

PARTICIPATING ADDENDUM
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Administered by the State of Oklahoma
IMMEDIATE NEED AFTERMARKET AUTOMOTIVE PARTS
MASTER AGREEMENT

Master Agreement No: 09000006747

IEH Auto Parts LLC dba Auto Plus Auto Parts and The Pep
Boys – Manny, Moe & Jack

And

State of Oklahoma by and through the Office of Management and Enterprise Services

(Oklahoma Contract No.: SW307A)

THIS PARTICIPATING ADDENDUM (this “Addendum”) is entered into effective as of July 20, 2016 (the “Effective Date”), by and between the State of Oklahoma by and through the Office of Management and Enterprise Services (the “State of Oklahoma” or Participating State/Entity”) and IEH Auto Parts LLC dba Auto Plus Auto Parts and The Pep Boys – Manny, Moe & Jack. (“Contractor”). The term of the Addendum shall be a one (1) year term from July 20, 2016 through July 19, 2017, which may be extended upon mutual agreement, with optional one-year terms, but shall not exceed July 19, 2021 (the Effective Date through July 19, 2017, is referred to herein as the “Effective Period”). Protracted contract negotiations may, at the State’s sole discretion, result in fewer optional terms. The State of Oklahoma and Contractor are sometimes collectively referred to herein as the “Parties.” Capitalized terms used but not defined herein have the meanings ascribed to such terms in that certain Master Agreement Award among the State of Oklahoma (“Lead State”), Contractor and those states entering into a Participating Addendum thereto (the “Master Agreement”).

WHEREAS, the Master Agreement is further identified as Master Agreement NO. 09000006747, and is effective July 20, 2016 through July 19, 2021. This Participating Addendum will be coterminous with the Master Agreement and any extensions of the Master Agreement, unless terminated pursuant to the terms of this addendum and MASTER AGREEMENT TERMS AND CONDITIONS, NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS, Section 7 Cancellation.

WHEREAS, the Master Agreement contemplates that all authorized entities in any state are welcome to use the Master Agreement through NASPO ValuePoint Cooperative Procurement Program (NASPO ValuePoint) with such state’s chief procurement official and provides that any such state reserves the right to add state-specific terms and conditions and modify the scope of the contract in such state’s Participating Addendum as allowed by the Master Agreement; and

WHEREAS, this Addendum is the State of Oklahoma’s Participating Addendum contemplated by the Master Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Scope:** This addendum covers the Immediate Need Aftermarket Automotive Parts contracts led by the State of Oklahoma for use by state agencies and other entities located in the Participating **State/Entity** authorized by that state’s statutes to utilize **state/entity** contracts with the prior approval of the state’s chief procurement official.
2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state’s

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statutes to use **state/entity** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating State Modifications or Additions to Master Agreement:

A. DEFINITIONS

Master Agreement Terms and Conditions, NASPO ValuePoint Master Agreement Terms and Conditions, Section 2., Definitions is modified to add the following provisions.

Purchasing Entity means The term (“Purchasing Entity”) shall include the State of Oklahoma (the “State”) and (a) any board, commission, committee, department or other instrumentality or entity designated to act on behalf of the State of Oklahoma or a political subdivision thereof; (b) any governmental entity specified as a political subdivision of the State of Oklahoma pursuant to the Governmental Tort Claims Act, including, without limitation, (i) any associated institution, instrumentality, board, commission, committee department, or other entity designated to act on behalf of the political subdivision; and (ii) a county or local governmental entity; and (c) entities authorized to utilize contracts awarded by the State of Oklahoma via a multistate or multi-governmental contract.

B. PRICE AND RATE GUARANTEE PERIOD

Master Agreement Terms and Conditions, NASPO ValuePoint Master Agreement Terms and Conditions Section 6., Price and Rate Guarantee Period is modified to add the following provision.

Pursuant to 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, Purchasing Entities under the Master Agreement that are Oklahoma state agencies are exempt from the assessment of State sales, use, and excise taxes. Further, such Purchasing Entities and Purchasing Entities that are political subdivisions of the State of Oklahoma are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Purchasing Entities will provide Contractor with a tax exemption certificate upon request. Any taxes of any nature whatsoever payable by the Contractor shall not be reimbursed by the Purchasing Entity.

C. CANCELLATION

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Master Agreement Terms and Conditions, NASPO ValuePoint Master Agreement Terms and Conditions Section 7., Cancellation is modified to add the following provision.

