City of Dublin

Office of the City Manager
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Phone: 614-410-4400 • Fax: 614-410-4490

Memo

To: Members of Dublin City Council

From: Marsha I. Grigsby, City Manager

Date: March 21, 2013

Initiated By: Darryl Syler, Fleet Manager
Michelle Crandall, Director of Administrative Services

Re: Resolution 11-13 – NAPA On-site Parts/Equipment Center

Summary

Resolution 11-13 authorizes the City Manager to execute a Services Agreement with Genuine Parts Company, d/b/a NAPA Auto Parts, to provide for an on-site parts center. During Council's operating budget workshops, staff discussed specific funding that was being designated for the addition of an on-site NAPA parts and equipment supply center. The operations of this center would include a full-time NAPA employee to handle all parts research, acquisition, distribution and inventory control, freeing up time for the City's technicians and Fleet Administrator. Additionally, NAPA would be responsible for identifying and scheduling all warranty and recall work. Finally, the City would be billed monthly for all parts and services, minimizing the amount of administrative time spent processing receipts and payment for parts/supplies.

Initially, the NAPA center will be used only by Fleet Management. However, later in the year, Facilities Management would also begin using the center for maintenance and custodial supplies. This will allow for better control and tracking of inventory for both divisions. Staff also plans to approach the Dublin City Schools to gauge any interest in shared use of the center for their fleet maintenance needs.

Section 37.04 of the Dublin Code of Ordinances authorizes the City Manager to obtain goods and services through cooperative purchasing programs. The City is a member of the National Joint Powers Alliance ("NJPA"), a national municipal contracting agency that competitively bids and awards contracts for equipment, goods, and services. After a competitive proposal process for "Vehicle Maintenance and Repair with Related Equipment, Supplies, and Services," the National Joint Powers Alliance (NJPA) awarded Genuine Parts Company, d/b/a NAPA Auto Parts the opportunity to provide vehicle parts and fleet management services to participating members. It is through this NJPA competitive bid process that the City is able to acquire this service.

Recommendation

Staff recommends adoption of Resolution 11-13, authorizing the City Manager to enter into a contract with NAPA for an on-site parts/equipment supply center located at 6351 Shier-Rings Rd. Should you have any questions related to this matter, please contact Michelle Crandall at 614-410-4403 (desk) or 614-206-4886 (mobile).

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc., Form No. 30045

Resolution No. 11-13 Passed _____, 20____

A RESOLUTION AUTHORIZING THE USE OF CERTAIN CITY OWNED PROPERTY FOR A NAPA STORE AND AUTHORIZING AN AGREEMENT WITH GENUINE PARTS COMPANY, D/B/A NAPA AUTO PARTS, FOR FLEET MANAGEMENT SERVICES.

WHEREAS, § 37.04 of the Dublin Code authorizes the City Manager to obtain goods and services through cooperative purchasing programs; and

WHEREAS, the City is a member of the National Joint Powers Alliance ("NJPA"), a national municipal contracting agency that competitively bids and awards contracts for equipment, goods, and services; and

WHEREAS, after a competitive proposal process for "Vehicle Maintenance and Repair with Related Equipment, Supplies, and Services," the NJPA awarded Genuine Parts Company, d/b/a NAPA Auto Parts, the opportunity to provide vehicle parts and fleet management services to participating members; and

WHEREAS, the City desires to enter into an agreement with NAPA Auto Parts for vehicle parts and fleet management services; and

WHEREAS, the fleet management services component requires the use of City space for the operation of an on-site NAPA store; and

WHEREAS, the on-site NAPA store will not be open to the public; and

WHEREAS, Council, recognizing NAPA Auto Parts' participation in the NJPA cooperative purchasing process and that the use of City-owned space is an integral component of the fleet management services, desires to authorize the use of City-owned space at 6351 Shier-Rings Road, Dublin, Ohio for use as an on-site NAPA Store, subject to the terms and conditions set forth in the agreement attached hereto as Exhibit A; and

WHEREAS, Council desires to authorize the fleet management services agreement between the City and Genuine Parts Company, d/b/a NAPA Auto Parts.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Dublin, State of Ohio, _____ of the elected members concurring that:

Section 1. Council hereby authorizes the use of City-owned space at 6351 Shier-Rings Road, Dublin, Ohio for the operation of a NAPA Auto Parts store, subject to the terms and conditions set forth in the agreement attached hereto as Exhibit A.

