

**SECTION C
GENERAL TERMS & CONDITIONS**

THE STATE OF TEXAS

BID # SC-R-9130-024-21165

ORDINANCE # 06-0974

COUNTY OF HARRIS

CONTRACT # 4600006838

I. PARTIES

A. Address

THIS AGREEMENT FOR LOW EMISSION DIESEL FUEL AND UNLEADED GASOLINE ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and **MOTIVA ENTERPRISES LLC** ("Contractor or Vendor"), a corporation doing business in Texas.

The initial addresses of the parties, which one party may change by giving written notice to the other party, are as follows:

City

City Purchasing Agent
City of Houston
P.O. Box 1562
Houston, Texas 77251

Contractor

Motiva Enterprises LLC
910 Louisiana, Houston, Texas 77002
Phone: 713-241-4374
Fax: 713-241-1724

The Parties agree as follows:

B. Table of Contents

This Agreement consists of the following sections:

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EXHIBITS

- A. DEFINITIONS
- B. SCOPE OF SERVICES
- C. FEES AND COSTS

C. Parts Incorporated

The above described sections and exhibits are incorporated into this Agreement.

D. Controlling Parts

If a conflict among the sections or exhibits arises the Exhibits control over the Sections.

E. Definitions

Certain terms used in this Agreement are defined in Exhibit "A".

F. Signatures

The Parties have executed this Agreement in multiple copies, each of which is an original.

ATTEST/SEAL (if a corporation):

MOTIVA ENTERPRISES LLC

WITNESS (if not a corporation):

By: Eddie Green

Name: Eddie Green

Title: Director of Marketing
Motiva Commercial Marketing

By: Brian P. Smith

Name: BRIAN P. SMITH

Title: VP. Supply, Distribution + Commercial Marketing

Federal Tax ID Number: 16-0262490

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS

Signed by:

Cora Russell

City Secretary

Bill White Open Army

Mayor

APPROVED:

COUNTERSIGNED BY:

Calvin Wells

City Purchasing Agent

Annise D. Parker

City Controller Matthew P. Appel

DATE COUNTERSIGNED:

9-25-06

This Contract has been reviewed as to form by the undersigned legal assistant and has been found to meet established Legal Department criteria. The Legal Department has not reviewed the content of these documents.

9-6-06

Date

David Richards

Legal Assistant

II. DUTIES OF CONTRACTOR

A. Scope of Services

In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the services described in Exhibit "B."

B. Intentionally Omitted

C. INDEMNIFICATION

CONTRACTOR COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS AND LIABILITY, INCLUDING DEFENCE COSTS RELATING IN ANY WAY TO DAMAGES, CLAIMS OR FINES ARISING BY REASON OF OR IN CONNECTION WITH CONTRACTOR'S ACTUAL NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CONTRACTOR IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT.

THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH OR DAMAGE RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OR THAT OF THIRD PARTIES.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE CONTRACTOR UNDER THIS AGREEMENT SHALL NOT EXCEED \$600,000 PER OCCURRENCE.

D. INDEMNIFICATION PROCEDURES

(1) Notice of Claims. If the City or Contractor receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 10 days. The notice must include the following:

(a) a description of the indemnification event in reasonable detail,

- (b) the basis on which indemnification may be due, and the anticipated amount of the indemnified loss.

This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

- (a) Assumption of Defense. Contractor may assume the defense of the claim at its own expense with counsel chosen by Contractor. Contractor shall then control the defense and any negotiations to settle the claim. Within 10 days after receiving written notice of the indemnification request, Contractor must advise the City as to whether or not it will defend the claim. If Contractor does not assume the defense, wherein Contractor's indemnification obligations are correctly allotted, the City shall assume and control the defense, and all defense expenses constitute an indemnification cost.
- (b) Continued Participation. If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

E. Intentionally Omitted

F. Warranties

With respect to any parts and goods furnished by it, Contractor warrants:

- (1) that Contractor has free and clear title to the deliverables under this agreement,
- (2) that each item meets or exceeds Contractor's specifications,
- (3) that such deliverables shall be delivered free from lawful security interests, liens, taxes and encumbrances.
- (4) The Contractor makes no other warranties, expressed or implied, including the implied warranty of merchantability and that of fitness for a particular purpose.

G. Licenses and Permits

Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule, or regulation required for Contractor's performance under this Agreement.

H. Compliance with Equal Opportunity Ordinance

Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Exhibit "C."

