



City of Austin

Purchasing Office

P.O. Box 1088, Austin, TX 78767

June 15, 2017

Advance Stores Company Inc. dba Carquest dba Advance Auto Parts

Laura Payne

2635 E. Millbrook Rd.

Raleigh, NC 27604

Laura.Payne@advance-auto.com

Dear Ms. Payne:

The Austin City Council approved the execution of a contract with your company through the U.S. Communities Government Purchasing Alliance cooperative program for automotive repair parts in accordance with the referenced solicitation.

Responsible Department:	Fleet Services Department
Department Contact Person:	Perry Been
Department Contact Email Address:	Perry.Been@austintexas.gov
Department Contact Telephone:	512-974-2629
Project Name:	Automotive Repair Parts
Contractor Name:	Advance Stores Company Inc. dba Carquest dba Advance Auto Parts
Contract Number:	MA 7800 GC170000012
Contract Period:	06/15/17 – 12/31/2020
Dollar Amount	\$1,536,000
Extension Options:	Two 12-Month Options of \$576,000 Each
Requisition Number:	17011300209
Cooperative Contract Number:	U.S. Communities Government Purchasing Alliance Contract No. 2017000280
Agenda Item Number:	20
Council Approval Date:	May 4, 2017

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Marian Moore
Procurement Specialist II
City of Austin
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
ADVANCE STORES COMPANY INC. DBA CARQUEST DBA ADVANCE AUTO PARTS
("Contractor")
FOR
AUTOMOTIVE REPAIR PARTS
MA 7800 GC170000012**

This Contract is between Advance Stores Company, Inc. dba Carquest dba Advance Auto Parts having offices at 2635 E. Millbrook Rd, Raleigh, NC 27604 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date"). Solicitation requirements are met by using Contractor's U.S. Communities Government Purchasing Alliance with the City of Charlotte, a political subdivision of the State of North Carolina Contract No. 2017000280.

1.1 This Contract is composed of the following documents:

- 1.1.1 U.S. Communities Government Purchasing Alliance with the City of Charlotte, a political subdivision of the State of North Carolina Contract No. 2017000280
- 1.1.2 This document
- 1.1.3 Exhibit A, Supplemental Terms
- 1.1.4 Exhibit B, Non-Discrimination and Non-Retaliation Certification
- 1.1.5 Exhibit C, Non-Suspension or Debarment Certification

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 U.S. Communities Government Purchasing Alliance with the City of Charlotte, a political subdivision of the State of North Carolina Contract No. 2017000280 as referenced in Section 1.1.1
- 1.2.2 This document as referenced in Section 1.1.2
- 1.2.3 Supplemental Terms as referenced in Section 1.1.3
- 1.2.4 The Non-Discrimination and Non-Retaliation Certification as referenced in Section 1.1.4
- 1.2.5 The Non-Suspension or Debarment Certification as referenced in Section 1.1.5

1.3 Quantity. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order.

1.4 Term of Contract. The Contract will be in effect on the date executed by the City (Effective Date) and shall remain in effect until December 31, 2020, and may be extended thereafter for up to two (2) additional twelve (12) month extension option(s), subject to the extension of the cooperative contract (as referenced in Section 1.1.1 above), approval of the Contractor and the City Purchasing Officer or his designee.

The City reserves the right to transfer this contract by amendment to future U.S. Communities Government Purchasing Alliance contract (s) with Advanced Stores Company Inc. that supersede Contract No. 2017000280 if the terms and conditions are favorable to the City.

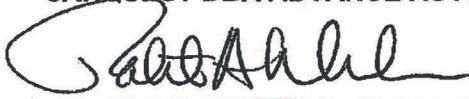
1.5 Compensation. The Contractor shall be paid an estimated amount of \$1,536,000 for the initial Contract term and \$576,000 for each extension option for a total amount Not-to-Exceed \$2,688,000. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

- 1.6 **Scope of Work, Clarifications and Additional Agreements.** This agreement is for the purchases of automotive parts and accessories and related services provided by the Contractor. A percentage discount will be provided to the City depending on the particular purchase.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

**ADVANCE STORES COMPANY INC. DBA
CARQUEST DBA ADVANCE AUTO PARTS**



Signature

Robert A Wheeler

Printed Name of Authorized Person

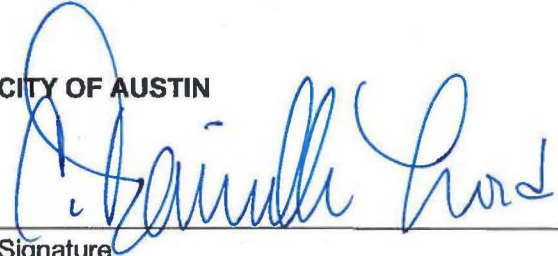
SVP Professional Business

Title

6/15/17

Date

CITY OF AUSTIN



Signature

Danielle Lord

Printed Name of Authorized Person

Procurement Mgr.

Title

6/15/17

Date

Exhibit A – Supplemental Terms
Exhibit B – Non-Discrimination and Non-Retaliation Certification
Exhibit C – Non-Suspension or Debarment Certification
Attachment A – Fleet Services Delivery Locations

**STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG**

CONTRACT NO. 2017000280

**CONTRACT TO PROVIDE
AUTOMOTIVE PARTS AND ACCESSORIES AND RELATED PRODUCTS AND SERVICES**

This Contract (the "Contract") is entered into as of this 1st day of January 2017 (the "Effective Date"), by and between Advance Stores Company, Inc. a corporation doing business in North Carolina (the "Company"), and the City of Charlotte, a North Carolina municipal corporation (the "City").

STATEMENT OF BACKGROUND AND INTENT

- A. The City issued An Invitation to Bid (ITB Number 269-2016-070) dated June 8, 2016 requesting Bids from qualified firms to provide the City and other Participating Public Agencies with Auto Parts and Accessories and Related Products and Services hereafter referred to as ("Products"). This Invitation to Bid, together with all attachments and any amendments, is referred to herein as the "ITB".
- B. The Company submitted a Bid in response to ITB #269-2016-070 on June 18, 2016. This Bid, together with all attachments and separately sealed confidential trade secrets, is referred to herein as the "Bid."
- C. The City awarded this Contract on September 12, 2016 to Company to provide Auto Parts and Accessories and Related Products and Services to the City all in accordance with the terms and conditions set forth herein.
- D. The City of Charlotte, on behalf of itself and all states, local governments, school districts, and higher education institutions in the United States of America, and other government agencies and nonprofit organizations (herein "Participating Public Agencies"), competitively solicited and awarded the Contract to the Company. The City has designated U.S. Communities as the administrative and marketing conduit for the distribution of the Contract to Participating Public Agencies.

The City is acting as the "Contracting Agent" for the Participating Public Agencies, and shall not be liable or responsible for any costs, damages, liability or other obligations incurred by the Participating Public Agencies. The Company (including its subsidiaries General Parts, CARQUEST Auto Parts, Advance Auto Parts, WorldPac, Auto Parts International, Straus-Frank Enterprises and Golden State Supply) shall deal directly with each Participating Public Agency concerning the placement of orders, issuance of purchase orders, contractual disputes, invoicing, payment and all other matters relating or referring to such Participating Public Agency's access to the Contract.

Each Participating Public Agency enters into a Master Intergovernmental Cooperative Purchasing Agreement (MICPA) outlining the terms and conditions that allow access to the Lead Public Agencies' Master Agreements. Under the terms of the MICPA, the procurement by the Participating Public Agency shall be construed to be in accordance with, and governed by, the laws of the state in which the Participating Public Agency resides.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and conditions contained in this Contract, the parties agree as follows:

A G R E E M E N T

1. **INCORPORATION OF EXHIBITS.** The following Exhibits are attached to this Contract and incorporated into and made a part of this Contract by reference:

Exhibit A: Pricing Sheets

Exhibit B: Specifications

Exhibit C: Bid Response Forms

Exhibit D: U.S. Communities Administration Agreement

Each reference to the Contract shall be deemed to include all Exhibits. Any conflict between language in an Exhibit to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract. Each reference to Advance Stores Company, Inc. in the Exhibits and Appendices shall be deemed to mean the Company.

2. **DEFINITIONS.** The following terms shall have the following meanings for purposes of this Contract (including all Exhibits):
 - 2.1 **EFFECTIVE DATE.** The term "Effective Date" refers to the effective date identified in the first paragraph of this Contract.
 - 2.2 **PRODUCTS.** The term "Products" shall mean Automotive Parts and Accessories for Light, Medium and Heavy Duty Vehicles and Related Products and Services and all other related items the Company agreed to provide to the City in its Bid.
 - 2.3 **SERVICES.** The term "Services" shall include all Services that the Company agreed to provide to the City in its Bid.
3. **TERM.** The initial term of this Contract will be for three (3) years from the Effective Date with an option to renew for two (2) additional two-year terms. This Contract may be extended only by a written amendment to the Contract signed by both parties.
4. **AGREEMENT TO PROVIDE PRODUCTS AND SERVICES.**
 - 4.1 The Company shall provide the Products and Services in accordance with the terms and conditions set forth in this Contract and the attached Exhibits. Except as set forth in Exhibit A, the prices set forth in Exhibit A constitute all charges payable by the City for the Products and Services, and all labor, materials, equipment, transportation, facilities, storage, information technology, permits, and licenses necessary for the Company to provide the Products and Services.
 - 4.2 **Placement of Orders:** All orders will be placed by personnel designated by the City on an as needed basis for the quantity required at the time during the term of the Contract.
5. **OPTIONS AND ACCESSORIES:** The City may in its discretion purchase from the Company options and accessories beyond what is called for in the Specifications, provided that such purchase does not create unfairness so as to defeat the purpose of the Bid statutes, and provided the City is authorized by law to make such purchases without a formal Bid process.
6. **DOCUMENTATION:** The Company will provide for all Products purchased under this Contract written or electronic documentation that is complete and accurate, and sufficient to enable City employees with ordinary skills and experience to utilize such Products for the purpose for which the City is acquiring them.
7. **COMPENSATION.** The City shall pay the Company for the Products and Services delivered in compliance with the Specifications at the unit prices set forth in Exhibit A. This amount constitutes

the maximum fees and charges payable to the Company in the aggregate under this Contract and will not be increased except by a written amendment duly executed by both parties in compliance with the price adjustment provisions set forth in Exhibit C. The Company shall not be entitled to charge the City any prices, fees or other amounts that are not listed in Exhibit A.

8. PRICE ADJUSTMENT.

8.1 The price(s) stated in this Contract shall not increase for the first year term of the Contract. The prices shall also not increase during the two (2) additional two-year renewal option terms unless the City approves a price adjustment in writing in accordance with the following terms:

8.1.1 Price increases shall only be allowed when justified in the City's sole discretion based on legitimate, bona fide increases in the cost of materials. No adjustment shall be made to compensate the Company for inefficiency in operation, increase in labor costs, or for additional profit.

8.1.2 To obtain approval for a price increase, the Company shall submit a written request to the Procurement Management Division representative, at the address listed below, together with written documentation sufficient to demonstrate that the increase is necessary based on a legitimate increase in the cost of materials. The request must state and fully justify the proposed price increase per unit over the price originally proposed.

City of Charlotte
M&FS Finance Office / Procurement Management
600 East Fourth Street
Charlotte, NC 28202

8.1.3 No proposed price increase shall be valid unless accepted by the City in writing. The City may approve such price increase for the remaining term of the Contract or for a shorter specified period, in the City's sole discretion. If the City rejects such price increase, the Company shall continue performance of the Contract.

8.1.4 If the City approves a price increase pursuant to this Section and the market factors justifying the increase shift so that the increase is no longer justified, the City shall have the right to terminate the price increase and revert back to the prices that were in effect immediately prior to the increase. The Company shall notify the City in writing if the market factors on which the City granted the increase change such that the City's reasons for granting the increase longer apply.

8.2 If the Company's unit prices for any Products and/or Services should decrease, the Company shall provide the affected Products and/or Services at the lower discounted price. The Company will provide the City with prompt written notice of all decreases in unit prices.

8.3 If a Product becomes unavailable, or if a new Product becomes available, the Company promptly will send the City a proposed revised version of Exhibit A. The City reserves the right to add or delete items to this Contract if particular items should become discontinued or an upgraded item becomes available to the industry market. Any new or replacement items added may be subject to Bid statute requirements. The City may also delete radio and communication equipment items included in this Contract if items are no longer needed or no longer issued as part of radios and communication equipment. At no additional cost to the City, the Company may substitute any Product or Service to be provided by the Company, if the substitute meets or exceeds the Specifications, is compatible with the City's operating

environment and is of equivalent or better quality to the City. Any substitution will be reflected in a written signed change order.

9. **BILLING.** Each invoice sent by the Company shall include all reports, information and data required by this Contract (including the Exhibits) necessary to entitle the Company to the requested payment. The Company shall send one (1) copy only of each invoice using one of the following options:

Option 1 – E-mail one copy of each invoice to cocap@charlottenc.gov. Company shall not mail invoices that have been sent via e-mail.

