

# Master Purchase Order

|                                       |   |                           |                |                       |
|---------------------------------------|---|---------------------------|----------------|-----------------------|
| <b>DO NOT INVOICE TO THIS ADDRESS</b> | <br><b>DENVER</b><br><small>THE MILE HIGH CITY</small> | Master Purchase Order No. | 0666A0208      | Ord.                  |
| <b>City &amp; County of Denver</b>    |   | Date:                     | 11/20/2012     | <b>Revision No. 2</b> |
| Purchasing Division                   |   | Payment Terms             | Net 30         |                       |
| 201 West Colfax Avenue, Dept. 304     |   | Freight Terms             | DESTINATION    |                       |
| Denver, CO 80202                      |   | Ship Via                  | Delivery       |                       |
| United States                         |   | Buyer:                    | Michael Romero |                       |
| Phone: 720-913-8100 Fax: 720-913-8101 |   | Phone:                    | 720-913-8122   |                       |

Vendor: Omeara Ford, Inc Phone: 303-254-5051 Fax: 303-254-5235

Omeara Ford, Inc  
 400 West 104<sup>th</sup> Avenue  
 Northglenn, Colorado  
 80234  
 Attn: Tim Kellner

Ship To: Various City Agencies

Bill To: Various City Agencies

## 1. Goods/Services:

Omeara Ford Center, Inc., a Corporation in the State of Colorado, ("Vendor") shall provide the goods, and any services related thereto, identified and described on attached **Exhibit A**, to the City and County of Denver, a Colorado municipal corporation (the "City"), all in accordance with the terms and conditions of this Master Purchase Order.

## 2. Ordering:

The City shall purchase one or more of the goods/services by issuing a written purchase order(s) or similar appropriate written document ("Order"), each of which will be deemed incorporated into this Agreement for purposes of such Order only.

## 3. Pricing:

The pricing/rates for the goods/services is contained on **Exhibit A** and shall be held firm for the term of this Master Purchase Order.

## 4. Term:

The effective period of this annual contract shall be from City signature date to and including **7/31/2013**.

## 5. Non-Exclusive:

This Master Purchase Order is non-exclusive. City does not guarantee any minimum purchase other than as provided herein.

## 6. Inspection and Acceptance:

City may inspect all goods/services prior to acceptance. Payment does not constitute acceptance. Vendor shall bear the cost of any inspection/testing that reveal goods/services that are defective or do not meet specifications. City's failure to accept or reject goods/services shall not relieve Vendor from its responsibility for such goods/services that are defective or do not meet specifications nor impose liability on City for such goods/services. If any part of the goods/services are not acceptable to City, City may, in addition to any other rights it may have at law or in equity: (1) make a warranty claim; (2) repair and/or replace the goods or substitute other services at Vendor's expense; or (3) reject and return the goods at Vendor's cost and/or reject the services at Vendor's expense for full credit. Any rejected goods/services are not to be replaced without written authorization from City, and any such replacement shall be on the same terms and conditions contained in this Master Purchase Order. Vendor shall perform all services in accordance with the standard of care exercised by highly competent vendors who perform like or similar services.

## 7. Shipping, Taxes and Other Credits and Charges:

All pricing is F.O.B. destination unless otherwise specified. Shipments must be marked with Vendor's name, the Master Purchase Order number, and contain a delivery or packing slip. Vendor shall not impose any charges for boxing, crating, parcel post, insurance, handling, freight, express or other similar charges or fees. Vendor shall notify City in writing of any price decreases immediately, and City shall receive the benefit thereof on all unshipped items. Vendor shall comply with any additional delivery terms specified herein. Vendor shall be responsible for the cleanup and reporting of any contamination (environmental or otherwise) or spillage resulting from the delivery and/or unloading of goods within twenty-four (24) hours of the contamination or spillage or sooner if required by law. Vendor shall procure all permits and licenses; pay all charges, taxes and fees; and give all notices necessary and incidental to the fulfillment of this Master Purchase Order and all cost thereof have been included in the prices contained herein. City shall not be liable for the payment of taxes, late charges or penalties of any nature, except as required by D.R.M.C. § 20-107, et seq. The price of all goods/services shall reflect all applicable tax exemptions. City's Federal Registration No. is 84-6000580 and its State Registration No. is 98-02890. Vendor shall pay all sales and use taxes levied by City on any tangible personal property built into the goods/services. Vendor shall obtain a Certificate of Exemption from the State of Colorado Department of Revenue prior to the purchase of any materials to be built into the goods/services and provide a copy of the Certificate to City prior to final payment.

## 8. Risk of Loss:

Vendor shall bear the risk of loss, injury or destruction of goods prior to delivery to City. Loss, injury or destruction shall not release Vendor from any obligation hereunder.