Section 2. Council hereby authorizes the City Manager to execute the Services Agreement with Genuine Parts Company, d/b/a NAPA Auto Parts, for fleet management services. The agreement shall be in a form substantially similar to the agreement attached hereto as Exhibit A.

Section 3. This Resolution shall be effective upon passage in accordance with Section 4.04(a) of the Revised Charter.

Passed this _____ day of _____, 2013

_____
Mayor - Presiding Officer

ATTEST:

_____
Clerk of Council

SERVICES AGREEMENT

This Services Agreement ("Agreement") is made and entered into and effective on this 11 day of March, 2013 ("Effective Date") by and between the City of Dublin, Ohio ("Dublin"), an Ohio Municipal Corporation, with offices located at 5200 Emerald Parkway, Dublin, Ohio 43017 and Genuine Parts Company, a Georgia corporation, doing business as NAPA Auto Parts ("NAPA"), with an office and principal place of business located at 2999 Circle 75 Parkway, Atlanta, Georgia 30339.

Recitals

WHEREAS, pursuant to a competitive bidding and selection process by the National Joint Powers Alliance (hereinafter, "NJPA"), a Minnesota-based Service Cooperative created by Minnesota Legislative Statute 123A.21, NAPA established a contract on or around February 24, 2011 with NJPA to sell certain auto, truck, bus, and equipment parts as well as to provide Integrated Business Solutions (IBS) to its members pursuant to the terms and conditions provided in that certain RFP #010511, Response to RFP #010511 and the Contract Acceptance and Award; and

WHEREAS, Dublin is a member of the NJPA; and

WHEREAS, the Dublin Code of Ordinances authorizes the City Manager to obtain goods and/or services through cooperative purchasing programs without legislative authorization; and

WHEREAS, City Council has authorized NAPA to use certain City property for the IBS services; and

WHEREAS, Dublin desires to engage NAPA to perform the services pursuant to the Master Agreement as more fully described in the Master Agreement, attached hereto as Exhibit A (the "Services"); and

WHEREAS, NAPA desires to perform the Services and desires to be so engaged.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements herein contained, the parties, intending to be legally bound, agree as follows:

Provisions

I. Performance of the Services. NAPA shall:

A. Perform the Services as set forth in Exhibit A.

B. Complete, sign and return the Ohio Public Employees Retirement System ("OPERS") Independent Contractor Acknowledgment form.

C. Give prompt notice to Dublin should NAPA observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.

D. Remit to Dublin after the termination of this Agreement, all files and documents pertaining to the project that have been obtained or produced including, but not limited to, permits, licenses, applications, codes, drawings, site plans, photographs and similar materials. NAPA shall be entitled to retain copies for NAPA's files.

II. Obligations of Dublin. Dublin shall:

A. Assist NAPA by placing at its disposal all available information pertinent to the Services for the project.

B. Use its best efforts to secure release of other data applicable to the project held by others.

C. Make all necessary provisions to enter upon public and private property as required to perform the Services.

D. Give prompt notice to NAPA should Dublin observe or otherwise become aware of any fault or deficit in the project or any nonconformance with the Agreement.

E. Perform all other responsibilities for Dublin set forth on Exhibit A.

III. Term and Termination. The Agreement shall commence on the ___ day of March, 2013 and shall terminate on the 31 day of March, 2016, or as otherwise mutually agreed to by Dublin and NAPA. Either party may terminate this Agreement at any time by giving the other thirty (30) days advance written notice.

Immediately upon termination of this Agreement by either party for any reason:

(a) All duties, responsibilities and other obligations of each party hereunder shall terminate, except for the payment of any amounts due and owing to NAPA at the time of termination.