Option 2 – Mail one copy of each invoice to:

City of Charlotte Accounts Payable
PO Box 37979
Charlotte, NC 28237-7979
Attn: (Fleet Management)

The City is not tax exempt from sales tax. The Company shall include all applicable State and County sales taxes on the invoice and not combined with the cost of the goods.

Payment of invoices shall be due within thirty (30) days after the City has received all of the following: (a) an accurate, properly submitted invoice, (b) all reports due for the month covered by the invoice; and (c) any other information reasonably requested by the City to verify the charges contained in the invoice. Invoices must include state and local sales tax.

10. **CONTRACT MONITORING:** The City shall have the right to audit the Company's compliance with the terms and conditions of the Contract at such times as the City deems appropriate. Unless the City elects to terminate the Contract, the Company shall develop a written action plan to correct any Contract deficiency identified during these compliance audits, and shall submit such plan to the City within thirty (30) days of notification of non-compliance.
11. **REPORTING:** The Company shall provide such written reports of purchasing and expenditures as may be requested by the City from time to time, including without limitation any reports described in the Specifications.
12. **AUDIT:** During the term of the Contract and for a period of three (3) years after termination or expiration of this Contract for any reason, the City shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of the Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$5,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.
13. **GENERAL WARRANTIES.** Company represents and warrants that:
 - 13.1 It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of North Carolina, and is qualified to do business in North Carolina;
 - 13.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
 - 13.3 The execution, delivery, and performance of this Contract have been duly authorized by Company;

- 13.4 No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
 - 13.5 In connection with its obligations under this Contract, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
 - 13.6 The Company shall not violate any agreement with any third party by entering into or performing this Contract.
14. **ADDITIONAL REPRESENTATIONS AND WARRANTIES.** Company represents warrants and covenants that:
- 14.1 The Products and Services shall comply with all requirements set forth in this Contract, including but not limited to the attached Exhibits;
 - 14.2 All work performed by the Company and/or its subcontractors pursuant to this Contract shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
 - 14.3 Neither the Services, nor any Products provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and
 - 14.4 The Company and each of its subcontractors have complied and shall comply in all material respects with all applicable federal, state and local laws, regulations and guidelines relating to the performance of this Contract or to the Products and Services delivered hereunder, including but not limited to E-Verify, and shall obtain all applicable verifications, permits, and licenses.
15. **COMPLIANCE WITH LAWS:** All Products and Services delivered under this Contract shall be in compliance with all applicable federal, state and local laws, regulations and ordinances. In performing the Contract, the Company shall obtain and maintain all licenses and permits, and comply with all federal, state and local laws, regulations and ordinances.
16. **DELIVERY TIME:** When delivery time is requested in the ITB, (whether in the form of a specific delivery date or maximum number of days for delivery) time is of the essence. The Company's Bid shall be deemed a binding commitment of the Company to meet the delivery time stated herein unless the Bid specifically takes exception. If such delivery time is not met, the City shall be entitled to terminate the Contract immediately for default and/or exercise any other remedies available at law or in equity.
17. **QUALITY.** Unless this Contract specifically states otherwise for a particular item, all components used to manufacture or construct any supplies, materials or equipment or Products provided under this Contract shall be: (a) new; (b) the latest model; (c) of the best quality and highest grade workmanship; and (d) in compliance with all applicable federal, state and local laws, regulations and requirements. By "new", the City means that the item has been recently produced and has not been previously sold or used.
- Whenever this Contract states that a Product or Service shall be in accordance with laws, ordinances, building codes, underwriter's codes, applicable A.S.T.M. regulations or similar expressions, the requirements of such laws, ordinances, etc., shall be construed to be minimum requirements that are in addition to any other requirements that may be stated in this Contract.
18. **DESIGN AND/OR MANUFACTURER REQUIREMENT:** All Products and Services shall meet the Specifications set forth in Section 5 of this **ITB**.

19. **INSPECTION AT COMPANY'S SITE:** The City reserves the right to inspect the equipment, plant, store or other facilities of the Company during the Contract term from time to time as the City deems necessary to confirm that such equipment, plant, store or other facilities conform with the Specifications and are adequate and suitable for proper and effective performance of the Contract. Such inspections shall be conducted during normal business hours and upon at least three (3) days' notice to the Company (except that a store may be inspected at any time during regular store hours without notice).
20. **PREPARATION FOR DELIVERY:**
 - 20.1 **Condition and Packaging.** All containers/packaging shall be suitable for handling, storage or shipment, without damage to the contents. The Company shall make shipments using the minimum number of containers consistent with the requirements of safe transit, available mode of transportation routing. The Company will be responsible for confirming that packing is sufficient to assure that all the materials arrive at the correct destination in an undamaged condition ready for their intended use.
 - 20.2 **Marking.** All cartons shall be clearly identified with the City purchase order number and the name of the department making the purchase. Packing lists must be affixed to each carton identifying all contents included in the carton. If more than one carton is shipped, each carton must be numbered and must state the number of that carton in relation to the total number of cartons shipped (i.e. 1 of 4, 2 of 4, etc.).
 - 20.3 **Shipping.** The Company shall follow all shipping instructions included in the ITB, the City's purchase order or in the Contract.
21. **ACCEPTANCE OF PRODUCTS/SERVICES:** The Products delivered under this Contract shall remain the property of the Company until the City physically inspects, actually uses and accepts the Products. In the event Products provided to the City do not comply with the Contract, the City shall be entitled to terminate the Contract upon written notice to the Company and return such Products (and any related goods) to the Company at the Company's expense. In the event the Services provided under this Contract do not comply with the Contract, the City reserves the right to cancel the Service and rescind any related purchase of Products upon written notice to the Company. The remedies stated in this Section are in addition to and without limitation of any other remedies that the City may have under the Contract, at law or in equity.
22. **GUARANTEE:** Unless otherwise specified by the City, the Company unconditionally guarantees the materials and workmanship on all Products and Services. If, within the guarantee period any defects occur due to a faulty Product or Services (including without limitation a failure to comply with the Specifications), the Company at its expense, shall repair or adjust the condition, or replace the Product and/or Services to the complete satisfaction of the City. These repairs, replacements or adjustments shall be made only at such time as will be designated by the City to ensure the least impact to the operation of City business.
23. **NO LIENS:** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.
24. **MANUFACTURER OR DEALER ADVERTISEMENT:** No manufacturer or dealer shall advertise on Products delivered to the City without prior approval by the City.
25. **RIGHT TO COVER:** If the Company fails to comply with any term or condition of the Contract or the Company's response to the ITB, the City may take any of the following actions with or without terminating the Contract, and in addition to and without limiting any other remedies it may have:

- (A) Employ such means as it may deem advisable and appropriate to obtain the applicable Products and/or Services (or reasonable substitutes) from a third party; and
- (B) Recover from the Company the difference between what the City paid for such Products and/or Services on the open market and the price of such Products and/or Services under the Contract or the Company's response to the ITB.

26. **RIGHT TO WITHHOLD PAYMENT:** If Company breaches any provision of the Contract, the City shall have the right to withhold all payments due to the Company until such breach has been fully cured.

27. **OTHER REMEDIES:** Upon breach of the Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

28. **TERMINATION.**

28.1 **TERMINATION WITHOUT CAUSE.** The City may terminate this Contract at any time without cause by giving sixty (60) days written notice to the Company. The Company may terminate this Contract at any time without cause by giving one hundred and eighty (180) days written notice to the City.

28.2 **TERMINATION FOR DEFAULT BY EITHER PARTY.** By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:

28.2.1 The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

28.2.2 The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or

28.2.3 The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this Section shall identify and state the party's intent to terminate this Contract if the default is not cured within the specified period.

28.3 **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.** By giving written notice to the Company, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

28.3.1 The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this

Contract, Company's Bid, or any covenant, agreement, obligation, term or condition contained in this Contract; or

- 28.3.2 The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.
- 28.4 NO EFFECT ON TAXES, FEES, CHARGES, OR REPORTS. Any termination of the Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 28.5 OBLIGATIONS UPON EXPIRATION OR TERMINATION. Upon expiration or termination of this Contract, the Company shall promptly (a) return to the City all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by the City; (b) provide the City with sufficient data necessary to migrate to a new vendor, or allow the City or a new vendor access to the systems, software, infrastructure, or processes of the Company that are necessary to migrate to a new vendor; and (c) refund to the City all pre-paid sums for Products or Services that have been cancelled and will not be delivered.
- 28.6 NO SUSPENSION. In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 28.7 AUTHORITY TO TERMINATE. The City Manager or their designee is authorized to terminate this Contract on behalf of the City.
- 28.8 TRANSITION SERVICES UPON TERMINATION. Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Products, Services, functions and operations provided by the Company hereunder to another provider or to the City as determined by the City in its sole discretion. The transition Services that the Company shall perform if requested by the City include but are not limited to:
 - 28.8.1 Working with the City to jointly develop a mutually agreed upon transition Services plan to facilitate the termination of the Services; and
 - 28.8.2 Notifying all affected vendors and subcontractors of the Company of transition activities;
 - 28.8.3 Performing the transition Service plan activities;
 - 28.8.4 Answering questions regarding the Products and Services on an as-needed basis; and
 - 28.8.5 Providing such other reasonable Services needed to effectuate an orderly transition to a new system.
- 29. **NO DELAY DAMAGES:** Under no circumstances shall the City be liable to the successful Company for any damages arising from delay, whether caused by the City or not.

30. **MULTIPLE CONTRACT AWARDS.** This Contract is not exclusive. The City reserves the right to award multiple Contracts for the Products and Services required by this Contract if the City deems multiple Contracts to be in the City's best interest.
31. **RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent Contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the City that may arise under law or under the terms of this Contract.
32. **INDEMNIFICATION:** To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any Products or deliverables provided to the City pursuant to this Contract ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; or (iii) arising from the Company's failure to perform its obligations under this Contract, or from any act of negligence or wilful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from a violation of any federal, state or local law, regulation or ordinance by the Company or any its subcontractors (including without limitation E-Verify or other immigration laws); or (v) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term "Indemnitees" means the City and each of the City's officers, officials, employees, agents and independent Contractors (excluding the Company); and (b) the term "Charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts) or any other legal theory or principle, in connection with an Infringement Claim.
33. **INSURANCE.** Throughout the term of the Contract, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Section, or in the event the Company fails to provide the City with the required certificates of insurance, the City shall be entitled to terminate the Contract immediately upon written notice to the Company.

The Company agrees to purchase and maintain the following insurance coverage during the life of the Contract with an insurance Company acceptable to the City of Charlotte, authorized to do business in the State of North Carolina:

- (A) **Automobile Liability:** Bodily injury and property damage liability covering all owned, non-owned, and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident; and, \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.

- (B) Commercial General Liability: Bodily injury and property damage liability as shall protect the successful Company and any subcontractor performing work under the Contract from claims of bodily injury or property damage which arise from performance of the Contract, whether such work is performed by the Company, any subcontractor or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for Products, Services, completed operations, personal injury liability and Contractual liability assumed under the indemnity provision of the Contract.
- (C) Workers' Compensation: Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.

The City shall be named as additional insured under the commercial general liability insurance for operations or Services rendered under this Contract. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Consultant's operations under this agreement. The Company and each of its subcontractors shall and does waive all rights of subrogation against the City and each of the Indemnitees, as defined in Section 5.1.

The Company shall not commence any work in connection with the Contract until it has obtained all of the types of insurance set forth in this Form, and such insurance has been approved by the City. The Company shall not allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

All insurance policies shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall furnish the City with proof of insurance coverage by certificates of insurance accompanying the Contract.

Certificates of all required insurance shall contain the provision that the City will be given (30) days written notice of any intent to amend or terminate by either the insured or the insuring Company. All insurance certificates must include the City of Charlotte's Contract number in the description field.

The City shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

34. **NON-DISCRIMINATION.** The City has adopted a Commercial Non-Discrimination Policy that is described in Section 2, Article V of the Charlotte City Code, and is available for review on the City's website (the "Non-Discrimination Policy"). The Company agrees to comply with the Non-Discrimination Policy, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age, marital status, familial status, sexual orientation, gender identity, gender expression, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers in connection with a City Contract or Contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City Contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause

shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City Contracts or other sanctions.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Company has used on City Contracts in the past five years, including the total dollar amount paid by Contractor on each subcontract or supply Contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy as set forth in Section 2, Article V of the City Code, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy. The Company understands and agrees that violation of this clause shall be considered a material breach of this Contract and may result in Contract termination, disqualification of the Company from participating in City Contracts and other sanctions.

The Company further agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format provided by the City.

35. **COMPANY WILL NOT SELL OR DISCLOSE DATA.** The Company will treat as confidential information all data provided by the City in connection with this agreement. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by this agreement.
36. **WORK ON CITY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the City's premises, obey all instructions and directions issued by the City's project manager with respect to work on the City's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all rules, regulations and security procedures of the City when on the city's premises.
37. **BACKGROUND CHECKS:** The Company agrees that it has conducted or will conduct background checks on all personnel who will be working at the Charlotte Service facility or delivering Products or Services under the Contract. The Company will conduct such background checks prior to the personnel commencing work hereunder, whether as part of the Company's standard pre-employment screening practices or otherwise. The Company will complete a background check on an annual basis for each person working at the Charlotte facility. Background check will include at a minimum:
 - a. Criminal records search,
 - b. Identification verification; and
 - c. Proof of authorization to work in the United States.