**9. Invoice:**

Each invoice shall include: (i) the Master Purchase Order number; (ii) individual itemization of the goods/services; (iii) per unit price, extended and totaled; (iv) quantity ordered, back ordered and shipped; (v) an invoice number and date; (vi) ordering department's name and "ship to" address; and (vii) agreed upon payment terms set forth herein.

**10. Payment:**

Payment shall be subject to City's Prompt Payment Ordinance D.R.M.C. § 20-107, et-seq. after City accepts the goods/services. Any other provision of this Agreement notwithstanding, in no event shall the City be liable for aggregate payments under this Master Purchase Order in excess of **one million five hundred thousand dollars (\$1,500,000)**. The Vendor acknowledges that any goods/services provided beyond those specifically described in **Exhibit A** are performed at Contractor's risk and without authorization from the City. City's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Master Purchase Order, encumbered by the City after receipt of Vendor's invoice and paid into the Treasury of City. Vendor acknowledges that: (i) City does not by this Master Purchase Order, irrevocably pledge present cash reserves for payments in future fiscal years; and (ii) this Master Purchase Order is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of City. City may setoff against any payments due to Vendor any claims and/or credits it may have against Vendor under this Master Purchase Order.

**11. Amendments/Changes:**

Only the Manager of General Services or his delegate is authorized to change or amend this Master Purchase Order by a formal written change order. Any change or amendment that would cause the aggregate payable under this Master Purchase Order to exceed the amount appropriated and encumbered for this Master Purchase Order is expressly prohibited and of no effect. Vendor shall verify that the amount appropriated and encumbered is sufficient to cover any increase in cost due to changes or amendments. Goods/services provided without such verification are provided at Vendor's risk. The Vendor has no authority to bind City on any contractual matters.

**12. Warranty:**

Vendor warrants and guarantees to City that all goods furnished under this Master Purchase Order are free from defects in workmanship and materials, are merchantable, and fit for the purposes for which they are to be used. For any goods furnished under this Master Purchase Order which become defective within twelve (12) months (unless otherwise specified) after date of receipt by City, Vendor shall either, at City's election and to City's satisfaction, remedy any and all defects or replace the defective goods at no expense to City within seven (7) days of receipt of the defective goods or accept the defective goods for full credit and payment of any return shipping charges. Vendor shall be fully responsible for any and all warranty work, regardless of third party warranty coverage. Vendor shall furnish additional or replacement parts at the same prices, conditions and specifications delineated herein.

**13. Indemnification/Limitation of Liability:**

Vendor shall indemnify and hold harmless City (including but not limited to its employees, elected and appointed officials, agents and representatives) against any and all losses (including without limitation, loss of use and costs of cover), liability, damage, claims, demands, actions and/or proceedings and all costs and expenses connected therewith (including without limitation attorneys' fees) that arise out of or relate to any claim of infringement of patent, trademark, copyright, trade secret or other intellectual property right related to this Master Purchase Order or that are caused by or the result of any act or omission of Vendor, its agents, suppliers, employees, or representatives. Vendor's obligation shall not apply to any liability or damages which result solely from the negligence of City. City shall not be liable for any consequential, incidental, indirect, special, reliance, or punitive damages or for any lost profits or revenues, regardless of the legal theory under which such liability is asserted. In no event shall City's aggregate liability exceed the agreed upon cost for those goods/services that have been accepted by City under this Master Purchase Order. Notwithstanding anything contained in this Master Purchase Order to the contrary, City in no way limits or waives the rights, immunities and protections provided by C.R.S. § 24-10-101, et seq.

**14. Termination:**

City may terminate this Master Purchase Order, in whole or in part, at any time and for any reason immediately upon written notice to Vendor. In the event of such a termination, City's sole liability shall be limited to payment of the amount due for the goods/services accepted by City. Vendor acknowledges the risks inherent in this termination for convenience and expressly accepts them. Termination by City shall not constitute a waiver of any claims City may have against Vendor.

**15. Interference:**

Vendor shall notify the Director of Purchasing immediately of any condition that may interfere with the performance of Vendor's obligations under this Master Purchase Order and confirm such notification in writing within twenty-four (24) hours. City's failure to respond to any such notice shall in no way act as a waiver of any rights or remedies City may possess.

**16. Venue, Choice of Law and Disputes:**

Venue for all legal actions shall lie in the District Court in and for City and County of Denver, State of Colorado, and shall be governed by the laws of the State of Colorado as well as the Charter and Revised Municipal Code, rules, regulations, Executive Orders, and fiscal rules of City. All disputes shall be resolved by administrative hearing, pursuant to the procedure established by D.R.M.C. § 56-106. Director of Purchasing shall render the final determination.

