

**PROFESSIONAL GRADE TOOLS &
DIAGNOSTIC EQUIPMENT**

Lead by the State of Oklahoma

Master Agreement #: **OK-MA-818-035**

Contractor: **O'Reilly Automotive Stores, Inc/O'Reilly Auto Enterprises, LLC-DBA O'Reilly Auto Parts**

Participating Entity: **STATE OF OKLAHOMA**

The following products or services are included in this contract portfolio:

- *All products and accessories listed on the Contractor page of the NASPO ValuePoint*

Master Agreement Terms and Conditions:

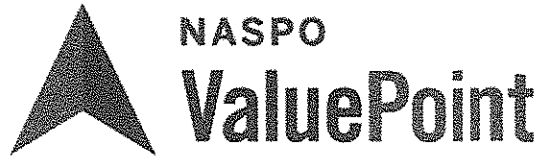
1. Scope: This addendum covers the *Professional Grade Tools and Diagnostic Equipment* led by the State of *Oklahoma* for use by state agencies and other entities located in the Participating State *[or State Entity]* authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

Removable Instruction: Participating States should ensure that paragraph 2 properly defines the scope of participation. The model language in paragraph enables participation by all political subdivisions, institutions of higher education, and other entities included in the state's statewide contract program.

2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of *Oklahoma*. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Primary Contacts: The primary contact individuals for this Participating Addendum areas follows (or their named successors):

Contractor

Name:	Roanen Barron
Address:	PO Box 9464, Springfield, MO. 65801
Telephone:	(417) 829-5879
Fax:	(417) 874-7199
Email:	probids@oreillyauto.com



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Participating Entity

Name:	Lisa Bradley
Address:	5005 N Lincoln, Suite 300, OKC, OK 73105
Telephone:	405-522-4480
Email:	Lisa.Bradley@omes.ok.gov

**4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER
AGREEMENT**

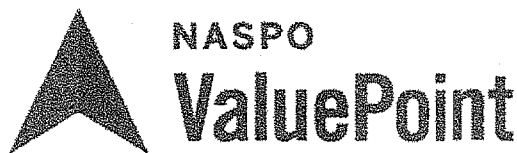
These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

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


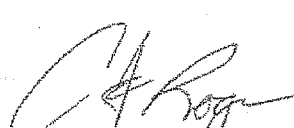
Oklahoma Terms were evidenced and agreed to in Attachment E of the original RFP.

NASPO ValuePoint
PARTICIPATING ADDENDUM



**PROFESSIONAL GRADE TOOLS &
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 Lead by the State of Oklahoma

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

Participating Entity: State of Oklahoma	Contractor: O'Reilly Automotive Stores/O'Reilly Auto Enterprises, LLC – DBA O'Reilly Auto Parts
Signature: 	Signature: 
Name: Ferris J Berger	Name: Chuck Rogers
Title: State Purchasing Director	Title: VP Professional Sales
Date: 3/25/19	Date: 3-21-19

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@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.]



State of Oklahoma

Office of Management and Enterprise Services

**STATE OF OKLAHOMA
ADDITIONAL
TERMS AND CONDITIONS
SPECIFIC TO
OKLAHOMA-BASED TRANSACTIONS**

1. Definitions

Acquisition

The term ("Acquisition") means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act.

Addendum or Addenda

The term ("Addendum or Addenda") means a document used to effect a contract change or modification to the Participating Addendum.

Effective Date

The term ("Effective Date") means the date this Participating Addendum was executed by both parties.

2. Participating Addendum Modification

The terms of this Participating Addendum shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Purchasing Director.

3. Choice of Law

Any claims, disputes, or litigation relating to the Participating Addendum, including the execution, interpretation, performance, or enforcement of the Participating Addendum shall be governed by the laws of the State of Oklahoma.

4. Choice of Venue

Venue for any action, claim, dispute or litigation relating in any way to the Participating Addendum shall be in Oklahoma County, State of Oklahoma.

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5. **Supplier Registration**

In order to receive payments from the State of Oklahoma, suppliers must be registered. The vendor registration process can be completed electronically through the OMES website at the following link: <https://www.ok.gov/dcs/vendors/index.php>.

6. **Non-Assignment**

For Oklahoma Participating Entities and/or Purchasing Entities, Contractor shall provide written notice of any proposed assignment, subcontract, transfer, sublet, or delegation to the State of Oklahoma under the notice provisions contained herein (the "Notice"). The Notice shall include (i) the entity name, (ii) to the extent applicable, the employee name(s), and (iii) the nature of the products or services to be provided and/or performed by the proposed assignee, delegate, sublessee, or subcontractor. Contractor shall not assign, sell, transfer, subcontract, or sublet rights, or delegate responsibilities under the Participating Addendum to a Non-Affiliate without prior written approval of the State of Oklahoma. More specifically, with respect to subcontractors, prior to a subcontractor being utilized by Contractor in connection with provision of the products or services within its obligations herein, Contractor shall obtain written approval of the State of Oklahoma of such subcontractor, which approval shall be within the sole and absolute discretion of the applicable Participating Entity and/or Purchasing Entity. The applicable Participating Entity and/or Purchasing Entity further reserves the right to revoke approval of a subcontractor in instances of poor performance or misconduct, or for other similar reasons. Notwithstanding anything to the contrary herein, if Contractor is permitted to utilize subcontractors in support of the Master Agreement or this Participating Addendum, Contractor shall remain solely responsible for its obligations under the terms of the Master Agreement and this Participating Addendum and for its acts and omissions and those of its agents, employees and permitted subcontractors.