The Company agrees if any personnel do not meet the background qualifications, he/she shall not be assigned to perform Services under this Contract. The Company will notify the City immediately if a background check reveals any conviction(s). If there is any question as to whether any personnel meets the background qualifications, prior to assignment of any Services under this Contract, the Company shall contact the City immediately.

38. **RESERVED.**

39. **NOTICES.** Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below. Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Contract shall be sent to:

For The Company:	For The City:
Laura Payne	Karen Ewing
Advance Stores Company, Inc.	Procurement Management Division
2635 E. Millbrook Rd.	600 East Fourth Street
Raleigh, NC 27604	Charlotte, NC 28202
Phone: 919.573.3004	Phone: 704.336.2992
Fax: 919.301.4079	Fax: 704.632.8254
E-mail: laura.payne@advance-auto.com	E-mail: kewing@charlottenc.gov
With Copy To:	With Copy To:
	Cindy White
	Senior Assistant City Attorney
	600 East Fourth Street
	Charlotte, NC 28202
	Phone: 704-336-3012
	Fax: 704-336-8854
	E-mail: cwhite@ci.charlotte.nc.us

All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

40. **SUBCONTRACTING:** The Company shall not subcontract any of its obligations under this Contract without the City's prior written consent. In the event the City does consent in writing to a subcontracting arrangement, Company shall be the prime Contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.
41. **MISCELLANEOUS**
- 41.1 **ENTIRE AGREEMENT.** This Contract, including all Exhibits and Attachments constitute the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral. Notwithstanding the forgoing, the parties agree that the ITB and the Bid are relevant in resolving any ambiguities that may exist with respect to the language of this Contract

- 41.2 AMENDMENT. No amendment or change to this Contract shall be valid unless in writing and signed by the party against whom enforcement is sought. Amendments that involve or increase in the amounts payable by the City may require execution by a Department Director, the City Manager, or an Assistant City Manager; depending on the amount. Some increases may also require approval by City Council.
- 41.3 GOVERNING LAW AND JURISDICTION. North Carolina law shall govern the interpretation and enforcement of this Contract, and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). All legal actions or other proceedings relating to this Contract shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Contract, the parties submit to the jurisdiction of such courts and hereby irrevocably waive any and all objections which they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.
- 41.4 BINDING NATURE AND ASSIGNMENT. This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign this Contract without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Section, a Change in Control, as defined in Section 41.8 constitutes an assignment.
- 41.5 SEVERABILITY. The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract or the Exhibits shall not affect the validity of the remaining portion of this Contract or Exhibits so long as the material purposes of this Contract can be determined and effectuated. If any provision of this Contract or Exhibit is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 41.6 NO PUBLICITY. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner without the prior written consent of the City. Notwithstanding the forgoing, the parties agree that the Company may list the City as a reference in responses to requests for proposals, and may identify the City as a customer in presentations to potential customers.
- 41.7 WAIVER. No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.
- 41.8 CHANGE IN CONTROL. In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by Contract or otherwise.
- 41.9 NO BRIBERY. The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the forgoing has bribed or attempted to bribe an officer or employee of the City in connection with this Contract.

41.10 FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES. The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.

41.11 TAXES. The Company shall pay all applicable federal, state and local taxes which may be chargeable against the Products and/or Services.

41.12 SURVIVAL OF PROVISIONS: Those Sections of the Contract and the Exhibits, which by their nature would reasonably be expected to continue after the termination of the Contract shall survive the termination of the Contract, including but not limited to the following:

Section 3	"Term"
Section 4.3	"Employment Taxes and Employee Benefits"
Section 13	"General Warranties"
Section 14	"Additional Representations and Warranties"
Section 22	"Guarantee"
Section 27	"Other Remedies"
Section 28	"Termination"
Section 33	"Insurance"
Section 34	"Indemnification" Principal Contacts"
Section 41	"Miscellaneous"
Section 42	"Confidentiality"

41.13 NON-APPROPRIATION OF FUNDS. If City Council does not appropriate the funding needed by the City to make payments under this Contract for a given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.

41.14 E-VERIFY. Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.

41.15 IRAN DIVESTMENT ACT. Company warrants and certifies that as of the Effective Date, Company is not identified on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4. The person signing this Contract certifies that he or she is authorized by Company to make the foregoing certification. Company further agrees that it will not utilize on this Contract any subcontractor that is identified on the Final Divestment List.

41.16 NOTICE OF DEFERRAL UNDER FEDERAL GRANT UNIFORM GUIDANCE. As permitted under the rule published at 80 FR 54407, the City of Charlotte is electing to defer until July 1, 2017, the implementation of the procurement provisions of the Uniform Guidance, as detailed in 2 CFR 200 subsections .317 through .326. During this period, we will continue to operate under the guidance of 44 C.F.R. § 13.36(a)-(i) (States, Local and Tribal governments) and 2 C.F.R. 215.40-48 (Institutions of Higher Education, Hospitals, and Private Non-Profits).

This section shall constitute the documentation of this decision as required, and shall be deemed incorporated into our internal procurement policies

42. **CONFIDENTIALITY.**

42.1 DEFINITIONS. As used in this Contract, The term "Confidential Information" shall mean any information, in any medium, whether written, oral or electronic, not generally known in the relevant trade or industry, that is obtained from the City or any of its suppliers, Contractors or licensors which falls within any of the following general categories:

- 42.1.1 Trade secrets. For purposes of this Contract, trade secrets consist of information of the City or any of its suppliers, Contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new Products or Services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.
- 42.1.2 Information of the City or its suppliers, Contractors or licensors marked "Confidential" or "Proprietary."
- 42.1.3 Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.
- 42.1.4 Information contained in the City's personnel files, as defined by N.C. Gen. Stat. 160A-168. This consists of all information gathered by the City about employees, except for that information which is a matter of public record under North Carolina law.
- 42.1.5 Citizen or employee social security numbers collected by the City.
- 42.1.6 Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- 42.1.7 Local tax records of the City that contains information about a taxpayer's income or receipts.
- 42.1.8 Any attorney / client privileged information disclosed by either party.
- 42.1.9 Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
- 42.1.10 The name or address of individual home owners who, based on their income, have received a rehabilitation grant to repair their home.
- 42.1.11 Building plans of city-owned buildings or structures, as well as any detailed security plans.
- 42.1.12 Billing information of customers compiled and maintained in connection with the City providing utility Services
- 42.1.13 Other information that is exempt from disclosure under the North Carolina public records laws.

Categories 42.1.3 through 42.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b)

the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Contract.

42.2 RESTRICTIONS. Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- 42.2.1 Company shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by the City in writing.
- 42.2.2 Company shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an agent, subcontractor or vendor of the City or Company having a need to know such Confidential Information for purpose of performing work contemplated by written agreements between the City and the Company, and who has executed a confidentiality agreement incorporating substantially the form of this the Contract. Company shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted to any third party without the City's prior written consent.
- 42.2.3 Company shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 42.2.4 Company shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
- 42.2.5 Company shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, vendors, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.
- 42.2.6 In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 42.2.7 All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.
- 42.2.8 Company shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
- 42.2.9 Company shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract. The Company shall have each of its employees who will have access to the Confidential Information sign a confidentiality agreement which provides the City and

its vendors, licensors, subcontractors, employees and taxpayers the same level of protection as provided by this Contract.

42.3 EXCEPTIONS. The City agrees that Company shall have no obligation with respect to any Confidential Information that the Company can establish:

- 42.3.1 Was already known to Company prior to being disclosed by the City;
- 42.3.2 Was or becomes publicly known through no wrongful act of Company;
- 42.3.3 Was rightfully obtained by Company from a third party without similar restriction and without breach hereof;
- 42.3.4 Was used or disclosed by Company with the prior written authorization of the City;
- 42.3.5 Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Company shall first give to the City notice of such requirement or request;
- 42.3.6 Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.

43. **FORCE MAJEURE:** Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to the Contract, and such failure or delay shall not be deemed a default of the Contract or grounds for termination hereunder if all of the following conditions are satisfied:

If such failure or delay:

- A. could not have been prevented by reasonable precaution;
- B. cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
- C. if, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.


An event that satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the City shall have the right to terminate the Contract by written notice to the Company.

Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the successful Company of any obligation it may have regarding disaster recovery, whether under the Contract or at law.

IN WITNESS WHEREOF, and in acknowledgment that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed on the date first written above.

ADVANCE STORES COMPANY, INC.

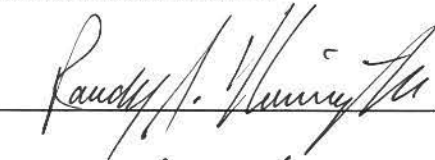
BY: 

PRINT NAME: Robert A. Wheeler

TITLE: SVP Commercial

DATE: 9-1-16

CITY OF CHARLOTTE:
CITY MANAGER'S OFFICE:

BY: 

PRINT NAME: Randy Harrington

TITLE: CFO

DATE: 9/17/16

CITY OF CHARLOTTE:
OFFICE OF RISK MANAGEMENT:

BY: 

PRINT NAME: Christee Gibson

TITLE: RIS Mgr

DATE: 9/15/14

EXHIBIT A

EXHIBIT A PRICING SHEET

The following Pricing Sheets are an Exhibit to and is incorporated into the Contract to Provide AUTOMOTIVE PARTS AND ACCESSORIES AND RELATED PRODUCTS AND SERVICES (the "Contract") between the City of Charlotte and Advance Stores Company, Inc.

EXHIBIT B

EXHIBIT B SPECIFICATIONS

This Exhibit B is incorporated into and made a part of the Contract for Automotive Parts and Accessories and Related Products and Services for Light, Medium, Heavy Duty Vehicles ("Contract") between the City of Charlotte (the "City") and Advance Stores Company, Inc. (the "Company"). Unless otherwise defined herein, capitalized terms in this Exhibit shall have the same meanings as are assigned to such terms in the main body of this Contract.

5. Scope of work:

The scope of this Contract shall be to provide Automotive Parts and Accessories and Related Products and Services for Light, Medium, Heavy Duty vehicles to the City of Charlotte and other Participating Public Agencies. The City's Fleet Management Division ("Fleet") requires a broad variety of vehicles and equipment including but not restricted to, automobiles, light, medium, and heavy duty trucks, SUVs, fire apparatus, buses, and construction equipment. Company must submit Bid on complete manufacturer lines of new Products and components to accommodate the City's requirements.

Company is required to address each of the following components of this ITB in writing as part of their Bid response. Bids that fail to include all information requested may be deemed non-responsive.

Participating Public Agencies may have additional specific requirements that might not be a requirement of the Lead Public Agency. The Company agrees to provide additional information or documentation to Participating Public Agencies as may be required per the Master Intergovernmental Cooperative Purchasing Agreement (between the Lead Public Agency and the Participating Public Agency).

5.1 General Requirements:

All Products offered shall be new, highest quality or grades available, meet all the requirements of these specifications and be in operating condition at time of delivery. All parts offered by the Company in response to this ITB shall be the most recently issued models. No parts other than the best quality will be considered for purposed of this ITB. While it is understood by all Parties involved that a quality comparison study is not practical in many situations, the Company shall be held directly responsible for substituting a sub-standard or lesser grade parts than required for in the application. Verifiable substitution of lesser grade parts may constitute grounds for Contract termination, or other action at the sole discretion of the City of Charlotte. Reference of brand names, style, and or model numbers provided in the ITB are to denote the product currently in use by the City that is compatible with existing vehicles or equipment.

5.1.1 Company must be an authorized distributor of each manufacturer of product lines offered to the City in the Bid response. The City shall be entitled to conduct or require a pre-award facility inspection and evidence of industry certifications. The Company may be required to submit a certificate for each Product manufacturer line offered. The certificate must state that the Company is authorized to supply such Products and Services.

5.1.2 All Products must be rated and classified for each category and required application.

5.2 Quantities:

EXHIBIT B

The City does not guarantee quantities and will purchase quantities of Products according to actual need during the term of the Contract. The quantities listed in this ITB are estimates only, and may differ substantially from actual quantities ordered. Multiple orders will be placed on an as needed basis during the term of the Contract.

5.3 Pricing:

Company must submit a fixed percentage discount off the Company most current retail list price, or other verifiable index for all automotive parts, components, accessories, and all other Products and Services offered by the Company, for the life of the Contract. The discount percentages offered will apply to the entire Products catalog for the brand and category listed. Prices must include shipping, handling, and delivery, manufacturer mark up, profit, item cost and storage. No other charges will be allowed.

All catalogs, and retail price lists must be identified and a copy included in the Bid response. The City may request documentation from manufacturer verifying list prices at any time.

