

Genuine Parts Company

doing business as

NAPA Sacramento Distribution Center

SECOND AMENDMENT TO AGREEMENT FOR SERVICES #2801

THIS SECOND AMENDMENT to that Agreement for Services #2801 made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Riebe's Auto Parts, LLC, a Georgia limited liability company duly qualified to conduct business in the State of California, doing business as Bart Industries (Riebe), now owned and operating as Genuine Parts Company, a Georgia corporation duly qualified to conduct business in the State of California, doing business as NAPA Sacramento Distribution Center (Genuine Parts) whose principal place of business is 2999 Wildwood Parkway, Atlanta, Georgia 30339 and whose local address 4635 Northgate Boulevard, Sacramento, California 95834 (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a contractor to assist its Department of Transportation, by providing vendor managed inventory services, in accordance with Agreement for Services #2801, dated June 18 2018 and First Amendment to Agreement for Services #2801, dated May 4, 2021, both incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, on December 23, 2020, pursuant to a competitive bidding and selection process by Sourcewell, Sourcewell and NAPA executed contract #110520-GPC, pursuant to which Riebe may provide a source of supply for certain auto, truck, and bus parts as well as to provide Integrated Business Solutions to County;

WHEREAS, Riebe executed an Assignment Agreement granting, assigning, transferring, conveying, delivering, delegating, and setting over unto Genuine Parts all of Riebe's rights, title, interest, duties, obligations, and liabilities in, to, and under Agreement #2801, amending **ARTICLE XXXVIII, Assignment**, and replacing **Exhibit B**, marked "Assignment" with **Exhibit B-1**, marked "Assignment Agreement;"

WHEREAS, the parties hereto desire to amend the Agreement to update the invoicing attention recipient, amending **ARTICLE III, Compensation for Services**;

WHEREAS, the parties hereto desire to amend the Agreement to update the notice recipients and addresses, amending **ARTICLE XIX, Notice to Parties**;

WHEREAS, the parties hereto desire to fully-replace or add specific Articles to update County's contract provisions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, County and Contractor mutually agree to amend the terms of the Agreement in this Second Amendment to Agreement for Services #2801 on the following terms and conditions:

- I. **ARTICLE XXXVIII, Assignment**, of the Agreement is amended in its entirety to read as follows:

ARTICLE XXXVIII

Assignment: Pursuant to ARTICLE VIII, Assignment and Delegation, of this Agreement, County approves the assignment of the Agreement from Riebe's Auto Parts, LLC dba Bart Industries, to Genuine Parts Company dba NAPA Sacramento Distribution Center, effective upon execution, and attached hereto as Exhibit B-1, on the following terms and conditions: Genuine Parts Company dba NAPA Sacramento Distribution Center assumes all duties, covenants, obligations, and responsibilities, including all indemnity and insurance obligations, of Riebe's Auto Parts, LLC dba Bart Industries under the Agreement and all amendments thereto, and is responsible for executing, performing, and providing all work and services as of the effective date of this Agreement in accordance with all terms and conditions as set forth in and as defined in this Agreement and all amendments thereto.

In the event Assignee fails to abide by a material term of the Vendor Managed Inventory Supply Agreement and Assignee is unable to remedy such failure within ten business (10) days after written notice thereof by the County of El Dorado, the County of El Dorado may demand that Assignor assume performance under the Vendor Managed Inventory Supply Agreement and that Assignee assign all rights, obligations, and interests under the Vendor Managed Inventory Supply Agreement back to Assignor. Assignee agrees to make such reassignment, and Assignor agrees to assume such performance and accept such reassignment. Assignor shall not, however, in any manner be liable for any liabilities, obligations, responsibilities and/or duties assumed by Assignee under the Vendor Managed Inventory Supply Agreement prior to the effective date of reassignment nor shall Assignor be liable to the County of El Dorado for any breach or default by Assignee under the Vendor Managed Inventory Supply Agreement.

- II. **ARTICLE III, Compensation for Services**, the eighth paragraph of the Article is amended in its entirety to read as follows:

Itemized invoices shall follow the format specified in Exhibit D and Exhibit E, and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall reflect NAPA's charges for the specific parts or

services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado
Department of Transportation
2441 Headington Road
Placerville, California 95667
Attn.: Ashley Johnson

or to such other location as County directs.

III. ARTICLE XIX, Notice to Parties, of the Agreement is amended in its entirety to read as follows:

ARTICLE XIX

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

With a copy to:

County of El Dorado
Department of Transportation
2441 Headington Road
Placerville, California 95667

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Brian Mullens
Deputy Director
Maintenance and Operations

Attn.: Michele Weimer
Procurement and Contracts
Manager

or to such other location as County directs.

Notices to NAPA shall be addressed as follows:

To NAPA:

Genuine Parts Company dba
Sacramento Distribution Center
2999 Wildwood Parkway
Atlanta, Georgia 30339

Attn.: Michael Picardi

or to such other location as NAPA directs.

IV. The following articles are fully replaced in their entirety:

ARTICLE VI

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and NAPA, and NAPA may perform similar work or services for others. However, NAPA shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with NAPA's responsibilities or hinder NAPA's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE IX

Independent Contractor: The parties intend that an independent contractor relationship will be created by this contract. NAPA is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. NAPA exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by NAPA. Those persons will be entirely and exclusively under the direction, supervision, and control of NAPA.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which NAPA performs the work or services for accomplishing the results. NAPA understands and agrees that NAPA lacks the authority to bind County or incur any obligations on behalf of County.

NAPA, including any subcontractor or employees of NAPA, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. NAPA shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes NAPA. NAPA shall not be subject to the work schedules or vacation periods that apply to County employees.

NAPA shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that NAPA provides for its employees.

NAPA acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

ARTICLE XVI

Default, Termination, and Cancellation:

A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:

1. The alleged default and the applicable Agreement provision.
2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and NAPA shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to NAPA, the excess costs to procure from an alternate source.
2. County shall pay NAPA the sum due to NAPA under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due NAPA under this Agreement and the balance, if any, shall be paid to NAPA upon demand.
3. County may require NAPA to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
2. A representation or warranty made by NAPA in this Agreement proves to have been false or misleading in any respect.

3. NAPA fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
 4. A violation of ARTICLE XXV, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of NAPA.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event NAPA ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to NAPA, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, NAPA shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

ARTICLE XXI

Indemnity: To the fullest extent permitted by law, NAPA shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of NAPA or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of NAPA to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XXV

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for NAPA and

performing work for County and who are considered to be NAPA within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are NAPAs within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

NAPA covenants that during the term of this Agreement neither it, or any officer or employee of NAPA, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If NAPA becomes aware of a conflict of interest related to this Agreement, NAPA shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XVI, Default, Termination, or Cancellation.

V. The following articles are added to the Agreement:

ARTICLE XXXIX

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XL

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XLI

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

Except as herein amended, all other parts and sections of Agreement for Services #2801 shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to Agreement for Services #2801 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- GENUINE PARTS COMPANY

doing business as

NAPA SACRAMENTO DISTRIBUTION CENTER --

By: _____
Paul Donahue
Chief Executive Officer
"NAPA"

Dated: _____

By: _____
Jennifer Ellis
Corporate Secretary

Dated: _____

Genuine Parts Company
doing business as
NAPA Sacramento Distribution Center

Exhibit B-1

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT (this "Assignment Agreement") is made this __ day of February, 2022, by and among Riebe's Auto Parts, LLC, a Georgia limited liability company (hereinafter "Assignor"), Genuine Parts Company, a Georgia corporation (hereinafter "Assignee") and the County of El Dorado, California (hereinafter "County").

WHEREAS, Assignor and County are parties to that certain Agreement for Services# 2801, dated June 18, 2018, as amended (the "Agreement"); and

WHEREAS, Assignor now desires to assign the Agreement to Assignee and Assignee desires to accept such assignment and County desires to provide its consent to the same subject to the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:


1. Assignment and Acceptance. Assignor hereby assigns, transfers, sets over and delivers to Assignee all of Assignor's rights, obligations and interest in and to the Agreement, including any options to renew or extend the contract term. Assignee hereby accepts the assignment of the Agreement, agrees to provide the services and perform all other obligations required to be performed by Assignor in said Agreement at the times and in the manner set forth in said Agreement, and shall be bound by all other terms, covenants and conditions of said Agreement.
2. County Consent. County hereby consents to the above assignment of the Agreement on the terms and conditions set forth herein.
3. Governing Law. This Assignment Agreement shall be construed and interpreted under the laws of the State of California, without giving effect to the provisions thereof, relating to conflicts of law.
4. Counterparts. This Assignment Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto cause this Assignment Agreement to be executed by their duly-authorized representatives effective as of the date first set forth above.


ASSIGNOR:

Riebe's Auto Parts, LLC

By: 
Name: JEFF HOWE
Title: District Manager

ASSIGNEE:

GenuinePartsCompany

By: 
Name: Tom Skov
Title: Vice President

COUNTY:

County of El Dorado

By: _____

Name: _____

Title: _____