With respect to all Oklahoma-based transactions and all Oklahoma-based Purchasing Entities, Participating State may terminate any order if funds sufficient to pay its obligations under the Participating Addendum are not appropriated by the applicable state legislature, federal government or other appropriate government entity or received from an intended third party funding source. In the event of such insufficiency, Participating State shall provide ten (10) calendar days' written notice of intent to terminate. Notwithstanding the foregoing, if a Purchasing Entity issues an order and has accepted the products and/or services under such order, the Purchasing Entity shall be obligated to pay for such products and/or services. In the event of termination of an order as provided in the foregoing, Participating State shall not be considered to be in default or breach under the Participating Addendum nor under the Master Agreement, nor shall it be liable for any further payments ordinarily due under, with respect to, related to, or arising out of such order, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

D. INSURANCE

Master Agreement Terms and Conditions, NASPO ValuePoint Master Agreement Terms and Conditions Section 17.(d.) Insurance is hereby deleted in its entirety and replaced with the following provision.

Prior to commencement of performance, Contractor shall provide to the Participating State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Participating State that (1) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given at least thirty (30) days prior written notice, and (2) provides that the Contractor's liability insurance policy shall be primary.

E. LAWS AND REGULATIONS

Master Agreement Terms and Conditions, NASPO ValuePoint Master Agreement Terms and Conditions Section 18., Laws and Regulations is modified to add the following provision.

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For Oklahoma-based transactions and Purchasing Entities, in connection with its performance of obligations under the terms of the Participating Addendum and this Master Agreement, the Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances and orders, as amended, that are, by their terms, expressly applicable to Contractor's delivery of products and/or services under the Participating Addendum and this Master Agreement and impose obligations upon Contractor in its role as an information technology products and services provider, including, but not limited to, the following:

- a) Drug-Free Workplace Act of 1988 and as implemented at 45 C.F.R. part 76, Subpart F;
- b) Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use under nonexempt Federal contract, grant or loans of facilities included on the EPA List of Violating Facilities;
- c) Title VII of the 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990 and Executive Orders 11246 and 11375; and
- d) Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93.

Without limiting the generality of the foregoing, the Contractor shall, at all times from the Effective Date and during the Effective Period, be registered as a business entity licensed to do business in the State of Oklahoma, have obtained and shall maintain a sales tax permit in the State of Oklahoma, and shall be current on all franchise- and/or other business-tax payments to the State of Oklahoma, as applicable.

F. PUBLIC INFORMATION

Master Agreement Terms and Conditions, NASPO ValuePoint Master Terms and Conditions, Section 24, Public Information is modified to add the following provision.

Contractor acknowledges that Purchasing Entities are subject to the Oklahoma Open Records Act. Contractor also acknowledges that such Purchasing Entity will comply with the Oklahoma Open Records Act and with all opinions of the Oklahoma Attorney General concerning this Act. Except for a provision of the Contract specifically designated as confidential in a writing executed by both parties or a provision protected from disclosure in the Open Records Act, no Contract provision is confidential information and, therefore, any provision is subject to disclosure under the Open Records Act.

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G. ADMINISTRATIVE FEES

Master Agreement Terms and Conditions, NASPO ValuePoint Master Terms and Conditions, Section 26., Administrative Fees is modified to add the following provision.

For Oklahoma Based Purchasing Entities, the State of Oklahoma assesses an administrative fee in the sum of one percent (1%) on all sales transacted by any entity under this Participating Addendum.

Failure to remit the fee quarterly may result in cancellation of the Participating Addendum. Administrative Fees shall not be reflected as a separate line item in Contractor's billing to participating State Agencies and Authorized Users.

Payment shall be made by via Company Check payable to OMES Procurement within 45 calendar days from the completion of the quarterly reporting period stated under the section titled "Contract Usage Reporting.

Contractor agrees to notify OMES Procurement 24 hour in advance prior to submitting payment.

To ensure payment is properly credited, the Contractor must identify payment in the Contract Usage Report as an "Administrative Fee" and include the following information: the Applicable State Contract Number, Administrative Fee amount (s) paid and the reporting period covered

Administrative Fees should be mailed to:

Office of Management and Enterprise Services
Attention: Accounts Receivable
5005 N. Lincoln Blvd. #200
Oklahoma City, Oklahoma 73105

H. NASPO ValuePoint Summary and Detailed Usage Reports

Master Agreement Terms and Conditions, NASPO ValuePoint Master Terms and Conditions, Section 27., NASPO ValuePoint Summary and Detailed Usage Reports is modified to add the following provision.

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For Oklahoma based Purchasing Entities, Contractor agrees to submit a Contract Usage Report and said report shall be submitted on a quarterly basis. "Contract Usage Report" shall include the following: the Applicable State Contract Number, report amount(s), and reporting period covered and the State agency name. Reports shall include usage of this Contract by any other Government Entities (i.e. county, city, etc). Continuous failure to submit quarterly usage report may result in termination of the Contract.