Discounts shall be firm for the life of the Contract. Unit prices shall be firm for the first annual term of the Contract. At least sixty (60) days prior to the end of such twelve (12) month term, the Company shall submit in writing to Procurement Management any proposed price adjustments (increases and decrease) for review. Price increases will only be considered for those items with a published manufacturer's price increase. The successful Company shall provide a comparison of previous year prices and proposed new prices, showing the percent (%) difference. Price increases will not be considered more than once annually.

5.3.1 Market Basket Items:

For price comparison purposes and verification of discounts offered and to determine the lowest Bid, Company must submit unit prices for all items provided as *Attachment 1- City Market Basket and Attachment 2-National Market Basket*. Company should not consider the Attachments as "core" or high volume items. The pricing submitted on Attachments 1 & 2 does not solely determine lowest responsive, responsible Company. Bids must comply with all requirements of this ITB and provide the broadest and most comprehensive product offering possible.

1. Pricing Sheets must be submitted in Excel format on a compact disc or flash drive. Company must not change the format. To obtain an electronic copy of the Pricing Sheets (Attachments 1 & 2), email Karen Ewing at kewing@charlottenc.gov. Company must also provide a hard copy (paper copy) of the Pricing Sheets with the "Original" copy of their Bids.
2. Company shall not alter or revise the Attachments provided by the City in Excel format. **Doing so may result in your Bid being deemed non-responsive.**
3. Company must submit unit pricing on the Products provided as Attachments 1 and 2 using the discounts stated on **Required Form 5 in Section 6**.
4. Company must indicate whether the item is an exact match or provide an alternate in the appropriate fields. The City's decision shall be final and conclusive in determine the equality of alternatives.
5. Pricing must include manufacturer part number, discount applied, and extended net/Contract price after discount.
6. DO NOT include any tax in your pricing.

EXHIBIT B

7. Company are cautioned to carefully review each item and pay special attention to the unit of measure for each item. Please be sure to Bid the unit of measure designated that may be different from your selling unit.

5.3.2 Catalog Price List.

Company must include a complete price list of all catalog items and Services offered that are not included in the Market basket Product Lists (Attachments 1 & 2) on a compact disc (CD) or flash drive. Pricing must be in the Excel format set forth in **Attachment 3**. Please provide separate price list for Light, Medium and Heavy Duty Vehicles if applicable. Services must be itemized using an hourly rate. Company must provide the broadest and most comprehensive Product offering possible.

5.3.3 Pricing Incentives and Rebates:

Please identify any incentives and rebates offered based on volume, dollar amounts, electronic ordering or other criteria.

The Lead Public Agency will evaluate any rebate stipulations or contingencies to determine which discount structure is in the best interest of the City and the Participating Public Agencies. The Lead Public Agency reserves the right to determine the most favorable pricing structure and any such determination shall be final and conclusive.

5.4 Placement of Orders.

The Company must have the proven ability to allow electronic access to product information and ordering. Orders may be placed via purchase orders, on-line using Internet technology or via the telephone or fax. Bids must address the following:

1. Percent (%) of time orders filled correctly;
2. Percent (%) of time items are back ordered;
3. Backorder policy;
4. Percent (%) of time orders are delivered within Contract time;
5. Return policy;
6. Retail store locations; and
7. Policy for over the counter purchases.

5.5 Electronic Commerce.

All Bids must address the following required features and functionalities of the Company's Internet ordering capabilities at no additional cost to the City:

1. Ability to set up individual users;
2. Ability to set up and maintain multiple accounts, and ship to locations for each user;
3. Product comparison tools;
4. Quick order feature;
5. Automated order confirmation (e-mail);
6. Technical Support. Please explain offering in detail and include hours of operation;
7. Ability to set product preferences based on the City specifications;
8. Product availability and real time pricing and inventory;
9. Ability to create custom shopping lists;
10. Ability to save a shopping cart and complete the check-out process at a later time;
11. Order tracking capabilities;
12. Schedule deliveries for a later date and include parameters;
13. On-line reports that designated City staff can produce;
14. Ability to add or change ship to locations;

EXHIBIT B

15. Please provide a dummy login and password for access to your on-line ordering system for review.
16. Capability to display picture and full description for every item.
17. On-line returns capability.

5.6 Reporting capabilities.

Company must be able to provide the City with monthly, quarterly, and annual electronic usage reports with product level detail, including the following:

1. Ability to sort the history of purchases by product type (i.e. belts, emissions, engine, etc.), by account, or ship-to location; and
2. Ability to produce recycled Products purchased reports.
3. Bids must include sample reports for a current government customer that demonstrates these reporting capabilities.

5.7 Billing capabilities.

1. Electronic billing options;
2. Customized billing options;
3. Invoice options;
4. Frequency options;
5. Sorting Capabilities; and
6. Media Types

5.8 Procurement Cards (P-cards).

Company must accept City issued p-cards on-line or in retail stores. P-cards must be linked to Contract pricing. Please address your Company's policy for accepting procurement cards (P-cards), major credit cards and how this information is linked to Contract pricing. Company must be able to provide Level III data on the credit card reports. Please confirm this requirement in your Bid response.

5.9 Delivery and Performance Service Level.

All in-stock Products provided under this Contract must be delivered F.O.B. to the City of Charlotte's designated Fleet Management facility (see Section 5.10) within two (2) hours for all orders placed. Products shall be delivered in quantities and intervals as requested by the City.

Special circumstances may require the Company to make immediate deliveries, in less than one (1) hour that may not be during regular business hours or days. Company are expected to provide flexibility in delivery and Services and any Products may be required at any location that may or may not be stated. These conditions are to be maintained to minimize Fleet downtime and Service delays. If notification is given to the successful Company of any Emergency Response or Essential Service equipment being inoperable due to Products or Service issues, the supplier must be willing and able to respond in less than one (1) hour, 24 hours per day and seven (7) days per week.

All Participating Public Agencies will require deliveries to their specific locations. Successful Company must agree to provide the same delivery terms and conditions to all Participating Public Agencies that utilize the Master Agreement through U.S. Communities. Bids must include exceptions of locations where Bidder cannot meet stated requirements.

The successful Company is responsible for maintaining a high level of Service as it relates to customer satisfaction and Contractual performance. The Company must be willing to accommodate changes in volume, delivery sites, and other reasonable requests by the City throughout the term of the Contract.

EXHIBIT B

The successful Company(s) shall facilitate the performance of inventory turns that may include all or part of the following:

- Smaller more frequent deliveries;
- Maintaining pre-determined inventory levels (based on min/max levels); and
- On-line ordering and designated personnel to “share” inventory data for availability and delivery information.

5.9.1 Each order delivered must have an invoice enclosed. The invoice must clearly show the Purchase Order Number, Fleet Order number, items ordered, unit of measure, Contract pricing, and items enclosed, and identify any items on backorder.

5.9.2 Bids must include Company process for tracking and verifying all deliveries.

5.10 Fleet Management Facility Locations:

Company shall deliver to locations needed by the City, including but not limited to:

Shop	Street Address	Standard Hours
Commission Decommission Facility	5500 Wilkinson Blvd, Suite B, Charlotte, NC 28208	7:30am – 4:00 pm Monday-Friday
Louise Avenue Facility	829 Louise Avenue, Charlotte, NC 28204	6:00am – 10:30 pm Monday-Friday
Atando Avenue Facility	1031 Atando Avenue, Charlotte, NC 28205	6:00 am – 10:30 pm Monday-Friday
12 th Street Facility	900 W. 12 th Street, Charlotte, NC 28206	7:30 am – 4:00 pm Monday-Friday
Tuckaseegee Road Facility	701 Tuckaseegee Road, Charlotte, NC 28208	6:00 am – 6:00 pm Monday-Friday
Sweden Road Facility	4600 Sweden Road, Charlotte, NC 28273	6:00 am – 10:30 pm Monday-Friday

All Participating Public Agencies will require deliveries to its specific locations. **Successful Company must agree to provide the same delivery terms and conditions to all Participating Public Agencies.**

5.11 Receiving:

Inventory accuracy and asset management are critical. The successful Company is solely responsible to insure all quantities, packaging, pricing, part numbers, and related information is correct on all shipments/parts/invoicing. Part numbers on invoicing to the City, must match part numbers on the part labels exactly. It is the sole responsibility of the successful Company to audit any/all shipments for accuracy. No delivery is to be “dropped off” at any Fleet facility without shipment confirmation, audit, and signature of receipt from authorized Fleet Management personnel.

5.12 Warranty:

All Products supplied under the Contract shall be covered by a manufacturer’s written guarantee and/or warranty that such Products will be free from defects in materials, workmanship and performance for a minimum of one year; merchantable and in full conformity with the Specifications set forth in this ITB, industry standards, dimension charts

EXHIBIT B

and Company's descriptions, representations and samples. The Company shall administer the warranty on the City's behalf, and shall ensure that the manufacturer repairs or replaces at no charge to the City all Products that violate either the above warranty or the applicable manufacturer's warranty.

5.12.1 The Company shall provide the City with two copies of the manufacturer's written warranty for each item of equipment.

5.12.2 It shall be the responsibility of the manufacturer to pay all shipping and crating costs associated with warranty repairs.

5.13 Invoices:

Invoices or Service Request tickets detailing inclusive pricing (labor, parts, fees, shipping/handling) shall be provided to each Fleet Management Facility Location upon delivery of Services or parts. Invoices shall be detailed indicating the following:

A. Header

- Invoice numbers must be sequential and shall not be duplicated during the life of this Agreement.
- Invoice Date
- Name of Fleet Management Facility requesting Service.
- City's payment method number (Purchase Order)
- Service Providers City vendor number
- Service Providers City Contract number
- Service Providers Payment Remit to Address

B. Detail

- Quantity
- Unit Price
- Extended Amount per item

NOTICE: Invoices detailing parts purchased with inclusive pricing (parts, fees, shipping/handling) must be provided to each Fleet Management Facility at the time and point of delivery.

- a. All credit statements and refund transactions must be processed within five (5) business days. Credit statements should include original statement invoice number as a reference.
- b. Failure to comply with or properly execute this invoicing procedure may delay payment and may be grounds to terminate this Agreement at the discretion of the City.
- c. It is the responsibility of the Company to ensure a copy of the invoice(s) is sent and received by the City of Charlotte Accounts Payable.
 1. All invoices should be sent to COCAP@CHARLOTTENC.GOV.
 2. Credit invoices should be sent to COCAP@CHARLOTTENC.GOV.
 3. Each invoice should be sent in a separate file AND email to COCAP@CHARLOTTENC.GOV.
- d. Failure to comply with or properly execute this invoicing procedure may delay payment and may be grounds to terminate this Agreement at the discretion of the City.

EXHIBIT B

- e. The Company shall provide daily the original summary invoice to the originating Fleet Management Facility by email AND the City of Charlotte Finance/Accounts Payable by email to cocap@charlottenc.gov.
- f. The City will pay undisputed, properly submitted invoices within thirty (30) days after the receipt of the Company's invoice (the "Due Date"), provided that the invoice has been submitted at the appropriate time as authorized.
- g. As a condition of payment, the Company must invoice the City for Services or parts within 60 days after such Services are performed or parts delivered. The Company waives the right to charge the City for any Services or parts that have not been invoiced within sixty (60) days of performance of the Services.

5.14 City Contracting Requirements:

The City will enter into a Master Agreement written by the City with the successful Company that contains the terms and conditions set forth in this ITB and sample Contract included as Section 8. Each Company must state specifically in its Bid response any exceptions to the terms and conditions included in this ITB, or the sample Contract and any proposed additional terms or conditions deemed important by the Company. The City will take any such exceptions and proposed additions into account during the evaluation process. Any terms and conditions that the Company does not specifically object to will be incorporated into the resultant Agreement. Notwithstanding the foregoing, the City reserves the right to change the proposed Contractual terms and conditions prior to Contract award if it is in the City's best interest to do so.

The terms and conditions set forth in this ITB are not all inclusive. The City may propose additional terms and conditions based on the responses to this ITB and the City's analysis of the successful Bid.

The term "Contract" shall refer to the Contract entered into between the City and the successful Company, and the term "Company" shall refer to the successful Company.

5.15 New Products and Services:

The City reserves the right to add or delete items to this Contract during the term of the Contract by written amendment, to the extent those Products and Services are within the scope of this ITB and include, but will not be limited to, Products added to the successful Company's and/or Manufacturer's catalog offerings, and Products and Services which reflect new technology and improved functionality. All requests are subject to review and approval by the City of Charlotte.

5.16 Applicable Laws:

The Company agrees to make itself aware of and comply with, and cause its subcontractors to comply with, all federal, state and local laws, regulations and ordinances relating to the performance of this Contract or to the Products and Services delivered hereunder, including without limitation E-Verify, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and OSHA. The Company further agrees to obtain all verifications, permits and licenses applicable to the performance of this Contract. If any violation of this Section has occurred or does occur, the Company will indemnify and save harmless the City from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties,

EXHIBIT B

interest charges and other liabilities (including settlement amounts) incurred on account of such violation.