(b) Each party shall immediately return to the other party all equipment, software, books, records, tools and any other personal property or information owned by the other party that are in such party's possession. Dublin shall allow NAPA full and unrestricted access to enter into the On Site Store(s) to immediately remove all equipment and other items of personal property owned by NAPA without being deemed guilty of trespass or any other violation of the law. Such removal must occur within fifteen (15) calendar days and any parts, supplies, or equipment not removed within such time frame shall be deemed abandoned by NAPA. All inventory records, sales history, sales analysis and all other information generated by NAPA under this Agreement will be returned to Dublin.

Nothing contained in this Section shall be deemed a waiver of, or in any other manner impair or prejudice, any other legal rights that either party may have against the other party for any breach of this Agreement. The provisions and obligations of Sections VI, VII, VIII, and IX shall survive the termination of this Agreement for any reason.

BUY BACK OF INVENTORY. Upon termination, expiration, or non-renewal of the contract, NAPA shall have the option to require Dublin to purchase all non-NAPA Inventory owned by NAPA and located in the On Site Store(s) at NAPA's current acquisition cost, and Dublin shall have the option to purchase all NAPA Inventory, owned by NAPA and located in the On Site Store(s) at NAPA's current acquisition cost. Upon Dublin's request, NAPA shall provide Dublin a listing of all NAPA and non-NAPA Inventory owned by NAPA and located in the On Site Store(s).

REMOVAL OF INVENTORY. Upon removal of the Inventory, NAPA agrees to repair and to restore any damage to the On Site Store(s) locations caused by NAPA's use of the property.

IV. Payment.

NAPA shall invoice Dublin for all Inventory purchased pursuant to this Agreement on a monthly basis according to the pricing plan below. Dublin agrees to pay the entire amount of all statements received from NAPA by the 25th day of the month following receipt of any such statement.

The overall goal of Dublin's pricing plan is to achieve a ten percent (10%) net profit for NAPA (the "Net Profit Target") by adjusting the pricing of two elements:

(a) ***Product Costs.*** The pricing of the Inventory to be supplied to Dublin by NAPA pursuant to this Agreement. Product Costs shall be further divided into "***NAPA Product Costs***," which is the pricing of NAPA supplier manufactured products, and "***Non-NAPA Product Costs***," which is the pricing of products which have not been manufactured by NAPA suppliers but which have been acquired for Dublin by NAPA pursuant to this Agreement.

(b) ***Operational Costs.*** Any and all costs and expenses associated with the operation of the On Site Store(s), including, but not limited to, vehicle gas and maintenance costs, salary and benefits payable to NAPA employees at the On Site Store(s), worker's compensation benefits and insurance, unemployment insurance, personal property insurance for the On Site Store(s) and Inventory, any deductible for losses covered under the personal property, automobile liability, or general liability insurance policies of NAPA, and all equipment supplied by NAPA. An example of a profit and loss statement reflecting such costs and expenses is attached hereto as Exhibit B.

(1) PRICING PLAN SUMMARY

NAPA Product Costs Non-NAPA Product Costs	Billed to Dublin at a 10% gross profit rate (gross profit is store acquisition cost divided by .90) Billed to Dublin at a 10% gross profit rate (gross profit is acquisition cost divided by .90)
Operational Costs	Billed to Dublin at cost
Net Profit Target	10% net profit for NAPA

Both NAPA Product Costs and Non-NAPA Product Costs shall be set by NAPA to yield a gross profit of ten percent (10%). Gross profit is calculated by dividing the acquisition cost by .90. Operational costs will be charged to Dublin at cost, with all such charges for Operational Costs to be included in Dublin's monthly billing statement. Dublin will be billed at the end of each month for operational costs on an "in arrears" basis.

In addition, NAPA may use any sub-contractor for the procurement of "outside" purchases or services (i.e., those parts or services not traditionally stocked or performed by NAPA), and Dublin

will be billed an additional charge for any such purchases so as to yield NAPA a ten percent (10%) gross profit on such purchases.