**17. Assignment/No Third Party Beneficiary:**

Vendor shall not assign or subcontract any of its rights or obligations under this Master Purchase Order without the written consent of City. In the event City permits an assignment or subcontract, Vendor shall continue to be liable under this Master

Purchase Order and any permitted assignee or subcontractor shall be bound by the terms and conditions contained herein. This Master Purchase Order is intended solely for the benefit of City and Vendor with no third party beneficiaries

**18. Notice:**

Notices shall be made by Vendor to the Director of Purchasing and by City to Vendor at the addresses provided herein, in writing sent registered, return receipt requested.

**19. Compliance With Laws:**

Vendor shall observe and comply with all federal, state, county, city and other laws, codes, ordinances, rules, regulations and executive orders related to its performance under this Master Purchase Order. City may immediately terminate this Master Purchase Order, in whole or in part, if Vendor or an employee is convicted, plead nolo contendere, or admits culpability to a criminal offense of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature.

**20. Insurance:**

Vendor shall secure, before delivery of any goods/services, the following insurance covering all operations, goods and services provided to City. Vendor shall keep the required insurance coverage in force at all times during the term of the Master Purchase Order, or any extension thereof, during any warranty period, and for three (3) years after termination of this Master Purchase Order. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A"VIII or better. Each policy shall contain a valid provision stating "Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the Denver Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." If any policy is in excess of a deductible or self-insured retention, City must be notified by Vendor. Vendor shall be responsible for the payment of any deductible or self-insured retention. City reserves the right to require Vendor to provide a bond, at no cost to City, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Master Purchase Order are the minimum requirements, and these requirements do not lessen or limit the liability of Vendor. Vendor shall provide a copy of this Master Purchase Order to its insurance agent or broker and have its agent or broker provide proof of Vendor's required insurance on [www.Ins-Cert.com](http://www.Ins-Cert.com) and link the information to City. City reserves the right to require Vendor to provide a certificate of insurance, a policy, or other proof of insurance as required by City's Risk Administrator in his sole discretion. Vendor's insurer shall name City as an additional insured and waive subrogation rights against City. All sub-consultants, subcontractors, independent contractors, suppliers or other entities providing goods/services hereunder shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Vendor. Vendor shall include all such entities as insureds under its policies or shall ensure that they all maintain the required coverages. Vendor shall provide proof of insurance for all such entities upon request by City. For Worker's Compensation Insurance, Vendor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Vendor expressly represents to City, as a material representation upon which City is relying, that none of the Vendor's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Master Purchase Order, and that any such rejections previously effected, have been revoked. Vendor shall maintain general liability coverage with limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate. Vendor shall maintain auto coverage with limits of \$1,000,000 for bodily injury per person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage applicable to all vehicles operating on City property and elsewhere. For general liability coverage, the policy must provide the following: (i) unlimited defense costs in excess of policy limits; (ii) contractual liability covering the indemnification provisions of this Master Purchase Order; (iii) severability of interests provision; (iv) waiver of exclusion for lawsuits by one insured against another; (v) provision that coverage is primary; (vi) provision that coverage is non-contributory with other coverage or self-insurance provided by City; and (vii) if the policy is a claims-made policy, then the retroactive date must be on or before the first date when any goods or services were provided to City.

**21. Severability:**

If any provision of this Master Purchase Order, except for the provisions requiring appropriation and encumbering of funds and limiting the total amount payable by City, is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity of the remaining portions or provisions shall not be affected if the intent of City and Vendor can be fulfilled.

**22. Survival:**

All terms and conditions of this Master Purchase Order which by their nature must survive termination/expiration shall so survive. Without limiting the foregoing, Vendor's insurance, warranty and indemnity obligations shall survive for the relevant warranty or statutes of limitation period plus the time necessary to fully resolve any claims, matters or actions begun within that period. Bonds shall survive as long as any warranty period.

**23. No Construction Against Drafting Party:**

No provision of this Master Purchase Order shall be construed against the drafter.

**24. Status of Vendor/Ownership of Work Product:**

Vendor is an independent contractor retained on a contractual basis to perform services for a limited period of time as described in Section 9.1.1E(x) of the Charter of City. Vendor and its employees are not employees or officers of City under Chapter 18 of the D.R.M.C. for any purpose whatsoever. All goods, deliverables, hardware, software, plans, drawings, reports, submittals and all other documents or things furnished to City by Vendor shall become and are the property of City, without restriction.

**25. Records and Audits:**

Vendor shall maintain for three (3) years after final payment hereunder, all pertinent books, documents, papers and records of Vendor involving transactions related to this Master Purchase Order, and City shall have the right to inspect and copy the same.