I. Non-Exclusive Contract

This contract awarded does not create an exclusive right in Contractor to supply all fuel products described herein. The City may procure and execute contracts with other contractors for the same or similar products subject to the limitations set out in Section 2.3 of the bid solicitation or in the event of force majeure, such as natural disasters, epidemics, terrorists acts or acts of war.

J. Intentionally Omitted

K. Environmental Laws

Contractor shall comply with all rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations (Environmental Laws). Contractor shall promptly reimburse the City for any fines or penalties levied against the City because of Contractor's failure to comply.

Contractor shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous

Materials on, under, in, above, to, or from the site except in strict compliance with the Environmental Regulations. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Contractor shall not deposit oil, gasoline, grease, lubricants or any ignitable or hazardous liquids, materials, or substances in the City's storm sewer system or sanitary sewer system or elsewhere on City Property in violation of the Environmental Laws.

III. DUTIES OF CITY

A. Payment Terms

The City shall pay and Contractor shall accept fees at the unit prices provided in Exhibit H for all services rendered and the deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.

Any quantities of services or deliverables shown in any part of this contract or its exhibits are estimated only and are not any guarantee that the City will not purchase more or less of those services or deliverables. The City will pay only for the services or deliverables actually ordered and only at the unit prices set out.

B. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor on the counter signature dates.

C. Method of Payment

The City shall pay Contractor on the basis of invoices submitted by Contractor, showing the specific tasks completed in the preceding month and the corresponding prices. The City shall make payments to Contractor at its address for notices within 30 days of receipt of an invoice.

D. Method of Payment - Disputed Payments

If the City disputes any items in an invoice Contractor submits for any reason, including lack of supporting documentation, the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

E. Limit of Appropriation

- (1) The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.
- (2) In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated the sum of **\$12,000,000.00** to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies:
- (3) The City makes a supplemental allocation by sending a notice signed by the Director and the City Controller to Contractor and where appropriated, approved by motion, or ordinance of City Council in substantially the following form:

"NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS"

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of notice]

SUBJECT: Supplemental allocation of funds for the purpose of the "[title of this Agreement]" between the City and (name of Contractor) countersigned by the City Controller on (Date of Countersignature) (the "Agreement").

I, (name of City Controller), City Controller of the City of Houston, certify that the supplemental sum of \$_____, upon the request of the below-signed Director, has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.

The aggregate of all sums allocated for the purpose of such Agreement, including the Original Allocation, and all supplemental allocations (including this one), as of the date of this notice, is \$_____.

SIGNED:

(Signature of the City Controller)

City Controller of the City

REQUESTED:

(Signature of the Director)

Director

- (4) The Original Allocation plus all supplemental allocations are the Allocated Funds. The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for services it provides. If Allocated Funds are exhausted, Contractor may suspend or terminate its performance under this agreement.

F. Changes

- (1) At any time during the Agreement Term, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work.
- (2) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent will issue the Change Order in substantially the following form:

CHANGE ORDER

TO: [Name of Contractor]

FROM: City of Houston, Texas (the "City")

DATE: [Date of Notice]

SUBJECT: Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]

Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:

[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]

Signed:

[Signature of City Purchasing Agent or Director upon written notice to the City Purchasing Agent]

- (3) The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may issue more than one Change Order, subject to the following limitations:
 - (a) Council expressly authorizes the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, to approve a Change Order of up to \$25,000. A Change Order of more than \$25,000 over the approved contract amount must be approved by the City Council.
 - (b) If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.
 - (c) The Total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- (4) Whenever Contractor receives a Change Order, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any

Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The City Purchasing Agent's or Director's decision regarding a time extension is final.

- (5) A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.
- (6) Change Orders are subject to the Allocated Funds provisions of this Agreement.

IV. TERM AND TERMINATION

A. Contract Term

This Agreement is effective on the Countersignature Date and expires three (3) years after the date specified in the Notice to Proceed unless sooner terminated according to the terms of this Agreement.

B. Notice to Proceed

Contractor shall begin performance under this Agreement on the date specified in a Notice to Proceed from the City Purchasing Agent.

C. Renewals

If sufficient funds are allocated, the City Purchasing Agent, at his or her sole discretion, may make a request to Contractor to renew this Agreement for up to two additional 1-year option periods, upon at least 30 days' written notice before expiration of the initial term, or first option period, as applicable. Any renewal, pursuant to this Section, shall be upon the same terms and conditions of the Agreement.