7. **Indemnification**

In connection with indemnification under the contract, when an Oklahoma state agency is a named defendant in any filed or threatened lawsuit, the defense of the Oklahoma state agency shall be coordinated by the Vendor to control the defense and any related settlement negotiations; provided, however, Contractor shall not agree to any settlement of claims against the Oklahoma state agency without obtaining advance written concurrence from the State Attorney General.

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8. Payment

As applicable, Oklahoma Participating Entities and/or Purchasing Entities and Contractor shall comply with applicable Oklahoma law with respect to invoicing and making payments hereunder. Invoices are to be paid in arrears after products have been delivered and accepted or services provided and accepted pursuant to 74 O.S. § 85.44(B). Payment by Oklahoma Participating Entities and/or Purchasing Entities shall be due NET 45 days after a proper invoice is received and the goods have been delivered and accepted or services provided and accepted. Any applicable late fees or interest incurred after forty-five (45) days of nonpayment shall be paid only in accordance with 62 O.S. § 34.72. Invoices shall contain the purchase order number. Failure to provide a proper invoice may result in delay of processing the invoice for payment.

Prompt pay discounts will be offered to the Participating Entity and/or Purchasing Entity with the first discount being offered when payment is made no less than ten (10) days after the receipt of invoice. Additional discounts will be offered when payment is made at different five (5) day increments, e.g. payment made fifteen (15), twenty (20), twenty-five (25), etc. days after receipt of invoice.

If Participating Entity and/or Purchasing Entity finds that an overpayment or underpayment has been made to Contractor, the Participating Entity and/or Purchasing Entity may adjust any subsequent payments to Contractor under the Contract to correct the account. A written explanation of the adjustment will be issued to Contractor by the Participating Entity and/or Purchasing Entity.

9. Audits and Records Clause

For Oklahoma-based transactions, as used in this clause, "records" includes invoices, statements of work, purchase order records, and such other relevant documents, regardless of whether such items are in written form, in the form of computer data, or in any other form. By accepting any purchase order from any Purchasing Entity hereunder, Contractor acknowledges and agrees that any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Participating Addendum.

Contractor is required to retain records relative to the Participating Addendum for the duration of the Participating Addendum and for a period of seven (7) years following completion and/or termination of this Participating Addendum. If an audit, litigation, or other action involving such records is started before the end of such seven-year period, the records are required to be maintained for two (2) years from the date that all issues relating to or arising out of the action are resolved, or until the end of such seven

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(7) year retention period, whichever is later.

Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse Purchasing Entities for any overpayments inconsistent with the terms of the contract or orders or underpayment of fees found as a result of the examination of the Contractor's records.

10. **Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

The Contractor certifies that the Contractor and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;
- B. Have not within a three-year period preceding the Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; for violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the foregoing offenses enumerated in this certification; and
- D. Have not within a three-year period preceding this Contract had one or more public (federal, state or local) contracts terminated for cause or default.

If the Contractor cannot certify this statement, attach a written explanation for review by the State.

11. **Pricing**

Pursuant to 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, Purchasing Entities under the Contract 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 Participating Entity or the Purchasing Entity.

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In accordance with 74 O.S. § 85.40, all travel expenses to be incurred by the Contractor in the performance of the Participating Addendum shall be included in the total price/ amount.

The price to the Customer under the Contract shall include and Contractor shall prepay all shipping, packaging, delivery and handling fees. All Product deliveries will be Free on Board Purchasing Entity's Destination. No additional fees shall be charged to the Purchasing Entity for standard shipping and handling. If the Purchasing Entity requests expedited or special delivery, Purchasing Entity may be responsible for any charges for expedited or special delivery.

12. **Type of Contract**

This is a firm fixed price contract for indefinite delivery and indefinite quantity for the supplies/services specified. Contractor and Participating Entity and/or Purchasing Entity are free to enter into similar agreements

13. **Termination for Cause**

The State may terminate the Participating Addendum in whole or in part in the event (i) it has provided Contractor with written notice of material breach, and (ii) Contractor fails to cure such material breach within thirty (30) days of receipt of written notice.

The State may terminate the Participating Addendum in whole or in part immediately without a thirty (30) day written notice to Contractor, only if Contractor's material breach is reasonably determined (i) to be an impediment to the function of the State and detrimental to the State, (ii) when conditions preclude the thirty (30) day notice.