5.17 Returns and Restocking Charges:

The Company or applicable manufacturer must pick up any merchandise to be returned within twenty-four (24) hours after the City notifies the Company of the return. The City will not pay restocking fees for merchandise that has been returned unless it is subject to minimum inventory requirements under this ITB or is a specialty item and the City has been notified, at the time of placement of order, of the potential restocking charge. The Company will issue a credit memo to the City within seven (7) calendar days of the return.

5.18 Placement of Orders:

All orders will be placed by City designated personnel on an as needed basis for the quantity required at the time during the term of the Contract. Orders will be placed by means of a purchase order, or other approved authorization method.

5.19 Training:

The successful Company will be responsible for initially training all necessary City employees on using their on-line ordering system and any on-going training for new or additional users, at no additional cost to the City. Supplier will be responsible for providing documented step-by-step instructions to each authorized user of the City.

5.20 Samples.

Prior to award of a Contract, Company may be required to furnish samples of Product items Bid, at no charge to the City. Designated City personnel will evaluate samples to determine the equality of the Products provided. All determinations shall be final and conclusive. Fleet Management will retain samples for comparison with items delivered under the resulting Contract.

5.21 Value Added Services.

Proposers are encouraged to include any special programs that your Company offers that will improve customer's ability to access Products, or other innovative strategies that could add value to this Contract.

5.22 Implementation of Services.

The successful Company will commit to working with the City to ensure a smooth transition. Bids must address how the Company will successfully implement a new account the size of the City. Following is an overview, not intended to be all inclusive of the transition components that will need to take place and be managed.

- Account Set-Up.
- Billing and Reporting.
- Customer Service Support.
- Communications and Trainings.
- Strategic & Tactical Field Support

5.23 Inventory:

All brands and sizes of parts that are carried in the City's Fleet Management inventory shall be stocked in the Company's inventories and made available for immediate delivery. Company shall analyze the City's usage patterns and maintain an adequate supply of parts and components identified by Fleet Management to meet the City's needs and avoid stock

EXHIBIT B

outs and back orders. Company recognize that the City provides essential and emergency Services to the citizens of the City of Charlotte and Mecklenburg County, and that Services cannot be provided if vehicles and equipment are down due to unavailability of parts and components.

The City reserves the right to acquire needed parts and components from alternate sources if the successful Company is unable to provide the required Products in a timely manner. Backorder and delivery reports and other methods deemed appropriate shall be requested by the City from time to time to monitor the Company's performance and compliance to the subsequent Contract. Poor performance with respect to the Product availability, or any other requirements of the Contract, may constitute grounds for termination of the Contract between the City and the Company.

If, for reasons beyond the control of the Company (i.e. industry wide parts outage), that result in a stock-out situation, the Company will be prepared and in agreement to supply the following: (a) immediate notification of inventory status to Fleet Management Shop Managers, Parts Managers, and Operations Managers at all stated City locations; (b) immediate notification and delivery of Contract specified parts and components when they become available.

EXHIBIT C

EXHIBIT C BID RESPONSE FORMS

These Bid Response Forms is an Exhibit to and is incorporated into the Contract to Provide
AUTOMOTIVE PARTS AND ACCESSORIES AND RELATED PRODUCTS AND SERVICES
(the "Contract") between the City of Charlotte and Advance Stores Company, Inc.

2. BID SUBMISSION FORM

ITB # 269-2016-070

AUTOMOTIVE PARTS, ACCESSORIES AND RELATED SERVICES

This Bid is submitted by:

Company Name: Advance Stores Company Inc.
State of Incorporation: VA
Representative (printed): Robert A. Wheeler
Representative (signed): [Signature]
Address: 2635 E. Millbrook Rd.
City/State/Zip: Raleigh, NC 27604
Telephone: 919-573-3004
(Area Code) Telephone Number
Facsimile: 919-301-4079
(Area Code) Fax Number
E-Mail Address: laura.payne@advance-auto.com

By signing above, the Bidder agrees that the City reserves the right to reject any and all Bids, to award multiple Contracts by line item, combination of items, or grand total according to the best interest of the City, to waive formalities, technicalities, to recover and re-Bid this ITB. Bids are valid for one hundred twenty (120) calendar days from Bid Opening.

The representative signing above hereby certifies and agrees that the following information is correct:

1. Bid/Bid document has been signed by authorized Bidder/proposer official.
2. Bid/Bid package has been properly labeled per the instructions. (See Section 1.6)
3. Bid/Bid package contains all of the Bid/Bid Response Package Forms:
 - Bid Submission - Form Two
 - Addenda Acknowledgement - Form Three
 - Exceptions - Form Four
 - Pricing Sheet - Form Five
 - Non-Discrimination Certification Compliance - Form Six
 - Bidder References - Form Seven
 - Pricing Market Baskets - Attachments 1 & 2
 - Complete Pricing Catalog - Attachment 3
 - U.S. Communities Supplier Worksheet - Section Seven
 - U.S. Communities Supplier Information - Section Seven
 - U.S. Communities Administration Agreement - Section Seven

3. ADDENDA ACKNOWLEDGEMENT FORM

ITB # 269-2016-070
AUTOMOTIVE PARTS, ACCESSORIES AND RELATED SERVICES

Please acknowledge receipt of all addenda by including this form with your Bid. All addenda will be posted to www.ips.state.nc.us. It is the Bidder's responsibility to monitor the site for all addenda issued for this ITB.

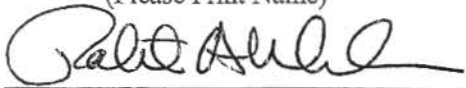
Addenda Receipt: The Bidder confirms receipt of any and all addenda issued for this Invitation to Bid/Request for Bids (Bidder to list all addenda received):

Addendum #	Date Addendum Downloaded from NC IPS:
1	6-24-16
2	6-30-16

The signature below certifies that the above information has been verified as complete.

Robert A. Wheeler

(Please Print Name)



Authorized Signature

Date

7-11-16

Senior Vice President, Commercial

Title

Advance Stores Company Inc.

Company Name

4. EXCEPTIONS FORM

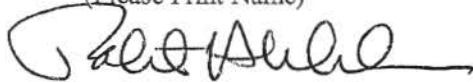
The undersigned Bidder agrees to provide all Products and Services requested in the ITB for the price(s) set forth in the Pricing Sheet, all in strict conformity with the terms, conditions and specifications set forth in the ITB (including any addenda or amendments), subject only to the exceptions stated in the chart below. Exceptions representing material changes to Bid terms are grounds for rejection of the Bidder's Bid.

ITB Section Number	ITB Section Title	Exception and Proposed Change to ITB

The signature below certifies that: (a) the Bidder's Bid complies with the requirements of this Invitation to Bid; and (b) that the Bidder takes no exception to the terms of the ITB other than those listed in the chart contained in this Form.

Robert A. Wheeler

(Please Print Name)



Authorized Signature

7-11-16

Date

SVP Commercial

Title

Advance Stores Company Inc.

Company Name

5. PRICING SHEET

ITB # 269-2016-070, AUTOMOTIVE PARTS, ACCESSORIES AND RELATED SERVICES

The undersigned proposes to furnish the following items in strict conformance to the Bid specifications and Bid invitation issued by the City of Charlotte for this Bid. Any exceptions are clearly marked in the Required Form – Section 6, Form 3.

BIDS ARE DUE NO LATER THAN 2:00 P.M. EDT, JULY 13, 2016

Pricing: Per Section 5.4, the Lead Public Agency is requesting (1) a fixed percentage discount for all Product Categories included below; (2) Unit prices for all Products listed in **Attachment 1 – City Market Basket** in Excel format; and (3) Unit prices for all Products listed in **Attachment 2 – National Market Basket** in Excel format; and (4) a Complete price list of all Products and Services offered by the Bidder.

ITEM	PRODUCT CATEGORY	VERIFIABLE PRICE LIST (Current Retail Price List Number or ID)	PERCENTAGE (%) DISCOUNT FOR ENTIRE CATEGORY (All Brands)
1	Batteries	Retail List (P3) dated 7/1/16	33%
2	Filters	Retail List (P3) dated 7/1/16	65%
3	Brake Systems	Retail List (P3) dated 7/1/16	35%
4	Paint and Body Repair	Retail List (P3) dated 7/1/16	8%
5	Ignition/Emission	Retail List (P3) dated 7/1/16	34%
6	Cooling System	Retail List (P3) dated 7/1/16	15%
7	Ride Control, Chassis and Steering	Retail List (P3) dated 7/1/16	26%
8	Driveline	Retail List (P3) dated 7/1/16	14%
9	Automotive Hardware & Engine Parts	Retail List (P3) dated 7/1/16	15%
10	Exhaust	Retail List (P3) dated 7/1/16	20%
11	Bearings, Seals, Hub Assemblies	Retail List (P3) dated 7/1/16	27%
12	Starters & Alternators	Retail List (P3) dated 7/1/16	25%
13	Climate Control	Retail List (P3) dated 7/1/16	13%
14	Heavy Duty Parts	Retail List (P3) dated 7/1/16	8%
15	Engines/Equipment	Retail List (P3) dated 7/1/16	5%
16	Chemicals	Retail List (P3) dated 7/1/16	8%
17	Accessories & Miscellaneous	Retail List (P3) dated 7/1/16	8%

Discounts must include all equipment, labor, delivery, installation, consultation, vendor profit, and all other associated costs. No additional cost will be allowed.

Section Six
Required Forms

Bidders are required to organize the information requested in this ITB in accordance with the format outlined above. Failure of the Bidder to organize the information required by this ITB as outlined may result in the City of Charlotte, at its sole discretion, deeming the Bid non-responsive to the requirements of this ITB. The Bidder, however, may reduce the repetition of identical information within several sections of the Bid by making the appropriate cross-references to other sections of the Bid. Appendices for certain technical or financial information may be used to facilitate Bid preparation.

Bid Content.

1. Cover Letter.

The Bid must include a letter of transmittal attesting to its accuracy, signed by an individual authorized to execute binding legal documents on behalf of the Bidder. The cover letter shall provide the name, address, telephone and facsimile numbers of the Bidder along with the name, title, address, telephone and facsimile numbers of the executive that has the authority to Contract with the City of Charlotte. The cover letter shall present the Bidder's understanding of the Project, a summary of the approach to be undertaken to perform the Services, as well as a summary of the costs to provide the Services.

2. Executive Summary.

The Bidder shall submit an executive summary, which outlines its Bid, including the proposed general management philosophy. The executive summary shall, at a minimum, include an identification of the proposed project team, responsibilities of the project team, and a summary of the proposed Services. This section should highlight aspects of this Bid that make it superior or unique in addressing the needs of the City of Charlotte. Executive Summary for City of Charlotte USC bid.doc

3. Required Forms.

To be deemed responsive to this ITB, Bidders must complete in detail, all Bid Forms included in Section 6, Section 7, and all Attachments.

Payment Terms: Net 30

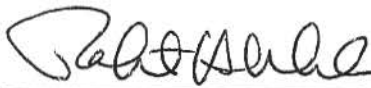
Delivery After Receipt of Order: Usually within an hour

The undersigned hereby certifies the Bidder has read the terms of this Bid document, including the sample Contract (Section 5) and is authorized to bind the firm to the information herein set forth.

Date: 7-11-16

Legal Name of Bidder: Advance Stores Company Inc.

By:



Signature

Robert A. Wheeler, SVP Commercial

Name and Title of Person Signing (PLEASE PRINT)

ATTACHMENT 3
ITB #269-2016-070 AUTOMOTIVE PARTS AND RELATED PRODUCTS AND SERVICES
CATALOG PRICE LIST

BIDDERS MUST INCLUDE A COMPLETE PRICE LIST OF ALL PRODUCTS AND SERVICES OFFERED IN THIS SAMPLE FORMAT. PRICING MUST BE SUBMITTED ON A CD OR FLASH DRIVE PER SECTION 5.3.2 OF THE ITB.

Category (Per Section 6 Required Form 5 - Pricing Sheet	Part Number	Part Description	UOM	Mfg. Name	Mfg. Number	Retail List Price	Percent (%) Discount (off Retail List Price)	Unit Cost With Discount Applied
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See attached files called AAP_USC 2016-17 Price File and CQ_USC 2016-17 Price File
as there are over 800,000 SKU's and it's too large to print

6. NON-DISCRIMINATION PROVISION

PROJECT: AUTOMOTIVE PARTS, ACCESSORIES AND RELATED SERVICES

All requests for Bids or Bids issued for City Contracts shall include a certification to be completed by the Bidder or Proposer in substantially the following form:

The undersigned Bidder or Proposer hereby certifies and agrees that the following information is correct:

1. In preparing it's the enclosed Bid or Bid, the Bidder or Proposer has considered all Bids and Bids submitted from qualified, potential subcontractors and suppliers, and has not engaged in discrimination as defined in **Section 2**.
2. For purposes of this section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, marital status, familial status, sexual orientations, gender identity, gender expression, or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other remedies that the City may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Bid or Bid submitted with this certification, and terminate any Contract awarded based on such Bid or Bid It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance and shall subject the Bidder or Proposer to any remedies allowed thereunder, including possible disqualification from participating in City Contracts or Bid processes for up to two years.
4. As a condition of Contracting with the City, the Bidder or Proposer agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of suppliers and subcontractors in connection with this solicitation process. Failure to maintain or failure to provide such information shall constitute grounds for the City to reject the Bid or Bid and to any Contract awarded on such Bid or Bid. It shall also constitute a violation of the City's Commercial Non-Discrimination Ordinance, and shall subject the Bidder or Proposer to any remedies that are allowed thereunder.
5. As part of its Bid, the Bidder shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Bidder or Proposer in a legal or administrative proceeding alleging that Bidder or Proposer discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. As a condition of submitting a Bid to the City, the Bidder or Proposer agrees to comply with the City's Commercial Non-Discrimination Policy as described in **Section 2**, Article V of the Charlotte City Code, and consents to be bound by the award of any arbitration conducted thereunder.