Contract usage report shall meet the following criteria:

- a) Must be submitted electronically in Excel format
- b) Reports shall be submitted quarterly regardless of quantity
- c) Submitted within forty five (45) - calendar days upon performance completion
- d) Contract quarterly reporting periods shall be as prescribed:

January 01 through March 31

April 01 through June 30

July 01 through September 30

October 01 through December 31

All Contract Usage Reports shall be delivered electronically (format: .xls) to:

E-mail: strategic.sourcing@omes.ok.gov

For Oklahoma Based Customers, the State of Oklahoma assesses an administrative fee in the sum of one percent (1%) on all sales transacted by any entity under the Contract.

Failure to remit the fee quarterly may result in cancellation of the Contract. Administrative Fees shall not be reflected as a separate line item in Contractor's billing to participating State Agencies and Authorized Users.

Payment shall be made by via Company Check payable to OMES Procurement within 45 calendar days from the completion of the quarterly reporting period stated under the section titled "Contract Usage Reporting.

Contractor agrees to notify OMES Procurement 24 hour in advance prior to submitting payment.

To ensure payment is properly credited, the Contractor must identify payment in the Contract Usage Report as an "Administrative Fee" and include the following information: the Applicable State Contract Number, Administrative Fee amount (s) paid and the reporting period covered

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Administrative Fees should be mailed to:

Office of Management and Enterprise Services
Attention: Accounts Receivable
5005 N. Lincoln Blvd. #200
Oklahoma City, Oklahoma 73105

I. Master Agreement Terms and Conditions, NASPO ValuePoint Master Terms and Conditions, Section 35., Governing Law and Venue is modified to add the following provisions.

Any claim, dispute, or litigation relating to the execution, interpretation, performance, or enforcement of this Participating Addendum shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles.

Venue for any action, claim, dispute, or litigation relating in any way to the execution, interpretation, performance, or enforcement of this Participating Addendum shall be in Oklahoma County, Oklahoma.

If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the Western District of Oklahoma.

Further, notwithstanding any provision in the Master Agreement, the State does not waive the doctrine of sovereign immunity and immunity from suit to the extent authorized by the Constitution and laws of the State of Oklahoma nor any other right or defense available to the State.

4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Eric Levy
Address	901 North Lenola Road, Moorestown, NJ 08057
Telephone	(856) 778-1400 ext. 4012
Fax	(856) 439-5903
E-mail	rlevy@autoplusap.com

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Participating Entity

Name	Theresa Johnson
Address	5005 N. Lincoln Blvd. Ste. 300, Oklahoma City, OK 73105
Telephone	(405) 521-2289
Fax	(405) 521-4475
E-mail	theresa.johnson@omes.ok.gov

5. Partner Utilization: Each state represented by NASPO ValuePoint participating in the Master Agreement independently has the option of utilizing partners. Only partners approved by this Participating State/ Entity may be deployed. The Participating State will define the process to add and remove partners and may define the partner's role in this Participating Addendum. The Contractor's partners' participation will be in accordance with the terms and conditions set forth in the Master Agreement. Approved partners are only upon written approval from the State of Oklahoma.
6. Terms: The Participating State/Entity agrees to the terms and conditions of the Master Agreement only to the extent the terms and conditions are not in conflict with this Addendum, applicable law, or both.
7. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.
8. Leasing: The Parties acknowledge and agree that (i) the Master Agreement provides that Participating State/Entity may enter into lease agreements if it has the authority to do so; and (ii) Participating State/Entity reserves the right, but has no obligation, to lease equipment under this Addendum and the Master Agreement upon terms and conditions mutually acceptable to the Parties.
9. Counterparts: This Addendum may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Addendum. Delivery of an executed counterpart of this Addendum by electronic means, including, without limitation, by facsimile transaction or by electronic delivery in portable document format (".pdf")

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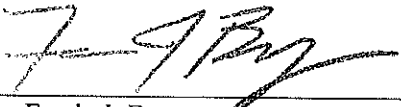
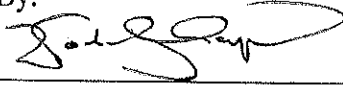
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or tagged image file format (".tiff"), shall be equally effective as delivery of a manually executed counterpart thereof.

IN WITNESS WHEREOF, the Parties have executed this Addendum through the duly authorized representative of each Party.

Participating State: <i>Oklahoma</i>	Contractor: IEH Auto Parts LLC dba Auto Plus Auto Parts and The Pep Boys - Manny, Moe & Jack
By: 	By: 
Name: Ferris J. Barger	Name: Wade Sharp
Title: State Purchasing Director	Title: Senior Vice President
Date: <i>7/20/16</i>	Date: 7/22/16

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

[Please email fully executed PDF copy of this document to
 PA @naspovaluepoint.org to support documentation of participation and posting in appropriate data
 bases]