



STATE OF NORTH CAROLINA
CITY OF MECKLENBURG

CONTRACT NO. 0601343

MASTER PURCHASE AGREEMENT

This Master Purchase Agreement (the "Agreement") is entered into as of this 26th day of June 2006 (the "Effective Date"), by and between AutoZone Stores, Inc., for itself and on behalf of its affiliates (collectively, the "Company"), and the City of Charlotte, a political subdivision of the State of North Carolina (the "City").

Statement of Background and Intent

- A. The City issued a "Request for Proposals for Automotive Parts and Accessories for Light Duty Vehicles" Number 269-2006-060, dated March 28, 2006 requesting proposals from qualified firms to provide the City and other Participating Public Agencies with Automotive Parts and Accessories, hereafter referred to as ("Products"). This Request for Proposals, together with all Exhibits, Appendices and Addenda, is referred to herein as the "RFP".
- B. In response to the RFP, the Company submitted to the City a proposal dated May 2, 2006. This proposal, together with Automotive Parts and Accessories for Light Duty Vehicles, all attachments and any separately sealed confidential trade secrets, is referred to herein as the "Proposal."
- C. The City and the Company have negotiated and now desire to enter into an Agreement for the Company to provide Automotive Parts and Accessories to the City and other participating public agencies in accordance with the terms and conditions set forth herein.
- D. Charlotte-Mecklenburg (herein "Lead Public Agency"), in cooperation with the U.S. Communities Purchasing & Finance Agency (herein "U.S. Communities"), and on behalf of other public agencies that elect to access the Master Agreement (herein "Participating Public Agencies"), competitively solicited and awarded the Master Agreement to Company. Lead Public Agency has designated U.S. Communities as the administrative and marketing conduit for the distribution of the Master Agreement to Participating Public Agencies. Company shall sign and return to U.S. Communities the Administration Agreement attached hereto and incorporated herein as Exhibit E.

Lead Public Agency is acting as the "Contracting Agent" for the Participating Public Agencies, and shall not be held liable or responsible for any costs, damages, liability or other obligation incurred by the Participating Public Agencies. Company shall deal directly with each Participating Public Agency concerning the placement of orders, issuance of the purchase order, contractual disputes, invoicing, payment and all other matters relating or referring to such Participating Public Agency's access to the Master Agreement.

The Master Agreement shall be construed to be in accordance with and government by the laws of the State in which the Participating Public Agency exists. Participating Public Agencies are required to register on-line with U.S. Communities at www.uscommunities.org. The registration allows the Participating Public Agency to enter into a Master Intergovernmental Cooperative Purchasing Agreement ("MICIPA"), which is intended to allow the Participating Public Agencies to meet applicable legal requirements and facilitate access to the Master Agreement and the Company.

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 Agreement, the parties agree as follows:

AGREEMENT

1. INCORPORATION OF EXHIBITS.

The parties acknowledge and agree that the following Exhibits are hereby incorporated into and made a part of this Agreement by reference:

Exhibit A:	Contract Pricing and Discounts
Exhibit B:	Company's Proposal
Exhibit C:	Delivery and Freight Schedules
Exhibit D:	RFP #269-2006-060
Exhibit E:	U.S. Communities Administrative Agreement
Exhibit F:	U.S. Communities Supplier Standards and Commitments

Any conflict between language in an Exhibit to this Agreement and the main body of this Agreement shall be resolved in favor of the main body of this Agreement.

2. DEFINITIONS.

The following terms shall have the following meanings for purposes of this Agreement (including all Exhibits):

- 2.1. "AFFILIATES" shall mean all departments or units of the City, Mecklenburg County, and all other public agencies.
- 2.2. "AGREEMENT" shall mean this Agreement including all Attachments and Exhibits, City of Charlotte's RFP No. 269-2006-060, all subsequent Addenda issued in connection with the RFP, the Company's proposal dated May 2, 2006 in response to the RFP as referenced and incorporated herein as though fully set forth.
- 2.3. "CONTRACTING AGENT" refers to the City of Charlotte, North Carolina.
- 2.4. "EFFECTIVE DATE" refers to the date this Agreement is fully executed by all parties to the Agreement.
- 2.5. "EQUIPMENT MANAGEMENT" refers to the City of Charlotte, Equipment Maintenance Division.
- 2.6. "LEAD PUBLIC AGENCY" refers to Charlotte Mecklenburg Procurement Services Division
- 2.7. "PRODUCTS" shall mean the Automotive Parts and Accessories for Light Duty Vehicles and related services to be provided by the Company as identified and described in this Agreement, including Exhibits.
- 2.8. "PARTICIPATING PUBLIC AGENCY" shall mean any and all government agencies, except Federal, that have the authority to purchase from another public agency's competitively solicited contract including Counties, Cities, Towns, Villages, Special Districts, Public Schools, Community Colleges, Universities, State Agencies and Non profit agencies providing services on behalf of government agencies.