NAME OF COMPANY: Advance Stores Company Inc.

BY: Robert A. Wheeler TITLE: SVP Commercial

SIGNATURE OF AUTHORIZED OFFICIAL: 

DATE: 7-11-16

7. REFERENCES

Company Name: Advance Stores Company Inc.

List three (3) clients excluding the City of Charlotte, for whom you have provided Products and Services similar to those outlined in this Invitation to Bid, for reference check:

NAME OF FIRM:	City of Columbia, MO
ADDRESS OF FIRM:	701 E. Broadway Columbia, MO 65202
CONTACT PERSON:	Mike Gilford
TELEPHONE NUMBER:	573-874-6285
FAX NUMBER:	573-443-3716
NAME OF FIRM:	Dallas County
ADDRESS OF FIRM:	509 Main St. Dallas, TX 75202
CONTACT PERSON:	Stephanie Ayala
TELEPHONE NUMBER:	214-589-7073
FAX NUMBER:	214-653-7449
NAME OF FIRM:	City of El Paso
ADDRESS OF FIRM:	1154 Hawkins Blvd. El Paso, TX 79961
CONTACT PERSON:	Ruben Rodriguez
TELEPHONE NUMBER:	915-212-8034
FAX NUMBER:	915-541-4355

EXHIBIT D

EXHIBIT D U.S. COMMUNITIES ADMINISTRATION AGREEMENT

This Administration Agreement is an Exhibit to and is incorporated into the Contract to Provide AUTOMOTIVE PARTS AND ACCESSORIES AND RELATED PRODUCTS AND SERVICES (the "Contract") between the City of Charlotte and Advance Stores Company, Inc.

ADMINISTRATION AGREEMENT

This ADMINISTRATION AGREEMENT ("Agreement") is made as of _____, by and between U.S. COMMUNITIES GOVERNMENT PURCHASING ALLIANCE ("U.S. Communities") and _____ ("Supplier").

RECITALS

WHEREAS, _____ ("Lead Public Agency") has entered into a certain Master Agreement dated as of even date herewith, referenced as Agreement No. _____, by and between Lead Public Agency and Supplier (as amended from time to time in accordance with the terms thereof, the "Master Agreement") for the purchase of _____ (the "Products and Services");

WHEREAS, the Master Agreement provides that any state, county, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), other government agency or nonprofit organization (each a "Public Agency" and collectively, "Public Agencies") may purchase Products and Services at the prices indicated in the Master Agreement upon prior registration with U.S. Communities, in which case the Public Agency becomes a "Participating Public Agency";

WHEREAS, U.S. Communities has the administrative and legal capacity to administer purchases under the Master Agreement to Participating Public Agencies;

WHEREAS, U.S. Communities serves in an administrative capacity for Lead Public Agency and other lead public agencies in connection with other master agreements offered by U.S. Communities;

WHEREAS, Lead Public Agency desires U.S. Communities to proceed with administration of the Master Agreement on the same basis as other master agreements;

WHEREAS, "U.S. Communities Government Purchasing Alliance" is a trade name licensed by U.S. Communities Purchasing & Finance Agency; and

WHEREAS, U.S. Communities and Supplier desire to enter into this Agreement to make available the Master Agreement to Participating Public Agencies.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, U.S. Communities and Supplier hereby agree as follows:

ARTICLE I

GENERAL TERMS AND CONDITIONS

1.1. The Master Agreement, attached hereto as Exhibit A and incorporated herein by reference as though fully set forth herein, and the terms and conditions contained therein shall apply to this Agreement except as expressly changed or modified by this Agreement.

1.2. U.S. Communities shall be afforded all of the rights, privileges and indemnifications afforded to Lead Public Agency under the Master Agreement, and such rights, privileges and indemnifications shall accrue and apply with equal effect to U.S. Communities under this Agreement

Section Seven
Required U.S. Communities Information

including, without limitation, Supplier's obligation to provide insurance and indemnifications to Lead Public Agency.

1.3. Supplier shall perform all duties, responsibilities and obligations required under the Master Agreement.

1.4. U.S. Communities shall perform all of its duties, responsibilities and obligations as administrator of purchases under the Master Agreement as set forth herein, and Supplier acknowledges that U.S. Communities shall act in the capacity of administrator of purchases under the Master Agreement.

1.5. With respect to any purchases made by Lead Public Agency or any Participating Public Agency pursuant to the Master Agreement, U.S. Communities (a) shall not be construed as a dealer, remarketer, representative, partner, or agent of any type of Supplier, Lead Public Agency or such Participating Public Agency, (b) shall not be obligated, liable or responsible (i) for any orders made by Lead Public Agency, any Participating Public Agency or any employee of Lead Public Agency or a Participating Public Agency under the Master Agreement, or (ii) for any payments required to be made with respect to such order, and (c) shall not be obligated, liable or responsible for any failure by a Participating Public Agency to (i) comply with procedures or requirements of applicable law or ordinance, or (ii) obtain the due authorization and approval necessary to purchase under the Master Agreement. U.S. Communities makes no representations or guaranties with respect to any minimum purchases required to be made by Lead Public Agency, any Participating Public Agency, or any employee of Lead Public Agency or a Participating Public Agency under the Master Agreement.

ARTICLE II

TERM OF AGREEMENT

2.1. This Agreement is effective as of _____ and shall terminate upon termination of the Master Agreement or any earlier termination in accordance with the terms of this Agreement, provided, however, that the obligation to pay all amounts owed by Supplier to U.S. Communities through the termination of this Agreement and all indemnifications afforded by Supplier to U.S. Communities shall survive the term of this Agreement.

ARTICLE III

REPRESENTATIONS AND COVENANTS

3.1. U.S. Communities views the relationship with Supplier as an opportunity to provide benefits to the Lead Public Agency, Public Agencies and Supplier. The successful foundation of the relationship requires certain representations and covenants from both U.S. Communities and Supplier.

3.2. U.S. Communities' Representations and Covenants.

(a) Marketing. U.S. Communities shall proactively market the Master Agreement to Public Agencies using resources such as a network of major sponsors including the National League of Cities (NLC), National Association of Counties (NACo), United States Conference of Mayors (USCM), and the Association of School Business Officials (ASBO) (collectively, the "Founding Co-Sponsors") and individual national, regional and state-level sponsors. In addition, the U.S. Communities staff shall make best efforts to enhance Supplier's marketing efforts through meetings with Public Agencies, participation in key events and tradeshow and other marketing activity such as advertising, articles and promotional campaigns.

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(b) Training and Knowledge Management Support. U.S. Communities shall provide support for the education, training and engagement of Supplier's sales force as provided herein. Through its staff (each, a "Program Manager" and collectively, the "Program Managers"), U.S. Communities shall, with scheduling assistance from Supplier, conduct training sessions and conduct calls jointly with Supplier to Public Agencies. U.S. Communities shall also provide Supplier with access to U.S. Communities' private intranet website which provides presentations, documents and information to assist Supplier's sales force in effectively promoting the Master Agreement.

3.3 Supplier's Representations and Covenants. Supplier hereby represents and covenants as follows in order to ensure that Supplier is providing the highest level of public benefit to Participating Public Agencies (such representations and covenants are sometimes referred to as "Supplier's Commitments" and are comprised of the Corporate Commitment, Pricing Commitment, Economy Commitment and Sales Commitment):

(a) Corporate Commitment.

(i) The pricing, terms and conditions of the Master Agreement shall, at all times, be Supplier's primary Contractual offering of Products and Services to Public Agencies. All of Supplier's direct and indirect marketing and sales efforts to Public Agencies shall demonstrate that the Master Agreement is Supplier's primary offering and not just one of Supplier's Contract options.

(ii) Supplier's sales force (including inside, direct and/or authorized dealers, distributors and representatives) shall always present the Master Agreement when marketing Products or Services to Public Agencies

(iii) Supplier shall advise all Public Agencies that are existing customers of Supplier as to the pricing and other value offered through the Master Agreement.

(iv) Upon authorization by a Public Agency, Supplier shall transition such Public Agency to the pricing, terms and conditions of the Master Agreement.

(v) Supplier shall ensure that the U.S. Communities program and the Master Agreement are actively supported by Supplier's senior executive management.

(vi) Supplier shall provide a national/senior management level representative with the authority and responsibility to ensure that the Supplier's Commitments are maintained at all times. Supplier shall also designate a lead referral contact person who shall be responsible for receiving communications from U.S. Communities concerning new Participating Public Agency registrations and for ensuring timely follow-up by Supplier's staff to requests for contact from Participating Public Agencies. Supplier shall also provide the personnel necessary to implement and support a supplier-based internet web page dedicated to Supplier's U.S. Communities program and linked to U.S. Communities' website and shall implement and support such web page.

(vii) Supplier shall demonstrate in its procurement solicitation response and throughout the term of the Master Agreement that national/senior management fully supports the U.S. Communities program and its commitments and requirements. National/Senior management is defined as the executive(s) with Companywide authority.

(viii) Where Supplier has an existing Contract for Products and Services with a state, Supplier shall notify the state of the Master Agreement and transition the

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state to the pricing, terms and conditions of the Master Agreement upon the state's request. Regardless of whether the state decides to transition to the Master Agreement, Supplier shall primarily offer the Master Agreement to all Public Agencies located within the state.

(b) Pricing Commitment.

(i) Supplier represents to U.S. Communities that the pricing offered under the Master Agreement is the lowest overall available pricing (net to purchaser) on Products and Services that it offers to Public Agencies. Supplier's pricing shall be evaluated on either an overall project basis or the Public Agency's actual usage for more frequently purchased Products and Services.

(ii) Contracts Offering Lower Prices. If a pre-existing Contract and/or a Public Agency's unique buying pattern provide one or more Public Agencies a lower price than that offered under the Master Agreement, Supplier shall match that lower pricing under the Master Agreement and inform the eligible Public Agencies that the lower pricing is available under the Master Agreement. If an eligible Public Agency requests to be transitioned to the Master Agreement, Supplier shall do so and report the Public Agency's purchases made under the Master Agreement going forward. The price match only applies to the eligible Public Agencies. Below are three examples of Supplier's obligation to match the pricing under Supplier's Contracts offering lower prices.

(A) Supplier holds a state Contract with lower pricing that is available to all Public Agencies within the state. Supplier would be required to match the lower state pricing under the Master Agreement and make it available to all Public Agencies within the state.

(B) Supplier holds a regional cooperative Contract with lower pricing that is available only to the ten cooperative members. Supplier would be required to match the lower cooperative pricing under the Master Agreement and make it available to the ten cooperative members.

(C) Supplier holds a Contract with an individual Public Agency. The Public Agency Contract does not contain any cooperative language and therefore other Public Agencies are not eligible to utilize the Contract. Supplier would be required to match the lower pricing under the Master Agreement and make it available only to the individual Public Agency.

(iii) Deviating Buying Patterns. Occasionally U.S. Communities and Supplier may interact with a Public Agency that has a buying pattern or terms and conditions that considerably deviate from the normal Public Agency buying pattern and terms and conditions, and causes Supplier's pricing under the Master Agreement to be higher than an alternative Contract held by Supplier. This could be created by a unique end-user preference or requirements. In the event that this situation occurs, Supplier may address the issue by lowering the price under the Master Agreement on the item(s) causing the large deviation for that Public Agency. Supplier would not be required to lower the price for other Public Agencies.