V. Relationship of the Parties. The parties acknowledge and agree that NAPA is an independent contractor and is not an agent or employee of Dublin. Nothing in this Agreement shall be construed to create a relationship between NAPA and Dublin of a partnership, association, or joint venture. Further, the parties acknowledge that Service Provider is paid a fee, retainer or other payment as Per Section IV of this Agreement; is not eligible for workers' compensation or unemployment compensation; is not eligible for employee fringe benefits such as vacation or sick leave; does not appear on Dublin's payroll; is required to provide his or her own supplies and equipment; and is not controlled or supervised by Dublin personnel as to the manner of work.

VI. Indemnification.

A. Professional Liability. Relative to any and all claims, losses, damages, liability and cost, NAPA agrees to indemnify and save Dublin, its officers, officials, and employees harmless from and against any and all suits, actions or claims for property losses, damages or personal injury arising from negligent acts, error or omission by NAPA or its employees.

B. Non-Professional Liability (General Liability). To the fullest extent permitted by law, NAPA shall indemnify, defend and hold harmless Dublin, its officers, officials, employees or any combination thereof, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the acts or omissions of NAPA, provided that such claim, damage, loss or expenses is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the work itself) including loss of use resulting therefrom, but only to the extent caused the negligent acts or omissions of NAPA, any subconsultant(s) of NAPA, its agents, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim damage, loss or expense is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph.

VII. Insurance.

A. NAPA shall secure and maintain, at his/her/its own expense, errors and omissions insurance in an amount not less than One Million Dollars ($1,000,000.00) per claim/annual aggregate to protect himself from any claim arising out of the performance of professional services and caused by negligent acts, omissions or negligent acts for which NAPA may be legally negligent. NAPA shall maintain said coverage for the entire contract period and for a minimum of one year after completion of the work under the contract.

B. In addition to errors and omissions insurance, NAPA shall also secure and maintain, at his/her own expense, insurance for protection from claims under Worker's Compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss

of use resulting therefrom, and any other insurance prescribed by laws, rules, regulations, ordinances, codes or orders.

C. NAPA shall secure and maintain, at his/her own expense, General Liability insurance in an amount not less than One Million Dollars ($1,000,000.00) per occurrence.

D. NAPA shall secure and maintain, at his/her/its own expense, Property insurance for protection from claims or damages, including any loss or damage to the Inventory and other personal property owned by NAPA that is located at the On Site Store(s) and loss of use resulting therefrom in an amount not less than Five Hundred Thousand Dollars ($500,000.00) or such amount as is sufficient to cover any loss or damage to the Inventory and other personal property owned by NAPA that is located at the On Site Store (s). Dublin shall be held harmless for any damage to NAPA's Inventory, property and/or equipment during the course of performance under the Contract.

E. The above referenced insurance shall be maintained in full force and effect during the life of this Contract and for one year beyond, where specified. Certificates showing that NAPA is carrying the above referenced insurance in at least the above specified minimum amounts shall be furnished to, and approved by, Dublin prior to the start of work on the project and before Dublin is obligated to make any payments to NAPA for the work performed under the provision of this contract. All such Certificates, with the exception of those for Worker's Compensation and Errors & Omissions coverage, shall clearly reflect that the City of Dublin is an “Additional Insured”.

VIII. Right to Audit

A. NAPA guarantees that the individuals employed by NAPA in any capacity, including but not limited to, employees, subcontractors and independent contractors, are authorized to work in the United States. NAPA will upon demand provide Dublin with appropriate documentation (Form I-9) for any Service Provider employee performing services for Dublin.

B. NAPA agrees to indemnify Dublin in accordance with Section VI of the Agreement for any issue arising out of NAPA’s hiring or retention of any individual who is not authorized to work in the United States.

IX. Taxes.

A. NAPA has the following identification number for income tax purposes: 58-0254510.

B. NAPA is subject to and responsible for all applicable federal, state, and local taxes.

C. Dublin represents that it is a tax-exempt entity and evidence of this tax-exempt status shall be provided to NAPA upon written request. NAPA hereby further agrees to withhold all municipal income taxes due or payable under the provisions of Chapter 35 of the Codified Ordinances of Dublin, Ohio, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold any such municipal income taxes due under such chapter for Services performed under this Agreement.

D. NAPA shall receive Internal Revenue Service form 1099 from Dublin for income tax reporting services.

X. Assignment. Neither party may assign this Agreement without obtaining express, written consent from the other party prior to assignment.

XI. Entire Agreement / Amendment. This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, discussions, undertakings and agreements between the parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the parties hereto. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by both parties in accordance with the laws of the State of Ohio.

XII. Discrimination.

A. No discrimination for reason of race, religion, sex, age or country of national origin shall be permitted or authorized by Dublin and/or NAPA in connection with the Services.

B. Nothing in this Agreement shall require the commission of any act contrary to any law or any rules or regulations of any union, guild, or similar body having jurisdiction over the Services of NAPA.

XIII. Governing Law/Venue. Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the parties, or of any of the parties' employees, agents or affiliated businesses, will be resolved under the laws of the State of Ohio, in any court of competent jurisdiction in Franklin County, Ohio.

XIV. Severability. If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and shall be replaced by a valid, mutually agreeable and enforceable provision which so far as possible achieves the same objectives as the severed provision was intended to achieve, and the remaining provisions of this Agreement shall continue in full force and effect.

XV. Paragraph Headings. Paragraph headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

XVI. Limitations on Rights of Third Parties. All obligations of a party under this Agreement are imposed solely and exclusively for the benefit of the parties, and no other person shall, under any circumstances, be deemed to be a beneficiary of such obligations.

XVII. Notice. Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be hand-delivered in person or sent via facsimile, by overnight mail through a reputable service, or by certified mail, return receipt requested, to the addresses set forth below:

As to NAPA:

NAPA Columbus
2665 W. Dublin-Granville Rd
Columbus, Ohio 43235
Attn: Nathan Jeter, District Manager
Telephone: (614) 766-1182
Facsimile: (614) 766-9147

As to Dublin:

Fleet Management
6351 Shier-Rings Rd.
Dublin, Ohio 43016
Attn: Darryl Syler, Fleet Administrator
Telephone: (614) 410-4757
Facsimile: (614) 410-4795

[signatures appear on following page]

BY SIGNING THIS AGREEMENT, YOU HEREBY ACKNOWLEDGE THAT YOU HAVE BEEN INFORMED THAT THE CITY OF DUBLIN, OHIO HAS CLASSIFIED YOU AS AN INDEPENDENT CONTRACTOR AND THAT YOU HAVE BEEN ADVISED THAT CONTRIBUTIONS TO OPERS WILL NOT BE MADE ON YOUR BEHALF FOR THESE SERVICES.

FURTHER, BY SIGNING THIS AGREEMENT, YOU HEREBY ACKNOWLEDGE THAT THE CITY OF DUBLIN, OHIO HAS IN NO WAY LIMITED OR RESTRICTED YOUR RIGHT TO PROVIDE THE AGREED-TO SERVICES TO THE GENERAL PUBLIC AND THAT YOU REGULARLY PROVIDE SUCH SERVICES TO THE GENERAL PUBLIC.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the _____ day of _____, 2013.

CITY OF DUBLIN, OHIO

BY: _____
Signature of Director

BY: _____
Marsha I. Grigsby, City Manager

NAPA

BY: _____
Grant Morris, Division Vice President
ITS: _____

Approved as to Form:

_____
Stephen J. Smith, Law Director

CERTIFICATION OF FUNDS

I hereby certify that the funds required to meet the City's obligation, payment, or expenditure under this Agreement have been lawfully appropriated or authorized for such purpose and are free from any obligation now outstanding.

_____ _____

Angel L. Mumma,
Deputy City Manager/Director of Finance Date