D. Termination for Convenience by Contractor

Contractor may terminate this Agreement at any time by giving 30 days written notice to the City. The City shall then pay the fees to Contractor for services performed and/or deliverables under this agreement.

E. Termination for Convenience by the City

The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this Agreement at any time by giving 30 days written notice to Contractor. The City's right to terminate this

Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

On receiving the notice, Contractor shall, unless the notice directs otherwise, as soon as practical, discontinue all services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit an invoice showing in detail the services performed and/or deliverables under this Agreement. The City shall then pay the fees to Contractor for services actually performed, and/or deliverables but not already paid for under this Agreement.

F. Termination for Cause by City

If Contractor defaults under this Agreement, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may either terminate this Agreement with thirty (30) days prior written notice to Contractor or allow Contractor to cure the default as provided below. If a default occurs and the City wishes to terminate the Agreement, then the City will deliver a written notice to Contractor describing the default and the proposed termination date. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

- (1) Contractor fails to perform a material duty under this Agreement;
- (2) Contractor becomes insolvent;
- (3) all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or
- (4) a receiver or trustee is appointed for Contractor.

The City Purchasing Agent or Director upon written authorization by the City Purchasing Agent, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent allows Contractor to cure the default and Contractor does so to the City Purchasing Agent's or Director's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the City Purchasing Agent or Director upon written notice to the City Purchasing Agent may terminate this Agreement on the termination date, at no further obligation of the City except to pay for deliverables and/or services performed prior to the date termination is effectuated.

To effect final termination, the City Purchasing Agent or Director upon written notice to the City Purchasing Agent must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement, and as soon as commercially practical cancel all orders or subcontracts chargeable to this Agreement.

G. Termination for Cause by Contractor

Contractor may terminate its performance under this Agreement if the City defaults and if upon written authorization by the Contractor, Contractor allows the City to cure the default and the City does so to the Contractor's satisfaction before the termination date, then the termination is ineffective. Default by the City occurs if the City fails to perform one or more of its material duties under this Agreement. If a default occurs and Contractor wishes to terminate the Agreement, then Contractor must deliver a written notice to the Director describing the default and the proposed termination date.

The date must be at least 30 days after the Director receives notice. Contractor, at its sole option, may extend the proposed termination date to a later date. If the City does not cure the default before the termination date, then Contractor may terminate this Agreement on the termination date, at no further obligation to the Contractor.

V. MISCELLANEOUS

A. Independent Contractor

Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

B. Force Majeure

1. However, neither party is liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, explosions, and other acts of God, war, terrorist acts, riots, court orders, the acts of superior governmental or military authority or any other cause outside the reasonable control of

the non-performing Party.

2. This relief is not applicable unless the affected party does the following:
 - (a) uses commercially reasonable efforts to remove the Force Majeure as quickly as possible; and
 - (b) provides the other party with prompt written notice of the cause and its estimated anticipated effect.
3. At the City's own cost and expense, the City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance does not constitute a default or breach of this Agreement by the City.
4. If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director upon written authorization by the City Purchasing Agent may terminate this Agreement by giving 30 days' written notice to Contractor. This termination is not a default or breach of this Agreement. CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT AT THE TIME OF THE TERMINATION

C. Severability

If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind exist between the Parties regarding this Agreement.

E. Written Amendment

Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and

Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

F. Applicable Laws

This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

Venue for any litigation relating to this Agreement is Harris County, Texas.

G. Notices

All notices required or permitted by this Agreement must be in writing and are deemed delivered on the earlier of the date actually received or the third day following: (1) deposit in a United States Postal Service post office or receptacle; (2) with proper postage (certified mail, return receipt requested); and (3) addressed to the other party at the address set out in the preamble of this Agreement or at such other address as the receiving party designates by proper notice to the sending party.

H. Non-Waiver

If either party fails to require the other to perform a term of this Agreement, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

I. Inspections and Audits

Subject to reasonable prior written notice to Contractor and at mutually agreeable dates and times, City representatives may perform, or have performed, (1) audits of Contractor's books and records, and (2) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least 3 years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

J. Risk of Loss

Title to, and all risk of loss of or damage to any deliverable shall pass as follows: when into any truck, tank car or pipeline, as the deliverable enters the receiving equipment, or, if received by a common carrier, when

accepted by the carrier for shipment; when into storage (other than from vessels), as the Product enters the tank; and when by book or stock transfer, on the effective date of the transfer. It is expressly understood that the passage of title and risk of loss as set forth above is not conditioned on delivery or receipt of Bills of Lading.

K. Ambiguities

If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

L. Interlocal Agreements

As permitted under Section 791.025 of the Texas Government Code, it is anticipated that local governmental entities will desire to purchase Fuel under this Agreement and solely in accordance with all terms and conditions contained herein. The Contractor agrees to allow said local governmental entities, which enter into an interlocal agreement with the City, to act as a purchaser of goods and services under this Agreement and solely in accordance with the terms and conditions contained herein. Termination of any and all interlocal cooperation agreements shall be concurrent with the termination of this Agreement or sooner.

M. Parties In Interest

Subject to interlocal agreements executed between the City and another governmental entity, this Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

N. Successors and Assigns

This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following paragraph.

This Agreement does not create any personal liability on the part of any officer or agent of the City or of the Contractor.

O. Business Structure and Assignments

Nothing in this clause prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's prior written consent which shall not be unreasonably withheld or delayed.

P. Remedies Cumulative

Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Agreement except in accordance with its provisions.

Q. Contractor Debt

If Contractor, at any time during the term of this agreement, incurs a debt, as the word is defined in Section 15-122 of the Houston City Code of Ordinances, it shall immediately notify the City Controller in writing. If the City Controller becomes aware that Contractor has incurred a debt, she shall immediately notify contractor in writing. If Contractor does not pay the debt within 30 days of either such notification, the City Controller may deduct funds in an amount equal to the debt from any payments owed to Contractor under this agreement, and Contractor waives any recourse therefor.

EXHIBIT "A"

DEFINITIONS

As used in this Agreement, the following terms have the meanings set out below:

"Agreement" means this contract between the Parties, including all exhibits, change orders, and any written amendments authorized by City Council and Contractor.

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

"City Purchasing Agent" is defined as the person or duly authorized successor, authorized in writing to act for the City. The term includes, except as otherwise provided in this Contract, the authorized representative of the City Purchasing Agent acting within the limits of delegated authority.

"Contractor Administrator" means the representative of the Building Services Department who is responsible for the administration for the Contract.

"Contract Award Notice" means the official notification substantiated by the Notice to Proceed issued by the City Purchasing Agent to the Contractor.

"Contract Charges" means charges that accrue during a given month as defined in Article III.

"Contract Term" is defined in Article IV.

"Contractor" is defined in the preamble of this Agreement and includes its successors and assigns.

"Countersignature Date" means the date this agreement is countersigned by the City Controller.

"Director" means the Director of the Building Services Department or the City Purchasing Agent for the City, or the person he or she designates.

"Effective Date" is defined as date contract is countersigned by the City Controller.

"Governing Body" means the Mayor and City Council of the City of Houston.

"Hazardous Materials" is defined in Article IIK (Environmental Laws).

"Notice to Proceed" means a written communication from the City Purchasing Agent to Contractor instructing Contractor to begin performance.

"Parties" mean all the entities set out in the Preamble.

EXHIBIT B

SPECIFICATIONS

1.0 General

- 1.1 The Contractor shall have a refinery in the Houston area and the capability of providing the specified fuel from a secondary source in the event of a natural or man-made disaster.

2.0 Pricing Formula

- 2.1 Contractor agrees to supply as ordered, the specified grades of fuel including **Texas Low Emission, Ultra Low Sulfur Diesel (ULSD)**. A firm fixed price for each item shall be determined daily by applying the firm-fixed differential bid (plus or minus) for the item to the **average price** per gallon for the item listed in the **Oil Price Information Service (OPIS), PADD3** report for Houston, Texas, Gross No. 2 LED Distillate, ULS Rack Prices **issued for each calendar day**. The resulting firm-fixed prices shall be effective for that calendar day. Weekend pricing will be as follows: Saturday and Sunday pricing will be based on the following Monday's posted price. Prices for holidays will be the same as the next valid day. No price increase for the firm, fixed differential is authorized for the term of this Contract.
- 2.2 Contractor agrees to supply as ordered, the specified grades of fuel including **Unleaded Reformulated Gasoline with 10% ethanol**. A firm fixed price for each item shall be determined daily by applying the firm-fixed differential bid (plus or minus) to the total of, 90% USGC Platts pipeline mean for RBOB plus 10% USGC Platts EtOH, listed in the **PLATTS OILGRAM PRICE REPORT, Product Price Assessments, U.S. Gulf Coast, issued for each calendar day**. The resulting firm-fixed prices shall be effective for that calendar day. Weekend pricing will be as follows: Saturday and Sunday pricing will be based on the following Monday's posted price. Prices for holidays will be the same as the next valid day. No price increase for the firm, fixed differential is authorized for the term of this Contract.
- 2.3 The City of Houston reserves the right to purchase up to 20% of the total estimated contract quantity at the SPOT Market price, if the SPOT price is more favorable than the OPIS or Platts formula contract price.
- 2.4 Prices quoted will be F.O.B. contractor's Houston area fuel terminal. The City will provide fuel transportation services through an independent delivery service and/or its own vehicles.