(iv) Supplier's Options in Responding to a Third Party Procurement Solicitation. While it is the objective of U.S. Communities to encourage Public Agencies to piggyback on to the Master Agreement rather than issue their own

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procurement solicitations, U.S. Communities recognizes that for various reasons some Public Agencies will issue their own solicitations. The following options are available to Supplier when responding to a Public Agency solicitation:

- (A) Supplier may opt not to respond to the procurement solicitation. Supplier may make the Master Agreement available to the Public Agency as a comparison to its solicitation responses.
 - (B) Supplier may respond with the pricing, terms and conditions of the Master Agreement. If Supplier is awarded the Contract, the sales would be reported as sales under the Master Agreement.
 - (C) If competitive conditions require pricing lower than the standard Master Agreement pricing, Supplier may submit lower pricing through the Master Agreement. If Supplier is awarded the Contract, the sales would be reported as sales under the Master Agreement. Supplier would not be required to extend the lower price to other Public Agencies.
 - (D) Supplier may respond to the procurement solicitation with pricing that is higher (net to buyer) than the pricing offered under the Master Agreement. If awarded a Contract, Supplier shall still be bound by all obligations set forth in this Section 3.3, including, without limitation, the requirement to continue to advise the awarding Public Agency of the pricing, terms and conditions of the Master Agreement.
 - (E) Supplier may respond to the procurement solicitation with pricing that is higher (net to buyer) than the pricing offered under the Master Agreement and if an alternative response is permitted, Supplier may offer the pricing under the Master Agreement as an alternative for consideration.
- (c) **Economy Commitment.** Supplier shall demonstrate the benefits, including the pricing advantage, of the Master Agreement over alternative options, including competitive solicitation pricing and shall proactively offer the terms and pricing under the Master Agreement to Public Agencies as a more effective alternative to the cost and time associated with such alternate Bids and solicitations.
- (d) **Sales Commitment.** Supplier shall market the Master Agreement through Supplier's sales force or dealer network that is properly trained, engaged and committed to offering the Master Agreement as Supplier's primary offering to Public Agencies. Supplier's sales force compensation and incentives shall be greater than or equal to the compensation and incentives earned under other Contracts to Public Agencies.
- (i) **Supplier Sales.** Supplier shall be responsible for proactive sales of Supplier's Products and Services to Public Agencies and the timely follow-up to sales leads identified by U.S. Communities. Use of product catalogs, targeted advertising, direct mail, online marketing and other sales initiatives are encouraged. All of Supplier's sales materials targeted towards Public Agencies shall include the U.S. Communities logo. U.S. Communities hereby grants to Supplier, during the term of this Agreement, a non-exclusive, revocable, non-transferable, license to use the U.S. Communities name, trademark, and logo solely to perform its obligations under this Agreement, and for no other purpose. Any goodwill, rights, or benefits derived from Supplier's use of the U.S. Communities name, trademark, or logo shall inure to the benefit of U.S. Communities. U.S. Communities shall provide Supplier with its logo and the standards to be employed

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in the use of the logo. During the term of the Agreement, the Supplier shall provide U.S. Communities with its logo and the standards to be employed in the use of the logo for purposes of reproducing and using Supplier's name and logo in connection with the advertising, marketing and promotion of the Master Agreement to Public Agencies. Supplier shall assist U.S. Communities by providing camera-ready logos and by participating in related trade shows and conferences. At a minimum, Supplier's sales initiatives shall communicate that (i) the Master Agreement was competitively solicited by the Lead Public Agency, (ii) the Master Agreement provides the Supplier's best overall pricing and value to eligible agencies, (iii) there is no cost to Participating Public Agencies, and (iv) the Master Agreement is a non-exclusive Contract.

(ii) Branding and Logo Compliance. Supplier shall be responsible for complying with the U.S. Communities branding and logo standards and guidelines. Prior to use by Supplier, all U.S. Communities related marketing material must be submitted to U.S. Communities for review and approval.

(iii) Sales Force Training. Supplier shall train its national sales force on the Master Agreement and U.S. Communities program. U.S. Communities shall be available to train on a national, regional or local level and generally assist with the education of sales personnel.

(iv) Participating Public Agency Access. Supplier shall establish the following communication links to facilitate customer access and communication:

(A) A dedicated U.S. Communities internet web-based homepage that is accessible from Supplier's homepage or main menu navigation containing:

- (1) U.S. Communities standard logo with Founding Co-Sponsors logos;
- (2) Copy of original procurement solicitation;
- (3) Copy of Master Agreement including any amendments;
- (4) Summary of Products and Services pricing;
- (5) Electronic link to U.S. Communities' online registration page; and
- (6) Other promotional material as requested by U.S. Communities.

(B) A dedicated toll-free national hotline for inquiries regarding U.S. Communities.

(C) A dedicated email address for general inquiries in the following format: uscommunities@(name of supplier).com.

(v) Electronic Registration. Supplier shall be responsible for ensuring that each Public Agency has completed U.S. Communities' online registration process prior to processing the Public Agency's first sales order.

(vi) Supplier's Performance Review. Upon request by U.S. Communities, Supplier shall participate in a performance review meeting with U.S. Communities to evaluate Supplier's performance of the covenants set forth in this Agreement.

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(vii) Supplier Content. Supplier may, from time to time, provide certain graphics, media, and other content to U.S. Communities (collectively "Supplier Content") for use on U.S. Communities websites and for general marketing and publicity purposes. During the term of the Agreement, Supplier hereby grants to U.S. Communities and its affiliates a non-exclusive, worldwide, free, transferrable, license to reproduce, modify, distribute, publically perform, publically display, and use Supplier Content in connection with U.S. Communities websites and for general marketing and publicity purposes, with the right to sublicense each and every such right. Supplier warrants that: (a) Supplier is the owner of or otherwise has the unrestricted right to grant the rights in and to Supplier Content as contemplated hereunder; and (b) the use of Supplier Content and any other materials or Services provided to U.S. Communities as contemplated hereunder will not violate, infringe, or misappropriate the intellectual property rights or other rights of any third party

3.4 Breach of Supplier's Representations and Covenants. The representations and covenants set forth in this Agreement are the foundation of the relationship between U.S. Communities and Supplier. If Supplier is found to be in violation of, or non-compliance with, one or more of the representations and covenants set forth in this Agreement, Supplier shall have ninety (90) days from the notice of default to cure such violation or non-compliance and, if Supplier fails to cure such violation or non-compliance within such notice period, it shall be deemed a cause for immediate termination of the Master Agreement at Lead Public Agency's sole discretion or this Agreement at U.S. Communities' sole discretion.

3.5 Indemnity. Supplier hereby agrees to indemnify and defend U.S. Communities, and its parent companies, subsidiaries, affiliates, shareholders, member, manager, officers, directors, employees, agents, and representatives from and against any and all claims, costs, proceedings, demands, losses, damages, and expenses (including, without limitation, reasonable attorney's fees and legal costs) of any kind or nature, arising from or relating to, any actual or alleged breach of any of Supplier's representations, warranties, or covenants in this Agreement.

ARTICLE IV
PRICING AUDITS

4.1 Supplier shall, at Supplier's sole expense, maintain an accounting of all purchases made by Lead Public Agency and Participating Public Agencies under the Master Agreement. U.S. Communities and Lead Public Agency each reserve the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. U.S. Communities shall have the authority to conduct random audits of Supplier's pricing that is offered to Participating Public Agencies at U.S. Communities' sole cost and expense. Notwithstanding the foregoing, in the event that U.S. Communities is made aware of any pricing being offered to three (3) or more Participating Public Agencies that is materially inconsistent with the pricing under the Master Agreement, U.S. Communities shall have the ability to conduct a reasonable audit of Supplier's pricing at Supplier's sole cost and expense during regular business hours upon reasonable notice. U.S. Communities may conduct the audit internally or may engage a third-party auditing firm on a non-contingent basis. Supplier shall solely be responsible for the cost of the audit. In the event of an audit, the requested materials shall be provided in the format and at the location where kept in the ordinary course of business by Supplier.

ARTICLE V
FEES & REPORTING

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5.1 Administrative Fees. Supplier shall pay to U.S. Communities a monthly administrative fee based upon the total sales price of all purchases shipped and billed pursuant to the Master Agreement, excluding taxes, in the amount of two percent (2%) of aggregate purchases made during each calendar month (individually and collectively, "Administrative Fees"). Supplier's annual sales shall be measured on a calendar year basis. All Administrative Fees shall be payable in U.S. Dollars and shall be made by wire to U.S. Communities, or its designee or trustee as may be directed in writing by U.S. Communities. Administrative Fees shall be due and payable within thirty (30) days of the end of each calendar month for purchases shipped and billed during such calendar month. U.S. Communities agrees to pay to Lead Public Agency five percent (5%) of all Administrative Fees received from Supplier to help offset Lead Public Agency's costs incurred in connection with managing the Master Agreement nationally.

5.2 Sales Reports. Within thirty (30) days of the end of each calendar month, Supplier shall deliver to U.S. Communities an electronic accounting report, in the format prescribed by Exhibit B, attached hereto, summarizing all purchases made under the Master Agreement during such calendar month ("Sales Report"). All purchases indicated in the Sales Report shall be denominated in U.S. Dollars. All purchases shipped and billed pursuant to the Master Agreement for the applicable calendar month shall be included in the Sales Report. Submitted reports shall be verified by U.S. Communities against its registration database. Any data that is inconsistent with the registration database shall be changed prior to processing. U.S. Communities reserves the right upon reasonable advance notice to Supplier to change the prescribed report format to accommodate the distribution of the Administrative Fees to its program sponsors and state associations.

5.3 Exception Reporting/Sales Reports Audits. U.S. Communities or its designee may, at its sole discretion, compare Supplier's Sales Reports with Participating Public Agency records or other sales analysis performed by Participating Public Agencies, sponsors, advisory board members or U.S. Communities staff. If there is a material discrepancy between the Sales Report and such records or sales analysis as determined by U.S. Communities, U.S. Communities shall notify Supplier in writing and Supplier shall have thirty (30) days from the date of such notice to resolve the discrepancy to U.S. Communities' reasonable satisfaction. Upon resolution of the discrepancy, Supplier shall remit payment to U.S. Communities' trustee within fifteen (15) calendar days. Any questions regarding an exception report should be directed to U.S. Communities in writing to reporting@uscommunities.org. If Supplier does not resolve the discrepancy to U.S. Communities' reasonable satisfaction within thirty (30) days, U.S. Communities shall have the right to engage outside Services to conduct an independent audit of Supplier's reports. Supplier shall solely be responsible for the cost of the audit.

5.4 Online Reporting. Within forty-five (45) days of the end of each calendar month, U.S. Communities shall provide online reporting to Supplier containing Supplier's sales reporting for such calendar month. Supplier shall have access to various reports through the U.S. Communities intranet website. Such reports are useful in resolving reporting issues and enabling Supplier to better manage its Master Agreement.

5.5 Usage Reporting. Within thirty (30) days of the end of each Contract year, Supplier shall deliver to U.S. Communities an electronic usage report of all sales under the Master Agreement, including:

- (i) Supplier's Product Number
- (ii) Product Description
- (iii) Manufacturer Name
- (iv) Manufacturer Number
- (v) Unit of Measure

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- (vi) U.S. Communities Price
- (vii) Number of times ordered
- (viii) Units sold
- (ix) Sales by Manufacturer

5.6 Supplier's Failure to Provide Reports or Pay Administrative Fees. Failure to provide a Sales Report or pay Administrative Fees within the time and in the manner specified herein shall be regarded as a material breach under this Agreement and if not cured within thirty (30) days of written notice to Supplier, shall be deemed a cause for termination of the Master Agreement at Lead Public Agency's sole discretion or this Agreement at U.S. Communities' sole discretion. All Administrative Fees not paid within thirty (30) days of the end of the previous calendar month shall bear interest at the rate of one and one-half percent (1.5%) per month until paid in full.

ARTICLE VI
MISCELLANEOUS

6.1 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

6.2 Assignment.

(a) Supplier. Neither this Agreement nor any rights or obligations hereunder shall be assignable by Supplier without prior written consent of U.S. Communities, and any assignment without such consent shall be void.

(b) U.S. Communities. This Agreement and any rights or obligations hereunder may be assigned by U.S. Communities in U.S. Communities' sole discretion, to an existing or newly established legal entity that has the authority and capacity to perform U.S. Communities' obligations hereunder.

6.3 Notices. All reports, notices or other communications given hereunder shall be delivered by first-class mail, postage prepaid, or overnight delivery requiring signature on receipt to the addresses as set forth below. U.S. Communities may, by written notice delivered to Supplier, designate any different address to which subsequent reports, notices or other communications shall be sent.

U.S. Communities:

U.S. Communities

2999 Oak Road, Suite 710

Walnut Creek, California 94597

Attn: Program Manager Administration

Supplier:

Laura Payne

Advance Stores Company Inc.

2635 E. Millbrook Rd.

Raleigh, NC 27604

Attn: U.S. Communities Program Manager

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6.4 Severability. If any provision of this Agreement shall be deemed to be, or shall in fact be, illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

6.5 Waiver. Any failure of a party to enforce, for any period of time, any of the provisions under this Agreement shall not be construed as a waiver of such provisions or of the right of said party thereafter to enforce each and every provision under this Agreement.

6.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.7 Modifications. This Agreement may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the parties hereto.

6.8 Governing Law; Arbitration. This Agreement will be governed by and interpreted in accordance with the laws of the State of California without regard to any conflict of laws principles. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this dispute resolution clause, shall be determined by arbitration in Walnut Creek, California, before one (1) arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The prevailing party will be entitled to recover its reasonable attorneys' fees and arbitration costs from the other party. The arbitration award shall be final and binding. Each party commits that prior to commencement of arbitration proceedings, the parties shall submit the dispute to JAMS for mediation. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in promptly scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. The mediation will be conducted by each party designating a duly authorized officer or other representative to represent the party with the authority to bind the party, and that the parties agree to exchange informally such information as is reasonably necessary and relevant to the issues being mediated. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator or any JAMS employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within thirty (30) days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), the administration of the arbitration shall proceed. The mediation may continue, if the parties so agree, after the appointment of the arbitrator. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The pendency of a mediation shall not preclude a party from seeking provisional remedies in aid of the arbitration from a court of appropriate jurisdiction, and the parties agree not to defend against any application for provisional relief on the ground that a mediation is pending.

