

EXHIBIT

"A"

**CITY OF ROUND ROCK
AGREEMENT FOR THE PURCHASE OF
AFTERMARKET VEHICLE PARTS
WITH
GENUINE PARTS COMPANY
(DBA "NAPA AUTO PARTS")**

THE STATE OF TEXAS

§

CITY OF ROUND ROCK

§

KNOW ALL BY THESE PRESENTS:

§

COUNTY OF WILLIAMSON

§

COUNTY OF TRAVIS

§

§

THAT THIS Agreement for the purchase of aftermarket vehicle parts needed to maintain City of Round Rock owned vehicles (referred to herein as the "Agreement"), is made and entered into on this the _____ day of the month of _____, 2021, by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664 (referred to herein as the "City") and GENUINE PARTS COMPANY (dba "NAPA Auto Parts"), whose offices are located at 2999 Wildwood Parkway, Atlanta, Georgia 30339 (referred to herein as the "Vendor").

RECITALS:

WHEREAS, City desires to purchase aftermarket vehicle parts needed for the maintenance of City owned vehicles; and

WHEREAS, City is a member of Sourcewell Cooperative and Vendor is an approved Sourcewell vendor; and

WHEREAS, the City desires to purchase certain goods and services from Vendor through Sourcewell Cooperative Contract No. 032521-GPC to receive pricing and services as set forth herein; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby Vendor is to obligated to sell to City specified products and City is obligated to pay for said products. The Agreement includes any exhibits, addenda, and/or amendments thereto.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods and services** mean the specified services, supplies, materials, commodities, or equipment.

2.01 EFFECTIVE DATE; TERM

A. This Agreement shall be effective on the date it has been signed by both parties hereto, and shall remain in full force and effect, unless and until it expires by operation of the term stated herein, or until terminated as provided herein.

B. The term of this Agreement shall be from the effective date of the Agreement until May 19, 2025. City reserves the right to review the relationship at any time, and may elect to terminate this Agreement, with or without cause, or may elect to continue.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

City selected Vendor to supply the goods and services as outlined in Exhibit "A," attached hereto and incorporated herein by reference.

The goods and services which are the subject of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

4.01 ITEMS AWARDED; SCOPE OF WORK

When taken together with the appended exhibit, this Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions. Vendor shall satisfactorily provide all goods and services

described under the attached Exhibit "A" at the sole request of the City. Vendor provide goods and services in accordance with this Agreement, in accordance with the appended exhibits, in accordance with due care, and in accordance with prevailing industry standards for comparable services.

5.01 COSTS

A. City agrees to pay for goods during the term of this Agreement at the pricing set forth in Exhibit "A."

B. The City shall is authorized to pay the Vendor an amount not-to-exceed **Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00)** for the term of this Agreement.

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

A. Name and address of Vendor;

B. Purchase Order Number;

C. Description and quantity of items received or services provided; and

A. Delivery or performance dates.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the goods as determined by City's budget for the fiscal year in question. City may effect such termination by giving Vendor a written notice of termination at the end of its then current fiscal year.

8.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Vendor will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Vendor may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Vendor, a contractor, a subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- B. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

9.01 GRATUITIES AND BRIBES

City may, by written notice to Vendor, cancel this Agreement without liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

10.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, these taxes shall not be included in Vendor's charges.

11.01 ORDERS PLACED WITH ALTERNATE VENDORS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products or services from another supplier or suppliers.

12.01 INSURANCE

Vendor shall meet all requirements required by the City as set forth on the City's website at: https://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf

13.01 CITY'S REPRESENTATIVE

City hereby designates the following representatives authorized to act in its behalf with regard to this Agreement:

Rocky Buoy
Fleet Operations
212 Commerce Boulevard
Round Rock, Texas 78664
737-610-5451
rbuoy@roundrocktexas.gov

14.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

15.01 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, City may pursue all remedies available to it at law or in equity, including without limitation, remedies at law in a court of competent jurisdiction.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to make any payment in full when due;
- B. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- C. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- D. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

16.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Vendor.

C. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Vendor, Vendor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Vendor shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

17.01 INDEMNIFICATION

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, reasonable attorney's fees, and any and all other costs or fees arising out of or resulting from the fault of Vendor, or Vendor's agents, employees or subcontractors, in the performance of Vendor's obligations under this Agreement, no matter to whom such loss may occur. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. In accordance with Chapter 2271, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of Services Provider verifies that Services Provider does not boycott Israel and will not boycott Israel during the term of this Agreement.

19.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, and assigns to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

20.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement;
or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

Genuine Parts Company
2999 Wildwood Parkway
Atlanta, Georgia 30339

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

AND TO: Stephen L. Sheets, City Attorney
309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

21.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

22.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

23.01 DISPUTE RESOLUTION

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

24.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no

way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

25.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Vendor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Vendor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Attest:

By: _____
Sara White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Genuine Parts Company

By: Bryan Cox
Printed Name: Bryan Cox
Title: AREA Manager
Date Signed: 9/12/21

Exhibit "A"

Sourcewell RFP #032521 Aftermarket Vehicle Parts and Supplies

Sourcewell 9074 Pricing Profile - United States Version

Bidder Name: NAPA Auto Parts U.S. (Genuine Parts Company)

Catalog Website: www.napaprolink.com

CATEGORY	DESCRIPTION	% DISCOUNT Off List
1	AIR CONDITIONING	50%
2	ALTERNATORS AND STARTERS	50%
3	BATTERIES	43%
4	BEARING, BALL AND ROLLER	50%
5	BELTS AND HOSES	43%
6	BRAKES	50%
7	ELECTRICAL AND IGNITION	50%
8	EMISSIONS AND EXHAUST	60%
9	ENGINE AND DRIVE TRAIN	50%
10	FILTERS, OIL, GAS, AIR & TRANSMISSION	56%
11	GASKETS AND SEALS	51%
12	HEATING AND COOLING (ENGINE)	50%
13	LAMPS AND LIGHTING AND MIRRORS	51%
14	OILS AND LUBRICANTS; REG. & SYN.	50%
15	PUMPS, FUEL AND WATER	49%
16	SUSPEN., SHOCKS, STRUTS, & STEER.	48%
17	WIPERS/WASHERS	50%
18	SHOP SUPPLIES & EQUIPMENT	45%
19	WINTER ACCESSORIES	52%

Note: '% DISCOUNT off of List' is approximate as the actual profile calculation is based on a different base factor and could vary by product line by line/family by family.

Exhibit "A"

Sourcewell RFP #032521 Aftermarket Vehicle Parts and Supplies

Sourcewell 9074 Pricing Profile - Canada Version

Bidder Name: NAPA Auto Parts Canada (UAP Inc.)

Catalog Website: www.napaprolink.ca

CATEGORY	DESCRIPTION	% DISCOUNT off List
1	AIR CONDITIONING	44%
2	ALTERNATORS AND STARTERS	37%
3	BATTERIES	41%
4	BEARING, BALL AND ROLLER	41%
5	BELTS AND HOSES	43%
6	BRAKES	42%
7	ELECTRICAL AND IGNITION	37%
8	EMISSIONS AND EXHAUST	36%
9	ENGINE AND DRIVE TRAIN	37%
10	FILTERS, OIL, GAS, AIR & TRANSMISSION	49%
11	GASKETS AND SEALS	46%
12	HEATING AND COOLING (ENGINE)	40%
13	LAMPS AND LIGHTING AND MIRRORS	47%
14	OILS AND LUBRICANTS; REG. & SYN.	8%
15	PUMPS, FUEL AND WATER	42%
16	SUSPEN., SHOCKS, STRUTS, & STEER.	38%
17	WIPERS/WASHERS	38%
18	SHOP SUPPLIES & EQUIPMENT	14%
19	WINTER ACCESSORIES	26%

Note: '% DISCOUNT off of List' is approximate as the actual profile calculation is based on a different base factor and could vary by product line by line/family by family.