**26. Remedies/Waiver:**

No remedy specified herein shall limit any other rights and remedies of City at law or in equity. No waiver of any breach shall be construed as a waiver of any other breach.

**27. No Discrimination in Employment:**

Vendor shall not refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Vendor shall insert the foregoing provision in any subcontracts hereunder.


**28. Use, Possession or Sale of Alcohol or Drugs:**

Vendor shall cooperate and comply with the provisions of Executive Order 94. Violation may result in City terminating this Master Purchase Order or barring Vendor from City facilities or from participating in City operations.

**29. Conflict of Interest:**

No employee of City shall have any personal or beneficial interest in the goods/services described in this Master Purchase Order; and Vendor shall not hire or contract for services any employee or officer of City which would be in violation of City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

This Master Purchase Order is acknowledged and agreed to by:

Vendor Name: Omeara Ford, Inc  
(Company Name)  
 By:   
(Authorized Signature)  
 Print Name: Michel V. Smith  
 Title: Assistant Parts Manager  
 Date: 11-21-12

City & County of Denver, Purchasing Division

By: \_\_\_\_\_  
 Print Name: Michael Romero  
 Title: Buyer  
 Date: \_\_\_\_\_

EXHIBIT "A"

Vendor: Omeara Ford, Inc  
Title: AUTOMOTIVE AND LIGHT TRUCK PARTS  
Master Purchase Order No.: 0666A0208

---

It is recommended that you use your Master Purchase Order No. – 0666A0208, in all future correspondence, billing, invoicing or other communications.

Description of the goods, and services related thereto, being purchased and pricing:

- **F.O.B. POINT:**
  - All prices quoted must be quoted at a firm price F.O.B. Denver, Colorado, delivered to various agency locations.
- **DELIVERY CONSIDERATIONS:**
  - Delivery of in-stock items are to be made within twenty-four (24) hours or less from the time the order is placed.
  - Deliveries of items not at vendor location that require shipment from outside the Denver Metro Area are anticipated within five (5) business days (Monday through Friday excluding holidays) from the time the order is placed. The vendor is to notify requesting agency and communicate actual delivery date as soon as confirmed with vendor's supplier.
  - The vendor is to accommodate expedited delivery requests by City agencies as needed.
  - Deliveries shall be made during the normal business hours of individual agency locations or as requested.
- **OEM PARTS**
  - All items are to be Genuine Original Equipment Manufacturer Parts originally equipped and supplied by the vehicle manufacturer.
- **PROCUREMENTS OF OEM PARTS PER THIS MASTER PURCHASE ORDER ARE TO BE ONLY FOR THE FOLLOWING VEHICLE CLASSES: 1000-3999**

| Item No. | Description  | Accepted as PRIMARY Vendor  |
|----------|--|---|
| 2        | <p>FORD, LINCOLN/MERCURY Automobile Parts<br/>(O.E.M. ONLY – NO SUBSTITUTE)</p> <p>Engine Parts</p> <p>Body Parts</p> <p>Transmission Parts</p> <p>Front End Parts</p> <p>Rear End Parts</p> <p>Brake Parts</p> <p>Accessories</p> <p>List Sheet #: Ford-FPS-3642</p> <p>Dated: 7/2008<br/>Price Column<br/>to be used: Dealer Price</p> | <p>_____+7_____ %</p> <p>_____+7_____ %</p> <p>_____+7_____ %</p> <p>_____+7_____ %</p> <p>_____+7_____ %</p> <p>_____+7_____ %</p> <p>_____+7_____ %</p> |

| Item No. | Description   | Accepted as PRIMARY Vendor  |
|----------|---|---|
| 3        | <p>FORD Light Truck Parts<br/>(O.E.M. ONLY - NO SUBSTITUTES)</p> <p>Engine Parts</p> <p>Body Parts</p> <p>Transmission Parts</p> <p>Front End Parts</p> <p>Rear End Parts</p> <p>Brake Parts</p> <p>Accessories</p> <p>List Sheet #: Ford-FPS-3642</p> <p>Dated: 7/2008<br/>Price Column<br/>to be used: Dealer Price</p> | <p>_____+7_____ %</p> <p>_____+7_____ %</p> <p>_____+7_____ %</p> <p>_____+7_____ %</p> <p>_____+7_____ %</p> <p>_____+7_____ %</p> <p>_____+7_____ %</p> |

Buyer Note: 11/20/2012 Revision 2 Amends:

- Line 4 (Page 1)-Term
- Line 10 (Page 2)-Amount (Increase from \$1,300,000 to \$1,500,000)

Subject to City Council approval per 3.26(E) of the City Charter.