

SUPPLY AGREEMENT NO. 1821

Auto Parts for Fleet Maintenance

THIS **Auto Parts for Fleet Maintenance Supply Agreement** ("Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City") and O'Reilly Auto Enterprises, LLC. dba O'Reilly Auto Parts ("Supplier"), effective upon execution by the City Manager or the City Manager's designee ("City Manager").

WHEREAS, Supplier has bid to provide Auto Parts for Fleet Maintenance in response to Request for Bid No. **Buyboard 551-17** ("RFB"), which RFB includes the required scope of work and all specifications and which RFB and the Supplier's bid response are incorporated by reference in this Agreement as Exhibits 1 and 2, respectively, as if each were fully set out here in its entirety.

NOW, THEREFORE, City and Supplier agree as follows:

- 1. Scope.** Supplier will provide Auto Parts for Fleet Maintenance in accordance with the attached Scope of Work, as shown in Attachment A, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety. "Goods," "products", and "supplies", as used in this Agreement, refer to and have the same meaning.
- 2. Term.** This Agreement is for three years. The parties may mutually extend the term of this Agreement for up to zero additional zero-month periods ("Option Period(s)"), provided, the parties do so in writing and prior to the expiration of the original term or the then-current Option Period. The City's extension authorization must be executed by the City Manager or designee.
- 3. Compensation and Payment.** The total value of this Agreement is not to exceed \$420,000.00, subject to approved extensions and changes. Payment will be made for goods delivered and accepted by the City within 30 days of acceptance, subject to receipt of an acceptable invoice. All pricing must be in accordance with the attached Bid/Pricing Schedule, as shown in Attachment B, the content of which is incorporated by reference into this Agreement as if fully set out herein its entirety.
- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement, including deductions for non-performance and authorizations for payment. The City's Contract Administrator for this Agreement is as follows:

Benjamin Sanchez
Fleet Maintenance
361.826.1959
BenjaminS@cctexas.com

5. **Insurance.** Before performance can begin under this Agreement, the Supplier must deliver a certificate of insurance ("COI"), as proof of the required insurance coverages, to the City's Risk Manager and the Contract Administrator. Required insurance shall be maintained by the Supplier for the duration of the contract and proof of insurance shall be provided to the City upon request. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 10 days of the City Manager's written request. Insurance requirements are as stated in Attachment C, the content of which is incorporated by reference into this Agreement as if fully set out here in its entirety.
6. **Purchase Release Order.** For multiple-release purchases of products to be provided by the Supplier over a period of time, the City will exercise its right to specify time, place and quantity of products to be delivered in the following manner: any City department or division may send to Supplier a purchase release order signed by an authorized agent of the department or division. The purchase release order must refer to this Agreement, and products will remain with the Supplier until such time as the products are delivered and accepted by the City.
7. **Inspection and Acceptance.** Any products that are delivered but not accepted by the City must be corrected or replaced immediately at no charge to the City. If immediate correction or replacement at no charge cannot be made by the Supplier, a replacement product may be bought by the City on the open market. Any amount paid to Supplier for any products that are not accepted and for which an immediate correction or replacement cannot be made shall be reimbursed to the City immediately.
8. **Warranty.**
 - (A) The Supplier warrants that all products supplied under this Agreement are new, quality items that meet the manufacturer's specifications. The Supplier warrants that it has clear title to the products and that the products are free of liens or encumbrances.
 - (B) In addition, the products purchased under this Agreement shall be warranted by the Supplier or, if indicated in Attachment D by the manufacturer, for the period stated in Attachment D. Attachment D is attached to this Agreement and is incorporated by reference into this Agreement as if fully set out here in its entirety.

9. **Quality/Quantity Adjustments.** Any quantities indicated on the Bid/Pricing Schedule are estimates only and do not obligate the City to order or accept more than the City's actual requirements nor do the estimates restrict the City from ordering less than its actual needs during the term of the Agreement and including any Option Period. Substitutions and deviations from the City's product requirements or specifications are prohibited without the prior written approval of the Contract Administrator
10. **Non-Appropriation.** The continuation of this Agreement after the close of any fiscal year of the City, which fiscal year ends on September 30th annually, is subject to appropriations and budget approval specifically covering this Agreement as an expenditure in said budget, and it is within the sole discretion of the City's City Council to determine whether or not to fund this Agreement. The City does not represent that this budget item will be adopted, as said determination is within the City Council's sole discretion when adopting each budget.
11. **Independent Contractor.** Supplier will perform the work required by this Agreement as an independent contractor and will furnish such products in its own manner and method, and under no circumstances or conditions will any agent, servant or employee of the Supplier be considered an employee of the City.
12. **Subcontractors.** Supplier may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Supplier must obtain prior written approval from the Contract Administrator if the subcontractors were not named at the time of bid. In using subcontractors, the Supplier is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Supplier. All requirements set forth as part of this Agreement, including the necessity of providing a COI in advance to the City, are applicable to all subcontractors and their employees to the same extent as if the Supplier and its employees had performed the work.
13. **Amendments.** This Agreement may be amended or modified only by written change order signed by both parties. Change orders may be used to modify quantities as deemed necessary by the City.
14. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.
15. **Taxes.** The Supplier covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes. Upon request, the City Manager shall be provided proof of payment of these taxes within 15 days of such request.

