



**STANDARD AGREEMENT**

(version 5-1-2020)

This AGREEMENT (“Agreement”) is entered by and between **O’Reilly Auto Enterprises, LLC. dba O’Reilly Auto Parts** (“Contractor”), located at **233 S. Patterson Ave., Springfield, MO 65802** and the **City of League City** (“City”), a home-rule municipality, located at 300 W. Walker St., League City, Texas 77573 on the date set forth below.

**Terms:**

1. **Scope of Services:** Contractor will perform the services and/or provide the products as set forth in **Exhibit A**, which is attached and incorporated herein, and which can be generally described as **Auto Parts, Fluids, Maintenance and Equipment**. If there is a conflict between the terms of this Agreement and Exhibit A, the terms of this Agreement will prevail.
2. **Term and Termination:** This Agreement shall commence on **March 1, 2021** and shall expire on **February 29, 2024**. The period from commencement to expiration is the Contract Term. City reserves the right to terminate this Agreement for convenience upon seven (7) days written notice to Contractor. Upon such termination, City shall pay Contractor, at the rate set out in **Exhibit A**, for services satisfactorily performed or products satisfactorily provided up through the date of termination. Notwithstanding any provision in this Agreement to the contrary, City will not be required to pay or reimburse Contractor for any services performed or for expenses incurred by Contractor after the date of the termination notice that could have been avoided or mitigated by Contractor.
3. **Compensation:** Contractor shall be paid for the services/products as set forth in **Exhibit A**. In no event shall the total compensation exceed **\$360,000** during the term of this Agreement, provided, however, the City warrants that it shall not place orders for goods in excess of the total compensation amount. In the event that City places orders for good in excess of the total compensation amount, Contractor may refuse to fulfill such orders and shall not be in breach of this Contract. In the event City receives goods on purchase that exceed this total compensation amount, City agrees to return any such goods at City’s expense. City shall tender payment (including progress/partial payments) for services/goods only after such services are completed or goods are delivered and are deemed to be acceptable under this Agreement, in the sole reasonable discretion of City. Contractor must submit to City invoices for all goods delivered and services provided, which invoices must include details and dates of service or delivery. Payment by City shall be made within thirty (30) days of receipt of an invoice, except for any portion of the invoiced amount that City disapproves as not compliant under this Agreement, in the sole reasonable discretion of City. If City disapproves any amount submitted for payment by Contractor, City shall give Contractor specific reasons for disapproval in writing.
4. **Insurance:** Contractor is required during the Contract Term to maintain insurance as follows: (a) Comprehensive General Commercial Liability insurance covering bodily injury and property damage, with minimum coverage limits—exclusive of defense costs—of \$1,000,000 per occurrence and \$2,000,000 aggregate; (b) If Contractor will provide City “professional services,” as that term is used in Chapter 252 of the Texas Local Government Code, Professional Liability (errors and omissions/malpractice) insurance with minimum coverage limits—exclusive of defense costs—of \$2,000,000 per occurrence; and (c) If at any point during the Contract Term it is foreseeable that Contractor will enter upon City premises: (i) Worker’s Compensation coverage with statutory limits for the State of Texas, and (ii) Commercial Automobile Liability coverage with minimum coverage limits—exclusive of defense costs—of \$1,000,000

per occurrence and \$2,000,000 aggregate. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name the City as Additional Insured. Contractor shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Contractor shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

5. **Independent Contractor:** Contractor is an independent contractor and is not an employee, partner, joint venture, or agent of City. Contractor understands and agrees that he/she will not be entitled to any benefits generally available to City employees. Contractor shall be responsible for all expenses necessary to carry out the services under this Agreement and shall not be reimbursed by City for such expenses except as otherwise provided in this Agreement.
6. **Confidentiality:** During the course of the services to be provided under this Agreement, Contractor may become privy to confidential information of City. Contractor agrees to treat as confidential the information or knowledge that becomes known to Contractor during performance of this Agreement and to not use, copy, or disclose such information to any third party unless authorized in writing by City. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contractor shall promptly notify City of any misuse or unauthorized disclosure of City's confidential information and upon expiration of this Agreement shall return to City all confidential information in Contractor's possession or control. Contractor shall further comply with all information security policies of City that may apply and shall not make any press releases, public statements or advertisement referring to the services provided under this Agreement or the engagement of Contractor without the prior written approval of City.
7. **Warranties and Representations:** Contractor warrants and agrees that Contractor shall perform its services and conduct all operations in conformity with all applicable federal, state, and local laws, rules, regulations, and ordinances. For any service performed on premises owned or controlled by City, Contractor warrants and agrees that Contractor will perform said services in compliance with all City rules, including but not limited to, prohibitions related to tobacco use, alcohol, and other drugs.
8. **Licenses/Certifications:** Contractor represents and warrants that it will obtain and maintain in effect, and pay the cost of, all licenses, permits or certifications that may be necessary for Contractor's performance of this Agreement. If Contractor is a business entity, Contractor warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its formation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Contractor.
9. **Performance/Qualifications:** Contractor agrees and represents that Contractor has the personnel, experience, and knowledge necessary to qualify Contractor for the particular duties to be performed under this Agreement. Contractor warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards.
10. **Conflict of Interest:** Contractor warrants, represents, and agrees that Contractor presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of the services hereunder. Contractor further warrants and affirms that no relationship or affiliation exists between Contractor and City that could be construed as a conflict of interest with regard to this Agreement.
11. **INDEMNIFICATION: CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY , AND EACH OF ITS OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS,**

**PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT, TO THE EXTENT THE CLAIM ARISES FROM THE CONTRACTOR'S NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF CONTRACT OR VIOLATION OF LAW.**

12. **Force Majeure:** Neither City nor Contractor shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising solely from uncontrollable forces such as fire, theft, storm, war, supply chain shortage or delays, disease outbreak, epidemic, pandemic, or any other force majeure that could not have been reasonably avoided by the exercise of due diligence.
13. **Notices:** Any notice given under this Agreement by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the Parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notices shall be deemed communicated three (3) days after mailing.
14. **Texas Family Code Child Support Certification:** Pursuant to Section 231.006 of the Texas Family Code, Contractor certifies that it is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment may be withheld if this certification is inaccurate.
15. **State and/or City Auditor:** Contractor understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency or the City's internal auditor (collectively, the "Auditor"), to conduct an audit or investigation in connection with those funds. Contractor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contractor will include this provision in all contracts with permitted subcontractors.
16. **Jurisdiction:** Any disputes under this Agreement shall be brought in a court of competent jurisdiction in Galveston, Texas and governed by Texas law.
17. **Alternative Dispute Resolution:** To the extent that Chapter 2260, Texas Government Code, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General Pursuant to Chapter 2260, shall be used by City and Contractor to attempt to resolve any claim for breach of contract made by Contractor that cannot be resolved in the ordinary course of business. The Director of Finance of City shall examine Contractor's claim and any counterclaim and negotiate with Contractor in an effort to resolve such claims. This provision shall not be construed as a waiver by City of its right to seek redress in the courts.
18. **Entire Agreement:** This Agreement contains the entire understanding between the Parties and supersedes all prior agreements, arrangements, and understanding, oral or written between the Parties relating to this Agreement. This Agreement may not be modified except by mutual written agreement of the Parties executed subsequent to this Agreement.

19. **Eligibility to Receive Payment:** Contractor certifies that, as a matter of state law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if this representation is inaccurate.
20. **Payment of Debt/Delinquency to State:** Contractor certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Contractor agrees that any payments owing to Contractor under the Agreement may be applied directly toward any debt or delinquency that Contractor owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.
21. **Products and Materials Produced in Texas:** If Contractor will provide services under the Agreement, Contractor covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.
22. **Risk of Loss:** If applicable, all work performed by Contractor pursuant to the Agreement will be at Contractor's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, bearing such loss or damage will be Contractor's responsibility.
23. **Publicity:** Contractor shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.
24. **Legal Construction/Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this Agreement are declared to be severable. The Parties may mutually agree to renegotiate the Agreement to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.
25. **Limitations:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"). Any terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.
26. **Sovereign Immunity:** The Parties agree that neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement constitutes a waiver of sovereign immunity by City.
27. **Authority:** Contractor warrants and represents that Contractor has full power and authority to enter into and perform this Agreement and to make the grant of rights contained herein. The person signing on behalf of City represents that he/she has authority to sign this Agreement on behalf of City.
28. **Non-Waiver:** The Parties specifically agree that neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contractor. No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.

29. **Prohibition on Boycotting Israel:** Pursuant to Section 2270.002 of the Texas Government Code, by executing this Agreement Contractor verifies that Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.
30. **Prohibition Against Business with Iran, Sudan or Foreign Terrorists Organizations:** Contractor warrants, covenants, and represents that Contractor is not engaged in business with Iran, Sudan, or any company identified on the list referenced in Section 2252.152 of the Texas Government Code.

*(signature block on next page)*

3/12/2021

Executed on \_\_\_\_\_ . (date to be filled in by City Secretary)

**O'REILLY AUTO ENTERPRISES, LLC. DBA O'REILLY AUTO PARTS - "Contractor"**



\_\_\_\_\_  
Ryan Moore, VP Pricing

**CITY OF LEAGUE CITY – "City"**

DocuSigned by:

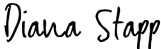


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John Baumgartner, IMCA-CM, P.E., City Manager

**Attest:**

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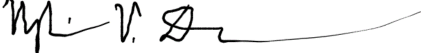


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Diana Stapp, City Secretary

**Approved as to Form:**

DocuSigned by:



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Office of the City Attorney

## **Exhibit A**

### **Scope of Services/Description of Products/Payment Schedule**

(There are 2 pages for Exhibit A, including this page)

O'Reilly Auto Parts; 41% discount or better off of O'Reilly list price on auto parts, fluids, maintenance and equipment. See attached bid pricing

### Bid Cost Sheet

#### Section A

Provide the list price location (wholesaler online portal or catalog website) for the specified categories, to include all delivery fees, for the categories specified in Appendix B "Product & Estimated Usage List" and the corresponding percentage off (discount) each category, which shall remain in effect during the term of this Agreement:

Category	List Price Location	Percent Off List
Air Conditioning and Heating	www.firstcallonline.com	41% or better%
Batteries	www.firstcallonline.com	41% or better%
Brakes	www.firstcallonline.com	41% or better%
Caps/Thermostats	www.firstcallonline.com	41% or better%
Chemicals	www.firstcallonline.com	41% or better%
Cooling System	www.firstcallonline.com	41% or better%
Driveline Components	www.firstcallonline.com	41% or better%
Electrical	www.firstcallonline.com	41% or better%
Engine Oil, Conventional	www.firstcallonline.com	41% or better%
Engine Oil, Synthetic	www.firstcallonline.com	41% or better%
Exhaust	www.firstcallonline.com	41% or better%
External Engine Parts	www.firstcallonline.com	41% or better%
Filtration	www.firstcallonline.com	41% or better%
Gaskets	www.firstcallonline.com	41% or better%
Hoses and Belts	www.firstcallonline.com	41% or better%
Injectors, Electronic Components	www.firstcallonline.com	41% or better%
Shock Absorbers	www.firstcallonline.com	41% or better%
Spark Plugs	www.firstcallonline.com	41% or better%
Suspension	www.firstcallonline.com	41% or better%
Wheel Bearing	www.firstcallonline.com	41% or better%
Wheel Seal	www.firstcallonline.com	41% or better%
Windshield Wipers	www.firstcallonline.com	41% or better%