2.9. "SERVICES" shall include all services that the Company provides or is required to provide under this Agreement.

2.10. SPECIFICATIONS AND REQUIREMENTS. The term "Specifications and Requirements" shall mean all definitions, descriptions, requirements, criteria, warranties, and performance standards relating to the Products and Services that are set forth or referenced in this Agreement, including the Exhibits.

3. TERM.

The initial term of this Agreement will be for five (5) years from the Effective Date with an option to renew for two (2) additional one-year terms. This Agreement may be extended only by a written amendment signed by both parties.

4. DESCRIPTION OF GOODS AND SERVICES.

The Company shall provide Automotive Parts and Accessories per bid specifications and in accordance with each and every one of the conditions, covenants, stipulations, terms and provisions contained in this Agreement.

5. CONTRACT PRICING.

5.1 The City agrees to pay the Company for materials, supplies, equipment, apparatus and services delivered in accordance with the terms and conditions of this Agreement based on a fixed percentage discount from the current Company Lowest Zone Price list as identified and incorporated into this Agreement as Exhibit A.

5.2 The Company agrees the fixed percentage discount will remain firm for entire contract term.

5.3 The Company shall advise the Charlotte-Mecklenburg Procurement Services Division in writing of any proposed price increases no later than sixty (60) days prior to the effective date of any such increases. The Company must provide documented evidence of material and labor price increases that directly impact current Products prices. No adjustments shall be made to compensate a Company for inefficiency in operation, quantity of product ordered, or for additional profit.

5.4 The City agrees to accept any price increase that is documented after thorough review and verification, and amend this Agreement if such is in the best interest of the City.

5.5 The Company shall be responsible for furnishing and delivering approved price lists and most current version of AZ Parts Connect (AZPC) software to the City and other participating public entities upon request.

5.6 The Company agrees that during the term of the Agreement, no State or Local public agency with the same payment terms, volume, delivery terms and other conditions set forth in the Master Agreement will receive the products provided under this Agreement at a lower net price. The Company will provide U.S. Communities and the Participating Public Agencies with such lower pricing on a going forward basis. This commitment shall not apply to special and/or one-time offers, liquidation sales and discounted product(s).

6. DELIVERY AND FREIGHT.

All orders shall be shipped F.O.B. Destination and the Company or third party carrier shall be responsible for any damage or loss in transit. All orders placed by the City or any Participating Public Agency shall be delivered by the methods and within the times specified in Exhibit C.

7. INVOICES.

Each invoice sent by the Company shall detail all Services and Deliverables performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Agreement. The Company shall mail all invoices for the City of Charlotte to:

City of Charlotte Finance Department
Accounts Payable
600 East 4th Street
10th Floor
Charlotte, NC 28202

The City will pay all accurate, properly submitted, uncontested invoices within thirty (30) days of receipt. Proposals may include an incentive discount for early payment. Invoices must include state and local sales tax. In no event shall the City be liable for any late fees or interest charges.

8. WARRANTY AND PRODUCT COMPLIANCE.

8.1 All Product provided to the City must be new, unused or remanufactured, of the latest design and technology and from the most current product lines, and meet all industry standards and other laws and requirements regarding Automotive Parts in the state of North Carolina or in accordance with the laws and applicable purchasing policies of the State and locality where the Participating Agency exists.

8.1 Company warrants that if any components of the products fail due to defects in workmanship or materials, within one year from date of delivery, Company will repair or replace, free of charge, all parts found defective.

9. GENERAL WARRANTIES.

Company represents and warrants that:

9.1 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;

9.2 It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

9.3 The execution, delivery, and performance of this Agreement have been duly authorized by Company;

9.4 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 Agreement;

9.5 In connection with its obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and

9.6 The Company shall not violate any agreement with any third party by entering into or performing this Agreement.

10. ADDITIONAL REPRESENTATIONS AND WARRANTIES.

Company represents warrants and covenants that:

10.1 The Services shall satisfy all requirements set forth in this Agreement, including but not limited to the attached Exhibits;

10.2 All work performed by the Company and/or its subcontractors pursuant to this Agreement shall meet industry accepted standards, and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;

- 10.3 Neither the Products, nor any Services provided by the Company under this Agreement will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party; and

11. TERMINATION.

11.1 Termination Without Cause.

The City may terminate this Agreement at any time without cause by giving sixty (60) days prior written notice to the Company.

11.2 Termination for Default by Either Party.

By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:

- a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, 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
- b. The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or
- c. 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 Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.
- d. Any notice of default shall identify this Section of this Agreement and shall state the party's intent to terminate this Agreement if the default is not cured within the specified period.

11.3 Additional Grounds for Default Termination by the City.

By giving written notice to the Company, the City may also terminate this Agreement 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):

- a. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Company's proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or
- b. The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

11.4 No Suspension.

In the event that either party disputes in good faith an allegation of default by the other party, notwithstanding anything to the contrary in this Agreement, the City and the Company agrees that it will not terminate this Agreement or suspend or limit the Services

or payment therefore unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

- 11.5 **Cancellation of Orders and Subcontracts.**
In the event this Agreement is terminated by either party for any reason prior to the end of the term, the City and the Company shall mutually agree upon a date for all services to cease. The Company shall proceed to conclusion, any order that has been, or is placed during the agreed upon grace period. As soon as practical after the agreed upon termination date, the Company shall submit a statement to the City showing in detail the services performed under this Agreement to the date of termination.
- 11.6 **Authority to Terminate.**
The City Manager or City Manager's designee is authorized to terminate this Agreement on behalf of the City. Two officers of the Company must sign any document terminating the Agreement on behalf of Company.
- 11.7 **No Effect on Taxes, Fees, Charges, or Reports.**
Any termination of this Agreement shall not relieve the Company or the City of the obligation to pay any fees, taxes or other charges then due to the other party, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination.
- 11.8 **Other Remedies.**
Upon termination of this Agreement, 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 remedies.

12 TRANSITION SERVICES UPON TERMINATION.

Upon termination or expiration of this Agreement, the Company shall provide reasonable efforts to assist the City with the orderly transfer of the 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. Prior to termination or expiration of this Agreement, the City may require the Company to perform and, if so required, the Company shall perform certain transition services necessary to migrate the work of the Company to another provider or to the City itself as described below (the "Transition Services"). Transition Services may include but shall not be limited to the following:

- (a) **Pre-Migration Services.**
- i. Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services; and
 - ii. Notifying all affected Agencies and subcontractors of the Company.
- (b) **Migration Services.**
- i. Performing the Transition Service Plan activities.
- (c) **Throughout Process and Post-Migration Services.**
- i. Answering questions regarding the Services on an as-needed basis; and
 - ii. Providing such other reasonable services needed to effectuate an orderly transition to a new Company.

This Section 12 pertains to the City of Charlotte only. The City will not be responsible for, or assist in, the transition services for any other participating agency.

13 AUDIT.

The Company shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. During the term of this Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, the City shall have the right to audit, either itself or through a third party, the books and records (including but not limited to the technical records) of the Company in connection with this Agreement, to ensure the Company's compliance with all the terms and conditions of this Agreement or the City's payment obligations. The Company will be responsible for all cost associated with the audit if the discrepancy is ten percent (10%) or more.

14 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.

15 COMPLIANCE WITH LAWS AND CODES.

The Company shall ensure that the Services are in compliance with all local, state and federal laws and regulations. In performing the Services, the Company shall comply with all local, state and federal laws and regulations.

16 WORK ON CITY'S PREMISES.

The Company will ensure that its employees and agents shall, whenever on the City's premises, shall obey all instructions and directions issued by the City 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.

The Company shall repair, or cause to be repaired, at its own cost, any and all damage to City facilities, buildings, or grounds to the extent caused by the Company or employees, subcontractors or agents of the Company. Such repairs shall be made immediately, but in no event later than thirty (30) days after the occurrence.

If Company fails to make timely repairs, the City may make any necessary repairs. All costs incurred by the City for such repairs, as determined by the City, shall be reimbursed by the Company by cash payment upon demand or City may deduct such cost from any amounts due to the Company from the City.

17 RELATIONSHIP OF THE PARTIES.

The relationship of the parties established by this Agreement is solely that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; or (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other. The Company shall be fully and solely responsible for its own acts and omissions and those of its employees, officers, agents and subcontractors. All personnel supplied by Company subcontractors shall be considered employees or agents of Company. The Company shall be responsible for the payment of all salaries, withholding taxes, worker's compensation, disability benefits and other compensation and related taxes for such persons.

18 INDEMNIFICATION.

The Company shall indemnify, defend and hold harmless the City and the City's officers, employees and agents from and against any and all losses, damages, costs, expenses (including

reasonable attorneys' fees), obligations and other liabilities (including settlement amounts) to the extent the same arise from:

- 18.1 any infringement of any copyright, trademark, patent, or other proprietary rights, or any misappropriation of any trade secrets, in connection with any software, documentation, services or other products supplied directly or indirectly by the Company in connection with this Agreement, or any allegation of any of the foregoing (collectively referred to as "Infringement Claims");
- 18.2 any act(s) of gross negligence or willful misconduct by the Company or any of its agents, employees or subcontractors (or any allegations of any of the foregoing), 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;
- 18.3 any acts or omissions of the Company with respect to the Services or any of the products or services provided by the Company under this Agreement (or any allegations of any of the foregoing); or
- 18.4 any claims by any persons or entities supplying labor or material to the Company in connection with the performance of the Company's obligations under this Agreement.

If an Infringement Claim occurs, the Company shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the Services or any component thereof shall not be adversely affected by such replacement or modification.

19 SUBCONTRACTING.

Should the Company choose to subcontract, the Company shall be the prime contractor and shall remain fully responsible for performance of all obligations, which it is required to perform under this Agreement. Any subcontract entered into by Company shall name the City as a third party beneficiary.

20 INSURANCE.

20.1 Types of Insurance

The Company shall obtain and maintain during the life of the Agreement, with an insurance Company rated not less than A by A.M. Best, authorized to do business in the State of North Carolina the following insurance:

Automobile Liability.

Successful Company shall be required to provide proof of 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.

Commercial General Liability.

Successful Company shall be required to provide proof of bodily injury and property damage liability as shall protect the contractor and any sub-contractor performing work under this contract from claims of bodily injury or property damage which arise from operation of services described in this RFP whether such operations are performed by contractor, any sub-contractor or any one 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 and \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed

operations, personal injury liability and contractual liability assumed under the indemnity provision in Section 28 of this contract.

The City shall be named as an additional insured under the commercial general liability insurance for operations or services rendered under this contract.

Worker's Compensation and Employers Liability.

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 employers and owners.

The Company shall not commence any work in connection with this Agreement until it has obtained all of the foregoing types of insurance and the City has approved proof of such insurance. 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.

20.2 Other Insurance Requirements.

The City shall be exempt from, and in no way liable for any sums of money, which 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.

The City shall be named as an additional insured for operations or services rendered under the general liability coverage. 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 Company operations under this agreement.

Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days written notice of any intent to amend or terminate by either the insured or the insuring Company.

Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished.

If any part of the work under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this Agreement, provided that types and amounts of insurance to be maintained by each subcontractor shall be adjusted to an amount reasonably necessary to cover the risks associated with such subcontractor's role in the project. The parties stipulate that the Company will maintain each type of insurance set forth above at a coverage level equal to at least half of the amount set forth above for such type of insurance. However, nothing contained herein shall relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

21 NOTICES.

Any notice, consent or other communication required or contemplated by this Agreement 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:

For The Company:	For The City:
AutoZone Stores, Inc.	Karen P. Ruppe
123 S. Front Street, Dept. 8060	Charlotte-Mecklenburg Procurement Services
Memphis, TN 38103	600 E. Fourth St.
Attn: Exec. VP—Commercial	Charlotte, NC 28216
Phone: 901-495-6864	Phone: 704-336-2992

Fax: 901-495-8248	Fax: 704-336-2258
E-mail: jim.weaver@autozone.com	E-mail: kruppe@ci.charlotte.nc.us
With Copy To:	With Copy To:
AutoZone Stores, Inc.	Cindy White
123 S. Front Street, Dept. 8074	Assistant City Attorney
Memphis, TN 38103	600 East Fourth Street, 15 th Floor
Attn: General Counsel	Charlotte, NC 28202
Phone: 901-495-7965	Phone: 704.336.3012
Fax: 901-495-8316	Fax: 704.336.8854
E-mail:	E-mail: cwhite@ci.charlotte.nc.us

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.

22 NON-DISCRIMINATION.

- 22.1 The Company agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or disability.
- 22.2 The Company agrees reasonably provide the City any information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors.

23 DRUG-FREE WORKPLACE.

The City is a drug-free workplace employer. The Mecklenburg City Board of Commissioners has also adopted a policy requiring Companies to provide a drug-free workplace in the performance of any City contract. The Company hereby certifies that it has or it will within thirty (30) days after execution of this Agreement:

- 23.1 Establish policies and procedures which prohibit reporting to work under the influence of alcohol or the detectable presence of illegal drugs, narcotics, other intoxicants or non-prescribed drugs.
- 23.2 Establish policies and procedures which prohibit the solicitation, possession and use of drugs on Company or Customer premises.
- 23.3 Make a good faith effort to continue to maintain a drug-free workplace for employees; and
- 23.4 Require any party to which it subcontracts any portion of the work under the contract to comply with the above provisions.

24 MISCELLANEOUS.

- 24.1 Entire Agreement.
This Agreement and the Contract Documents, including all Exhibits, and Attachments, all of which are hereby incorporated herein by reference, constitute the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such