6.9 Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon U.S. Communities, Supplier and any successor and assign thereto; subject, however, to the limitations contained herein.

[Remainder of Page Intentionally Left Blank – Signatures Follow]

Section Seven
Required U.S. Communities Information

IN WITNESS WHEREOF, U.S. Communities has caused this Agreement to be executed in its name and Supplier has caused this Agreement to be executed in its name, all as of the date first written above.

U.S. Communities:

U.S. COMMUNITIES GOVERNMENT PURCHASING ALLIANCE


By _____

Name: _____

Title: _____

Supplier:

Advance Stores Company Inc.

By  _____

Name: Robert A. Wheeler

Title: Senior Vice President, Commercial

**EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
PURCHASE SUPPLEMENTAL TERMS**

The following Supplemental Purchasing Provisions apply to this Contract:

1. DEFINITIONS:

- A. Stock Parts are defined as high turnover parts that are most commonly needed by the City.
- B. Non-Stock Parts are defined as low usage, high dollar parts that are not kept in inventory.
- C. Back-ordered (or Out-of-Stock) Parts are defined as parts that are not currently in stock but have been ordered or will be ordered.
- D. Fleet Service Center is a term used to designate any City facility where vehicles and equipment are repaired or serviced.

2. CONTRACTOR RESPONSIBILITIES

- A. The Contractor may be required to attend a post award meeting with City personnel within thirty (30) calendar days after Contract award. The purpose of the meeting is to discuss the terms and conditions of the contract.
- B. The Contractor shall stock or have immediate access to a parts inventory sufficient to fill stock orders 95% of the time. The stock level required shall be a two-week supply of inventory, which will be determined by the City. All parts will be ordered on an as-needed basis.
- C. The Contractor shall provide new parts, except for core components on renewed assemblies. Parts must meet all applicable federal, state and local requirements for quality and safety. If new parts are not available, or if Fleet Services requests them in writing (e.g. email), remanufactured or rebuilt parts may be provided. Used, factory seconds, shopworn, demonstrator, prototype, and discontinued parts or materials are not acceptable.
- D. The Contractor warrants that ALL parts are free from manufacturer defects in material and workmanship for a minimum of twelve (12) months or for the standard period as provided by the manufacturer, whichever is for the greatest length of time. This warranty shall provide for replacement parts and shall include pickup of the defective part and delivery of the replacement part at no additional cost.
- E. The Contractor shall provide a copy of the manufacturer's parts warranty to the Fleet Service Center Manager or their designee within five (5) calendar days of request by the City. The warranty period for all parts shall not start until the part is actually installed on a unit as evidenced by the City's work order.
- F. The Contractor further warrants that the parts supplied under this Contract will not void existing vehicle/equipment or manufacturer's warranties.
- G. The Contractor shall notify the Contract Manager and the Fleet Service Center Manager or designee of recall notices, warranty replacements, safety notices, or any applicable notice regarding the parts being sold.
- H. The Contractor shall provide a point of contact for receiving orders from the City. A City representative from the Fleet Service Center will contact the Contractor by e-mail, fax, or telephone to place an order for parts. The request will include the part number, part description, delivery requirements, and a unique delivery order number.
- I. The Contractor shall confirm the quantity to be shipped to the ordering Fleet Service Center representative by telephone within two (2) hours after the order is sent or at a time mutually agreed to between the Contractor and the City.
- J. The Contractor shall ship all orders for parts complete unless arrangements for partial shipments are made in advance. The Contractor shall provide, with each delivery, an invoice showing the description of each item, quantity, and unit price.
- K. The Contractor shall deliver Stock Parts to the ordering Service Center as follows: Parts ordered before 10:00 AM shall be delivered to the Service Center no later than 5:00 P.M. the same working day the order is sent. Parts

**EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
PURCHASE SUPPLEMENTAL TERMS**

ordered after 10:00 AM shall be delivered before noon the next working day after the order is sent. The City will not pay shipping costs to obtain "stock" parts that the Contractor does not have in inventory at the time the City places the order.

- L. The Contractor shall deliver Non-Stock Parts to the ordering Service Center within three (3) working days after the order is sent. All special orders will be honored under the Contract pricing, without any additional markups.
 - M. The Contractor shall deliver Back-ordered (or out-of-stock) Parts to the ordering Service Center within five (5) working days after the order is sent. The Contractor shall advise the ordering Service Center representative by telephone of when the part(s) will be available. Notification will be within two (2) hours after the order is sent. If the Contractor cannot provide the back-ordered part within five (5) working days, the City reserves the right to purchase the part on the open market and charge the Contractor the difference between the Contract price and the purchase price.
 - N. The Contractor shall provide, upon request, a monthly and/or yearly total of all parts purchased by Fleet Services or other City departments. The City prefers that the report be in an electronic format that may be sorted, or other City-approved format. The report shall include date purchased, invoice number, part number, part description, price per part, and the total dollar amount for all parts purchased.
3. **INSURANCE:** Insurance is required for this Contract.
- A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.
 - i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the contract to termination.
 - ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
 - iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
 - iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767
 - B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
 - i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage

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- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
- (1) The policy shall contain the following provisions:
- (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
- (2) The policy shall also include these endorsements in favor of the City of Austin:
- (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
- (1) The policy shall include these endorsements in favor of the City of Austin:
- (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

Note: If shipment is made by common carrier, then the requirements for Workers Compensation Employee Liability and Business Automobile Liability Insurance are not required. The Contractor must provide a written statement if a common carrier will be used to deliver parts.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
4. **QUANTITIES:** Quantities will be as needed and specified by the City for each order.
5. **DELIVERY REQUIREMENTS:**

Location:
As Requested on Delivery Order
(See Attachment A for Fleet Services delivery locations)

Days:
As Requested at Time of Order

- A. The Contractor shall confirm the order along with shipping details within two (2) working hours of when the order is placed (either verbally or in writing). Delivery is to be made within one (1) working day after the order is placed, or at a time mutually agreed to between the Contractor and City representative. All orders must be shipped complete unless arrangements for partial shipments are made in advance.
- B. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.

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C. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays.

6. INVOICES and PAYMENT:

A. Invoices shall contain a unique invoice number, **the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor.

B. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. The City cannot process payments to or for a Third Party on behalf of the Contractor until the Third Party has been approved by the City and included in the Vendor's registration with the City.

C. Invoices shall be mailed to the Service Center that placed the order (See Attachment A, for Fleet Services delivery locations).

D. Monthly statements shall be mailed to the below address as applicable:

	City of Austin
Department	Fleet Services
Attn:	Accounts Payable
Address	1190 Hargrave Street
City, State Zip Code	Austin, TX 78702

	City of Austin
Department	Department of Aviation
Attn:	Accounts Payable
Address	3600 Presidential Blvd. Suite 411
City, State Zip Code	Austin, Texas 78719
Email	abia.invoices@austintexas.gov

E. The Contractor agrees to accept payment by credit card, check, or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

F. Final invoices at the end of the Contract must be received at the Fleet Service Center that placed the order within thirty (30) calendar days after the Contract expiration date to be considered for payment. No exceptions to this 30-day submission requirement will be considered.

G. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

H. **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

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- I. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - iv. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - v. failure of the Contractor to comply with any material provision of the Contract Documents.
- J. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- K. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods provided under the Contract. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

7. VERIFICATION OF CONTRACTOR'S PARTS PRICING:

- A. City Parts Room, Contract Compliance and/or Accounts Payable personnel will review invoices to determine the accuracy of charges invoiced. The review will be performed using the pricing from the cooperative contract, in effect at the time of contract award, with any revisions approved by the City or cooperative purchasing program.
- B. If during the review the pricing is found to be different, the Contractor shall reimburse the City for the amount overcharged within thirty (30) calendar days after written notification from the Contract Manager.

8. UNUSED INVENTORY (STOCK LIFT)

- A. The City may require a stock lift on a quarterly basis. When required, the Contractor shall pick up and credit the City's account for items purchased during the Contract term which have not been used or have become obsolete for the City's needs, provided that these items are in the original cartons and in marketable condition. The amount credited to the City's account shall be in accordance with the cooperative contract.
- B. The date for the quarterly stock lift shall be mutually agreed upon between the Contractor and the Fleet Services Materials Control Manager or designee.
- C. At the end of the final Contract term, if the Contractor is not the successful vendor for the replacement Contract, when requested by the City, the Contractor shall pick up and refund the City for items purchased during the Contract term which were not used, provided the items are in the original cartons and in marketable condition. The amount refunded to the City shall be the original purchase price for the items less the restocking fee as outlined in the Restocking Fees provision above.

9. RESTOCKING FEES:

- A. The Contractor may bill the City restocking fees (as stated in the Cooperative agreement) for parts that are ordered by the City under the contract and returned for refund. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased.

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- B. Restocking fees may be charged to the City when multiple parts or groups of parts are returned for refund at one time due to the City inventory warehouse cleaning, unless these parts are returned at an annual pre-arranged date. The date for the annual return shall be mutually agreed upon between the City and the Contractor.

10. FINAL PAYMENT AND CLOSE-OUT:

- A. The making and acceptance of final payment will constitute:
- i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

11. **HAZARDOUS MATERIALS:** If hazardous materials are shipped, the Contractor shall furnish a Material Safety Data Sheets (SDS), (OSHA Form 20), on all chemicals and hazardous materials shipped specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.

12. **NON-COMPLIANCE:** The City will not tolerate non-compliance to the City's terms and conditions as stated in the Contract. The City will be the sole judge evaluating any unacceptable performance under the Contract. The City will notify the Contractor of any unacceptable performance in writing. The Contractor shall prepare a written response to the Contract Manager within two (2) working days after receipt of the City's notification. The Contractor's response shall include action taken to correct and prevent unacceptable performance from reoccurring. The City may discontinue using the Contract for cause based on repetitive non-compliance pursuant to the terms of the Cooperative Contract.

13. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

14. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

15. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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16. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
17. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
18. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, TX 78701, and mail delivery shall be to P.O. Box 1088, Austin, TX 78767.
19. **INTERESTED PARTIES DISCLOSURE:** As a condition to entering the Contract, the Contractor must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Contractor. Link to Texas Ethics Commission Form 1295 process and procedures below:
- https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
20. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:
- | | |
|--|--|
| To the City: | To the Contractor: |
| City of Austin, Purchasing Office | Advance Stores Company, Inc. |
| ATTN: Jonathan Dalchau, Contract Administrator | ATTN: Laura Payne, Contract Manager |
| P O Box 1088 | 2635 E. Millbrook Rd. |
| Austin, TX 78767 | Raleigh, NC 27604 |
| Jonathan.Dalchau@austintexas.gov | Laura.Payne@advance-auto.com |
21. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

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CITY OF AUSTIN
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Department: Fleet Services Department

Contact: Perry Been

Phone: (512) 974-2629

Email: perry.been@austintexas.gov

Department: Department of Aviation

Contact: Tina Gamez

Phone: (512) 530-6717

Email: tina.gamez@abia.org

EXHIBIT B
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

EXHIBIT B

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

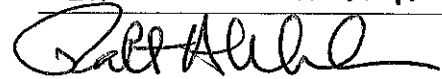
The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 15 day of JUNE, 2017

CONTRACTOR
Authorized
Signature

Title

ADVANCE STORES COMPANY INC
DBA CARQUEST AUTO PARTS
DBA ADVANCE AUTO PARTS



SVP Professional Business

EXHIBIT C
City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: ADVANCE STORES COMPANY INC DBA ADVANCE AUTO PARTS DBA CARQUEST AUTO PARTS

Signature of Officer or
Authorized
Representative:

 Date: 6/14/17

Printed Name:

Robert A Wheeler

Title

SVP Professional Business

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Liz Lock/ 512-974-2034	PM Name/Phone	Perry Been/ 512-974-2629
Sponsor/User Dept.	7800	Sponsor Name/Phone	Perry Been/ 512-974-2629
Solicitation No	cooperative	Project Name	Automotive Repair Parts
Contract Amount	\$1,172,000 with three 12-month extension options	Ad Date (if applicable)	
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source*			
<input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement			
<input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input checked="" type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
24-month contract for Automotive Repair Parts with Advance Auto Parts through the US Communities cooperative contract with three 12-month extension options			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
This contract is a replacement contract for Automotive Repair Parts with Advance Auto Parts (GC120000005) which will expire 06/27/17.			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
Commodity Code: Parts 06053			
Liz Lock, Buyer II		2/24/2017	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	2/28/2017	Date Assigned to BDC	2/28/2017
In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

There is only 1 MBE firm available.

Subcontracting Opportunities Identified

No subcontracting opportunities identified.

Counselor Name


SMBR Staff

Signature/ Date

 3/2/17

SMBR Director or Designee

Date

 3/2/17

Returned to/ Date: