

PARTICIPATING ADDENDUM
NASPO ValuePoint
IMMEDIATE NEED AFTERMARKET AUTOMOTIVE PARTS
Administered by the State of Oklahoma (hereinafter "Lead State")

MASTER AGREEMENT
O'Reilly Automotive Stores Inc. dba O'Reilly Auto Parts
Master Agreement No: 09000006747
(hereinafter "Contractor")

And

[State of North Dakota]
(hereinafter "Participating State" or "STATE")

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1. **Scope:** This addendum covers the *Immediate Need Aftermarket Automotive Parts* led by the State of Oklahoma for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state 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 statutes to use state 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/Entity Modifications or Additions to Master Agreement:**
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

Participating State/Entity to check one box.

No changes to the terms and conditions of the Master Agreement are required

The following changes are modifying or supplementing the Master Agreement terms and conditions.

4. **Coterminous:** The term of this participating addendum shall be coterminous with the State of Oklahoma Master Agreement Number 09000006747.

5. **Confidentiality:** CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract.

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6. Compliance with public records laws: CONTRACTOR understands that, except for disclosures prohibited in this Contract, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE as soon as reasonably possible upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

7. Spoilation: CONTRACTOR shall notify State of all potential claims that CONTRACTOR is aware of that arise as a result of CONTRACTOR'S performance under this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to State the opportunity to review and inspect the evidence, including the scene of an accident.

8. Cooperative Purchasing Contract: This Contract is a cooperative purchasing contract established pursuant to North Dakota Century Code (N.D.C.C.) § ~~54-44.4-13~~. This Contract is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C ch. 39-04.2, and the International Peace Garden. Participation in this open-ended contract is not mandated; therefore, the estimated volume of this Contract is not known.

9. Governing Law and Venue: This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

10. Insurance: Contractor and Authorized Dealer shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

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- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$1,000,000.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor or Authorized Dealer.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State.
- 3) The state of North Dakota and its agencies, officers, and employees shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured, which shall be achieved through use of a blanket endorsement. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- 4) The insurance required in this agreement, excluding Workers' Compensation, through a policy or endorsement, shall include:
 - a) Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
 - b) A provision that Contractor's or Authorized Dealer's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of Contractor's or Authorized Dealer's insurance and shall not contribute with it.
 - c) Cross liability/severability of interest for all policies and endorsements. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.

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- d) The insolvency or bankruptcy of the insured Contractor or Authorized Dealer shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor or Authorized Dealer from meeting the retention limit under the policy.
- 5) Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 6) Failure to provide proof of insurance as required in this agreement is a material breach of contract, and if CONTRACTOR does not cure such failure to provide proof of insurance upon fifteen (15) business days written notice from STATE, STATE may terminate this agreement.
- 7) Contractor or Authorized Dealer shall endeavor to provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

11. **Indemnification:** In addition to any indemnity obligations found within the Master Agreement, Contractor agrees that any attorney appointed to represent the STATE must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08.

12. **Alternative dispute resolution - jury trial:** STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

13. **Lease Agreements:** State agencies, institutions and other eligible participating entities of the Participating State (hereinafter referred to as "Participating Entity") may finance their purchase subject to the terms and conditions contained in the Master Price Agreement (including terms and conditions in the incorporated Request for Proposal) or, at the Participating Entity's option, a third party leasing company not associated with Contractor. If a third party lease or financing agreement is entered into, that agreement is separate from this Participating Addendum between Contractor and Participating Entity.

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

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Contractor

Name	David Stoecklein
Address	233 South Patterson Ave, Springfield, MO 65802
Telephone	(417) 851-5915
Fax	(417) 874-7199
E-mail	dstoecklein@oreillyauto.com

Contractor

Name	Chris George
Address	233 South Patterson Ave, Springfield, MO 65802
Telephone	(417) 862-2674, Ext. 10807
Fax	(800) 925-0899
E-mail	cgeorge@oreillyauto.com

Participating Entity

Name	Jamie Bostyan "State of North Dakota"
Address	600 E Boulevard Ave, Dept 012, Bismarck, ND 58505-0310
Telephone	(701) 328-4912
Fax	(701) 328-1615
E-mail	jbostyan@nd.gov

15. **Subcontractors:** All O'Reilly Auto Parts dealers and resellers authorized in the State of North Dakota, as shown on the dedicated O'Reilly Auto Parts (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The O'Reilly Auto Parts dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

16. **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.

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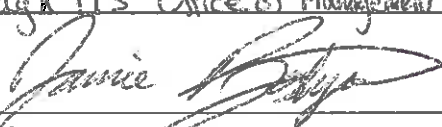

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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: <i>State of North Dakota through its Office of Management & Budget</i>	Contractor:
By: 	By: 
Name: <i>Jamie Bostyan</i>	Name: <i>Chuck Rogers</i>
Title: <i>Procurement Officer</i>	Title: <i>VP Professional Sales</i>
Date: <i>12-8-2016</i>	Date: <i>12-8-16</i>

[Additional signatures as required by Participating State]

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]**