3.0 Fuel Formulation Change

- 3.1 The formulation for the various fuel types specified herein is subject to change during the term of this agreement as a result of **changes made by refineries** or in federal, state and local regulations ("Alternate Formula Fuel"). Contractor shall provide the Alternate Formulation Fuel at the per gallon fixed differential/multiplier as set out in the contract Fee Schedule for the entire contract term, including option years, for fuel formulation changes **made by refineries** or mandated by federal, state and local regulations.

4.0 Product Quality

- 4.1 Contractor shall provide diesel fuel and unleaded gasoline in compliance with the product specifications mandated by the State of Texas for the Houston area.
- 4.2 Any aftermarket additive used shall be identified by brand and/or trade name. The manufacturer's additive specifications shall be provided to the City of Houston upon request.

5.0 Additional Provisions

5.1 The estimated quantity stated for each Line Item is an estimate only.

6.0 Interlocal Agreements

6.1 Under the same terms and conditions hereunder, the Contract may be expanded to other government entities through inter-local agreements between the City of Houston and the respective government entity that encompass all or part of the products provided under this contract. Separate contracts will be drawn to reflect the needs of each participating entity.

7.0 Invoicing and Payment

7.1 The Contractor shall submit an original invoice for each delivery order within thirty (30) days to:

City of Houston
Building Services Department, Fleet Management Division
611 Walker, 10th Floor
Houston, Texas, 77002

Each invoice shall contain:

1. City's Purchase Order Number.
2. The item number, type of fuel, total gallons delivered, the unit price and the total amount for each item.
3. Applicable Taxes.
4. The total amount of the invoice.

7.2 City of Houston will make payment within thirty (30) days excluding official City holidays as determined by City Council after receipt of Contractor's invoice. The City reserves all rights to review all payments made to the Contractor by auditing at a later date. Subject to such audit, any overpayments may be recovered from the Contractor. City and Contractor agree that the terms of this contract and all rights otherwise reserved by law, shall constitute the sole, controlling contract terms with respect to attorney's fees and interest owed on delayed, disputed or delinquent payments in lieu of Article 601f, Vernon's Texas Civil Statutes.

7.3 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales, Excise, and use Tax. The City's Tax Exempt Number is 7406001164. Contractor's invoice shall not contain assessments of any of these taxes.

8.0 In times of supply shortages or constraints and at Contractor's discretion, the Contractor reserves the right to allocate City of Houston at a percentage rate no less than 100% daily, of the monthly listed minimum volume in the master contract.

8.1 Contractor will use the following formula: **Monthly min contract volume/ 30 days = daily allocation at 100%**

9.0 Contractor, also reserves the right to allocate City's contract below 100% daily, in times of supply constraints that require all contract customers to be allocated below 100% daily. City's contract will not fall below 100% daily minimum gallons, unless all contract customers are allocated at the same % rate.

9.1 Contractor will notify City in times of allocation levels that fall below 100% daily minimum gallons

EXHIBIT "C"

FEES AND COSTS

1. **Fixed differential of + \$0.0375 to be applied per gallon of unleaded gasoline with 10% ethanol** additive based on the daily PLATTS OILGRAM PRICE REPORT, Product Price Assessments/U.S. Gulf Coast in accordance with the bid specifications.
2. **Fixed differential of - \$.0050 to be applied per gallon of ultra low sulfur diesel fuel** based on the average price per gallon for the item listed in the Oil Price Information Service (OPIS), PADD3 report for Houston, Texas, Gross No. 2 LED Distillate, ULS Rack Prices issued for each calendar day in accordance with the bid specifications.