



**CONTRACT AMENDMENT NO. 1**

Contract No. 22100000-21-STC

Contract Name: Construction and Industrial Equipment

**This Contract Amendment** to Contract No. 22100000-21-STC (“Amendment”) is made by and between the State of Florida, Department of Management Services (“Department”) and Clark Equipment Company (“Contractor”), with its principal place of business located at 250 East Beaton Dr., West Fargo, ND 58078, collectively referred to herein as the “Parties.”

**WHEREAS** the Parties entered into Contract No. 22100000-21-STC (“Contract”) which became effective on July 1, 2021, for the provision of Construction and Industrial Equipment;

**WHEREAS** the Parties agreed that the Contract may be amended by mutual agreement as provided in Section 6.9 Modification and Severability, of Attachment 1, Special Contract Conditions, to the Contract;

**ACCORDINGLY**, and in consideration of the mutual promises contained in the Contract documents, the Parties agree as follows:

**I. Contract Amendment.** The Contract shall be amended as follows:

**a. All references to the term “price sheet” throughout the Contract are hereby amended to read as “product sheet.”**

**b. Section 5.4 Suspended, Convicted, and Discriminatory Vendor Lists, of Attachment 1, Special Contract Conditions is hereby deleted in its entirety and replaced with the following:**

**5.4 Suspended, Convicted, Discriminatory, and Antitrust Violator Vendor Lists.**

In accordance with sections 287.042, 287.133, 287.134, and 287.137, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List, Discriminatory Vendor List, or Antitrust Violator Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors, or consultants have been placed on the Suspended Vendor List, Convicted Vendor List, Discriminatory Vendor List, or Antitrust Violator Vendor List during the term of the Contract.

**c. Section 12.3 Inspection of Records, Papers, and Documents, of Attachment 1 Special Contract Conditions is hereby created with the following terms:**

**12.3 Inspection of Records, Papers, and Documents.**

In accordance with section 216.1366, F.S., the Department is authorized to inspect the: (a) financial records, papers, and documents of the Contractor that are directly related to the performance of the Contract or the expenditure of state funds; and (b) programmatic records, papers, and documents of the Contractor which the Department determines are necessary to



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monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents requested by the Department within 10 Business Days after the request is made.

**d. "Net Price" as defined in Section 2, Definitions of Attachment 2, Scope of Work is hereby deleted in its entirety and replaced with the following:**

**Net Price** - The final price paid by the Customer after applying all MSRP discounts and MSRP Credits. The Net Price for Base Equipment, OEM and Non-OEM Option(s), Part(s), Accessory(ies), and Implement(s); and their respective features, equipment, and components shall include all charges for the Commodity, including but not limited to packing, handling, freight, distribution, transportation, startup, pre-delivery, delivery, inspection, installation, construction, assembly, title, and registration. The Contractor may include shipping charges for OEM and Non-OEM Options, Parts, Accessories, and Implements that the customer orders separately from the Base Equipment. Additional charges for a Commodity shall not be charged outside of the Net Price unless expressly authorized within the Scope of Work.

Charges and fees in excess of those that existed at the inception of the Contract may be extended to the Customer only if the amount of the increase is attributable to changes in market conditions. Prior to extending any such charge or fee to the Customer, the Contractor must request the Customer's approval by submitting documentation and justification for extending the amount of the charge or fee. The Contractor must explain the changes in market conditions that resulted in the charge or fee, identify the entity that determines and will receive the charge or fee (e.g., Manufacturer), and provide the methodology used to determine the amount of the charge or fee extended to the Customer. The amount of the charge or fee extended to the Customer shall not exceed the difference between the amount of the charge or fee at the time the Contractor requests the Customer's approval and the amount of the charge or fee that existed at the inception of the Contract. The Customer may approve or deny the charge or fee request. If deemed necessary by the Customer or the Contractor, the request may be escalated to the Department by submitting the same documentation that was submitted to the Customer to the Contract Manager. The Department reserves the exclusive right to approve or deny the escalated charge or fee request. If the charge or fee request is denied, the Contractor may withdraw the PQF. After obtaining written approval to extend the charge or fee, the approved amount of the charge or fee must be listed separately on the PQF. The Contractor shall provide documentation of approval by the Customer or Department with the PQF that includes the charge or fee.

**e. The first paragraph of Section 3.9, Transportation and Delivery of Attachment 2, Scope of Work is hereby deleted in its entirety and replaced with the following:**

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**3.9 Transportation and Delivery**

The Net Price for Base Equipment, OEM and Non-OEM Option(s), Part(s), Accessory(ies), and Implement(s); and their respective features, equipment, and components shall include all charges. Packing, handling, freight, distribution, and delivery shall be included at no additional charge to the Customer. The Contractor may include shipping charges for OEM and Non-OEM Options, Parts, Accessories, and Implements that the customer orders separately from the Base Equipment. Transportation and Delivery shall be FOB Destination to any point statewide as follows:

**f. Section 3.10, Price Quote Form of Attachment 2, Scope of Work is hereby deleted in its entirety and replaced with the following:**

**3.10 Price Quote Form**

For all Customer requests the Contractor shall complete and submit an Attachment 3, Price Quote Form (PQF), to the Customer for the requested Commodities. For all Commodities quoted on the PQF, the current MSRP at the time of quote, the percent MSRP Discount as listed on the Product Group Discount Sheet and the Net Price must also be provided to the Customer. All Commodities and surcharges shall be itemized on the PQF and include applicable brand, model, and pricing information. The percent MSRP Discount shall not be less than the discount listed on the Product Group Discount Sheet. The PQF shall be completed by the Contractor and returned to the Customer within two Business Days of the Contractor's receipt of the Customer's request for a quote. Customers are encouraged to seek more than one quote from the awarded Contractors, where available. Customers may negotiate with the Contractor to establish a lower price through a greater percent discount off MSRP.