14. **Termination for Convenience**

The State may terminate the Participating Addendum, in whole or in part, for convenience if it is determined that termination is in the State's best interest. The State shall deliver to the Contractor a written notice of termination for convenience specifying the terms and effective date of termination. The Participating Addendum termination date shall be a minimum of thirty (30) days from the date the notice of termination is issued by the State.

15. **Open Records**

Contractor acknowledges that all State agencies and certain other Oklahoma Purchasing Entities are subject to the Oklahoma Open Records Act. Contractor also acknowledges that such Purchasing Entities 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 or Participating Addendum specifically designated as confidential in a writing executed by both parties or a provision protected from disclosure in the Open

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Records Act, no contract or Participating Addendum provision is confidential information and, therefore, any provision is subject to disclosure under the Open Records Act.

16. **Default**

For Oklahoma-based transactions, in the event a Purchasing Entity fails to make a payment to the Contractor for Products delivered, accepted, and properly invoiced, after forty-five calendar days, the Contractor may, upon five business days advance written notice to the State Purchasing Director and the Purchasing Entity's purchasing official, suspend additional shipments of Product or provision of services to such Purchasing Entity until such time as reasonable arrangements have been made and assurances given by such Purchasing Entity for current and future contract payments. This provision shall not affect any other Oklahoma Purchasing Entities' rights and purchases under this Participating Addendum and shall be solely applicable to the Purchasing Entity who has failed to make a payment after forty-five calendar days.

17. **Non-Appropriation Clause**

With respect to all Oklahoma-based transactions and all Oklahoma-based Purchasing Entities, Purchasing Entity may terminate any order if funds sufficient to pay its obligations under this Participating Addendum or any purchase order made under this 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, Purchasing Entity 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, neither the Participating Entity nor the Purchasing Entity shall be considered to be in default or breach under the Participating Addendum nor under the contract, 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.

18. **Contract Usage Reporting Requirements**

Reports shall provide the total amount sold to all political entities that include but are not limited to Oklahoma State Agencies, Counties, Cities, Schools, and Municipalities. Reports shall be submitted quarterly regardless of quantity.

Usage reports shall be sent electronically to Strategic.Sourcing@omes.ok.gov within 45 calendar days upon completion of performance quarter cited below:

January 1 through March 31

April 1 through June 30

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July 1 through September 30

October 1 through December 31

19. Compliance with Applicable Laws

As long as Contractor has an obligation under the terms of the Contract and in connection with performance of its obligations, the Contractor shall comply with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

- A. Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. § 81.
- B. Prospective participant requirements set at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
- C. 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;
- D. Anti-Lobbying Law set forth at 31 U.S.C. § 1325 and as implemented at 45 C.F.R. part 93;
- E. Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Circular A-133 with approval and work paper examination rights of the applicable procuring entity;
- F. Be compliant with the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1312, and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. § 1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify; and

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- G. Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- H. The Contractor shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- I. The Contractor shall inform its employees, agents, and proposed subcontractors, if applicable, who provide Products or perform Services under the Contract of the Contractor's obligations under the Contract and shall require compliance accordingly. At the request of the State, Contractor shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- J. As applicable, Contractor agrees to comply with Governor's Executive Order 2012-01, effective August 06, 2012, which prohibits the use of any tobacco product on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.

20. **Contract Management Fee**

Pursuant to 74 O.S. § 85.33, the Central Purchasing Division of the State of Oklahoma imposes and Contractor agrees to pay a contract management fee in the sum of one (1) % of the combined total quarterly expenditures from Oklahoma under this Participating Addendum. This contract management fee is to be noted on the quarterly "Contract Usage Report" and paid by the Contractor, to Central Purchasing within 30 calendar days from the completion of the quarterly reporting period. The contract management fee check should be sent to:

Office of Management and Enterprise Services
Attention: Accounts Receivable
5005 N. Lincoln Boulevard, Suite 300
Oklahoma City, OK 73105

21. **Employment Relationship**

This Participating Addendum does not create an employment relationship. Individuals performing Services required by the Contract are not employees of the State of Oklahoma or any Oklahoma Purchasing Entity. Contractor's employees shall not be considered

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employees of the State nor of any Purchasing Entity for any purpose, and accordingly shall not be eligible for rights or benefits accruing to such employees.

22. **Publicity**

Contractor acknowledges and agrees that the existence of the Master Agreement, this Participating Addendum or any Acquisition thereunder is not in any way an endorsement by the State of Oklahoma or any Oklahoma Purchasing Entity of Contractor, the Products or the Services and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Master Agreement or this Participating Addendum wherein the name of the State or any Purchasing Entity is mentioned or language used from which the connection of the State or any Purchasing Entity therewith may, in the State's judgment, be inferred or implied as an endorsement. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices without obtaining the prior written approval of the State.