16. **Notice.** Any notice required under this Agreement must be given by fax, hand delivery, or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after postmark if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attn: Benjamin Sanchez
Assistant Parts Foreman
5352 Ayers Street, Building 3B, Corpus Christi, Texas 78415
361.826.1959
Fax: 361.826.8255

IF TO SUPPLIER:

O'Reilly Auto Enterprises LLC, dba O'Reilly Auto Parts
Attn: Roanen Barron
Senior Bid Analyst
Physical: 233 S. Patterson, Springfield, Missouri 65802
Mail: PO Box 1156, Springfield, Missouri 65801
417.829.5879
Fax: 800.925.0899

17. **SUPPLIER SHALL FULLY INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION ON ACCOUNT OF PERSONAL INJURIES, PROPERTY LOSS, OR DAMAGE, OR OTHER KIND OF INJURY, LOSS, OR DAMAGE, INCLUDING REASONABLE EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES, WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH RESULT FROM THE NEGLIGENT ACT, OMISSION, MISCONDUCT, OR FAULT OF THE SUPPLIER OR ITS EMPLOYEES OR AGENTS.**

18. **Termination.**

(A) The City Manager may terminate this Agreement for Supplier's failure to perform the work specified in this Agreement or to keep any required insurance policies in force during the entire term of this Agreement. The Contract Administrator must give the Supplier written notice of the breach and set out a reasonable opportunity to cure. If the Supplier has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

(B) Alternatively, the City Manager may terminate this Agreement for convenience upon 30 days advance written notice to the Supplier. The City

Manager may also terminate this Agreement upon 24 hours written notice to the Supplier for failure to pay or provide proof of payment of taxes as set out in this Agreement.

19. **Assignment.** No assignment of this Agreement by the Supplier, or of any right or interest contained herein, is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Supplier is of the essence of this Agreement, and the City Manager's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.
20. **Severability.** Each provision of this Agreement is considered to be severable and, if, for any reason, any provision or part of this Agreement is determined to be invalid and contrary to applicable law, such invalidity shall not impair the operation of nor affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part had been omitted.
21. **Order of Precedence.** In the event of any conflicts or inconsistencies between this Agreement, its attachments, and exhibits, such conflicts and inconsistencies will be resolved by reference to the documents in the following order of priority:
 - A. this Agreement (excluding attachments and exhibits);
 - B. its attachments;
 - C. the bid solicitation document including any addenda (Exhibit 1); then,
 - D. the Supplier's bid response (Exhibit 2).
22. **Certificate of Interested Parties.** Supplier agrees to comply with Texas Government Code Section 2252.908, as it may be amended, and to complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.
23. **Verification Regarding Israel.** In accordance with Chapter 2270, Texas Government Code, the City may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of the Supplier verifies that the company does not boycott Israel and will not boycott Israel during the term of this Agreement.
24. **Governing Law.** This Agreement is subject to all federal, State, and local laws, rules, and regulations. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas, and such form and venue for such disputes is the appropriate district, county, or justice court in and for Nueces County, Texas.

25. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and supersedes all prior negotiations, arrangements, agreements and understandings, either oral or written, between the parties.

(SIGNATURE PAGE FOLLOWS)

SUPPLIER

Signature: 

Printed Name: Chuck Rogers

Title: VP, Professional Sales

Date: 5-1-2020

CITY OF CORPUS CHRISTI

Signature: _____

Printed Name: _____

Title: _____

Date: _____

APPROVED AS TO LEGAL FORM

Assistant City Attorney

Date

Attached and Incorporated by Reference:

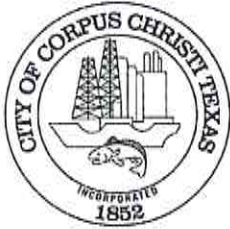
- Attachment A: Scope of Work
- Attachment B: Bid/Pricing Schedule
- Attachment C: Insurance Requirements
- Attachment D: Warranty Requirements

Incorporated by Reference Only:

- Exhibit 1: RFB No. Buyboard 551-17
- Exhibit 2: Supplier's Bid Response

SCOPE OF WORK

1. Contractor shall provide filters, batteries, brakes, engine parts, body parts, supplies and other automotive parts.
2. Parts will be ordered on an as needed basis.
3. In stock parts ordered before 2:00 pm shall be available for pick up the same business day.
4. In stock parts ordered after 2:00 pm shall be available for pick up the next business day.
5. Parts will be picked up between the hours of 8:00 am through 5:00 pm. To include Saturdays and holidays (except Christmas Day, Thanksgiving Day and Easter Sunday).
6. Contractor shall have a bill of sale upon pick up.



Attachment B – Pricing Schedule
 City of Corpus Christi
 Quote Form

| Description | Discount | |
|--------------------------------------------------------------------------|-----------------------------------|-------------------------------|
| Automotive & Fleet Parts, Batteries, OEM parts, Supplies Year 1 | 41% off List pricing or better | Not to Exceed \$140,000.00 |
| Automotive & Fleet Parts, Batteries, OEM parts, Supplies Year 2 | 41% off List pricing or better | Not to Exceed \$140,000.00 |
| Automotive & Fleet Parts, Batteries, OEM parts, Supplies Year 3 | 41% off List pricing or better | Not to Exceed \$140,000.00 |
| Buyboard Contract 551-17 | | |
| Total | | Not to Exceed \$420,000.00 |

COMPANY: O'Reilly Auto Enterprises, LLC. dba O'Reilly Auto Parts

NAME OF PERSON AUTHORIZED TO SIGN: Chuck Rogers

ADDRESS: 233 S. Patterson CITY/STATE/ZIP: Springfield, MO. 65802

PHONE: (417) 829-5879 EMAIL: probids@oreillyauto.com

FAX: (417) 874-7199 DATE: 5-1-2020

SIGNATURE:  TITLE: VP, Professional Sales

Attachment C: Insurance and Bond Requirements

No insurance or bond is required for this supply agreement; therefore, Section 5 is null and void.

Attachment D: Warranty Requirements

Warranty is based on manufacturer warranty.