**g. Section 3.13, Installation of Attachment 2, Scope of Work is hereby deleted in its entirety and replaced with the following:**

**3.13 Installation**

When installation is required, the Contractor shall be responsible for placing and installing the Commodities or parts in the required locations at no additional charge (not applicable to Group 15: Power Generators). All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the Commodity or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, tools, rigging, labor, and materials required to install or replace the Commodities or parts in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work



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shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

**h. Section 3.25, MSRP List and Product Adjustments of Attachment 2, Scope of Work is hereby deleted in its entirety and replaced with the following:**

**3.25 MSRP List and MSRP List Adjustments**

The Contractor shall submit a complete MSRP List that includes all Base Equipment; and OEM Options offered for each Manufacturer/-Brand Name and Group for which the Contractor received an award; the MSRP List may include OEM Parts, Accessories, and Implements and Non-OEM Options, Parts, Accessories, and Implements. The Commodities listed on the MSRP List must match the Commodities listed on the Product Sheet. The MSRP List is subject to the Department's approval. The MSRP List shall include the following for each Commodity: The Manufacturer/Brand Model Number, the Manufacturer/Brand Item Description, and the MSRP at the time of submission. The Contractor shall include a cover page, which shall provide the applicable Group, Manufacturer/Brand Name, and MSRP List date. The Department shall be the final arbiter for any disputes as to the accuracy of the MSRP at the time a Price Quote Form is received by the requesting Customer. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's MSRP List.

The Contractor may add products to and remove products from the MSRP List at any time during the life of the Contract by submitting a complete and revised MSRP List. Revised MSRP Lists must be accompanied by a revised Product Sheet, as described in the 'Product Sheet and Product Sheet Adjustments' section of the Scope of Work, as well as a list of all changes made from the previously submitted version of the MSRP List. Products added must be from a Manufacturer/Brand Name for which the Contractor received an award and fall within the scope of a Group for which the Contractor received an award. Products removed must be discontinued and no longer available from the Manufacturer. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's MSRP List.

**i. Section 3.26, Price Sheet and Price Adjustments of Attachment 2, Scope of Work is hereby deleted in its entirety and replaced with the following:**

**3.26 Product Sheet and Product Sheet Adjustments**

The Contractor shall submit a complete product sheet to include all Base Equipment and OEM Options, Parts, Accessories, and Implements for each Manufacturer/Brand and Group for which the Contractor received an award. The Commodities listed on the product sheet must match the Commodities listed on the MSRP List. The product sheet



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is subject to the Department's approval. The product sheet shall be provided in Excel format and include a separate tab for each Group. Each tab shall include, at minimum, the following information for each Commodity offered under that Group:

- Brand/Manufacturer Name (as shown on the Product Group Discount Sheet);
- Commodity Type (i.e., Base Equipment; OEM Option, Part, Accessory, or Implement);
- Model number or other identifier that Customers can use to locate the Commodity on the Manufacturer's website; Construction and Industrial Equipment
- Model number(s) of Base Equipment for and associated with the OEM Option, Part, Accessory, or Implement;
- Description;
- MSRP Discount (as shown on the Product Group Discount Sheet for the Commodity type).

The Contractor may add products to the product sheet at any time during the life of the Contract by submitting a complete and revised product sheet. Products added must be from a Manufacturer/ Brand Name for which the Contractor received an award and fall within the scope of a Group for which the Contractor received an award. The Contractor may delete products from the product sheet by providing a justification to the Department with approval from the Department. Any product deletions require the Contractor to submit a complete and revised product sheet, and shall include a revised MSRP List, as described in the "MSRP List and MSRP List Adjustments" section of the Scope of Work, as well as a list of all changes made from the previously submitted version of the MSRP List. The Contractor shall immediately notify the Department in writing if the Contractor is unable to provide the awarded Manufacturer/Brand. The Contractor shall be responsible for removing all non-eligible and unacceptable Commodities under the Contract from the Contractor's product sheet.

**II. Conflict.** Except as expressly amended and supplemented by this Amendment, the terms and conditions of the Contract will remain in effect unchanged. If and to the extent that any inconsistency may appear between the Contract and this Amendment, the provisions of this Amendment shall control.

**III. Effect.** Unless otherwise modified by this Amendment, all terms and conditions contained in the Contract shall continue in full force and effect. This Amendment is effective when signed by both Parties.



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**IN WITNESS WHEREOF**, the Parties agree to the terms and conditions of this Amendment and have executed it by their duly authorized representatives on the dates indicated below.

**State of Florida:**  
 Department of Management Services

**Contractor:**  
 Clark Equipment Company

**By:** DocuSigned by:  
*Pedro Allende*  
3E91A9D369EB47C...

**By:** DocuSigned by:  
*Barry Hanson*  
217196F8AE25401...

**Name:** Pedro Allende

**Name:** Barry Hanson

**Title:** Secretary

**Title:** Government Account Manager

**Date:** 9/13/2022 | 11:04 AM EDT

**Date:** 8/25/2022 | 3:24 PM CDT