



# CITY OF HOUSTON INVITATION TO BID

Issued: May 13, 2011

## **BID OPENING**

Sealed bids, in duplicate, will be received by the City Secretary of the City of Houston, in the City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, until **10:30 a.m., Thursday, June 9, 2011** and all bids will be opened and publicly read in the City Council Chamber, City Hall Annex, Public Level, 900 Bagby at 11:00 AM on that date for the purchase of:

**LOW EMISSION DIESEL FUEL AND UNLEADED GASOLINE  
FOR FLEET MANAGEMENT DEPARTMENT  
BID INVITATION NO.: S12-L23945  
NIGP CODE: 405-15**

## **BUYER**

Questions regarding this solicitation document should be addressed to **MARTIN L. KING** at **832.393.8705**, or e-mail to **[martin.king@houstontx.gov](mailto:martin.king@houstontx.gov)**.

## **ELECTRONIC BIDDING**

In order to submit a bid for the items associated with this procurement, vendor must fill in the pricing information on the "**PLACE BID**" page.

## **PRE-BID CONFERENCE**

A Pre-Bid Conference will be held for all Prospective Bidders at 900 Bagby Houston, Texas 77002 City Hall Tunnel Level (Basement) SPD Conference Room-1 at **10:00 a.m., on Tuesday, May 24, 2011**.

**All Prospective Bidders are urged to be present. It is the Bidder's responsibility to ensure that they have secured and thoroughly reviewed the solicitation documents prior to the Pre-Bid Conference. Any revisions to be incorporated into this solicitation document arising from discussions before, during and subsequent to the Pre-Bid Conference will be confirmed in writing by Letter(s) of Clarification prior to the bid due date. Verbal responses will not otherwise alter the specifications, and terms and conditions as stated herein.**

Bidding forms, specifications, and all necessary information should be downloaded from the Internet at **<https://purchasing.houstontx.gov/>**. By registering and downloading this solicitation document, all updates to this solicitation document will be automatically forwarded via e-mail to all registered Bidders. This information may also be obtained from the Supplier Assistance Desk, Strategic Purchasing Division, 901 Bagby (Concourse Level), Houston, Texas 77002.

The place of the bid opening may be transferred in accordance with Paragraph (b), (5) of Section 15-3 of The Code of Ordinances, Houston, Texas. The bid opening meeting may be rescheduled in accordance with Paragraph (b), (6) of said Section 15-3.

The City reserves the right to reject any or all bids or to accept any bid or combination of bids deemed advantageous to it.

City Employees are prohibited from bidding on this solicitation in accordance with the Code of Ordinances, Section 15-1.

### **\*CONTENTS:**

SECTION A: OFFER  
SECTION B: SCOPE OF WORK/SPECIFICATIONS  
SECTION C: GENERAL TERMS & CONDITIONS

**\*NOTE 1: Actual page numbers for each Section may change when the solicitation document is downloaded from the Internet or because of Letters of Clarification. Therefore, Bidders must read the bid document in its entirety and comply with all the requirements set forth therein.**

**\*NOTE 2: To be considered for award, please submit the electronic bid form and the forms listed in Section A, including the Official Signature Page, which must be signed by a company official authorized to bind the company.**

## SECTION A



**LOW EMISSION DIESEL FUEL AND UNLEADED GASOLINE  
FOR FLEET MANAGEMENT DEPARTMENT  
BID INVITATION NO.: S12-L23945  
NIGP CODE: 405-15**

To The Honorable Mayor  
and Members of the City Council  
of the City of Houston (the "City"), Texas:

The undersigned Bidder hereby offers to contract with the City upon the terms and conditions stated in that certain "**Contract for LOW EMISSION DIESEL FUEL AND UNLEADED GASOLINE for a three-year period with two (2) one-year option periods to extend for FLEET MANAGEMENT DEPARTMENT,**" which was distributed by the City together with the "Notice to Bidders" and is hereby incorporated herein by this reference (the "contract"). This offer is made at the prices stated on the electronic bid form. When issued by the City of Houston, Letters of Clarification shall automatically become part of this bid document and shall supersede any previous specifications or provisions in conflict with the Letters of Clarification. It is the responsibility of the Bidder to ensure that it has obtained all such letters. By submitting a bid on this project, Bidder shall be deemed to have received all Letters of Clarification and to have incorporated them into its bid.

The City may accept this bid offer by issuance of a contract covering award of said bid to this Bidder at any time on or before the 180<sup>th</sup> day following the day this Official Bid Form is opened by the City. This offer shall be irrevocable for 180 days, but shall expire on the 181<sup>st</sup> day unless the parties mutually agree to an extension of time in writing.

The City of Houston reserves the option, after bids are opened, to increase or decrease the quantities listed, subject to the availability of funds, and/or make award by line item.

If the City accepts the foregoing offer, this Bidder promises to deliver to the City Purchasing Agent of the City, five (5) original counterparts of said contract duly executed by this Bidder (as "Contractor") in accordance with this paragraph, proof of insurance as outlined in Article II of the contract, all on or before the tenth (10<sup>th</sup>) day following the day this Bidder receives from the City the unsigned counterparts shall be executed so as to make it binding upon the Bidder, and all of the applicable requirements stated in the document entitled "Instructions for Execution of Contract Documents," (which was distributed by the City) shall be complied with.

The City reserves the right to accept or reject, in whole or in part, any or all bids received and to make award on the basis of individual items or combination of items, as it is deemed in the best interest of the City.

If the City accepts the foregoing offer, this Bidder shall furnish all labor, supervision, materials, supplies, equipment and tools necessary to provide **LOW EMISSION DIESEL FUEL AND UNLEADED GASOLINE** in strict accordance with the specifications contained in Section B of this Invitation to Bid.

**ESTIMATED QUANTITIES NOT GUARANTEED:**

The estimated quantities specified herein are not a guarantee of actual quantities, as the City does not guarantee any particular quantity of low emission diesel fuel and unleaded gasoline will be purchased during the term of this agreement. The quantities may vary depending upon the actual needs of the user Department. The quantities specified herein and on the electronic bid document are good faith estimates of usage during the term of this agreement. Therefore, the City shall not be liable for any contractual agreements/obligations the Contractor enters into based on the City purchasing/requiring all the quantities specified herein and in the electronic bid document.

**Documents/forms must be downloaded from the City’s Website at <https://purchasing.houstontx.gov/>**

**Additional Required Forms to be included with this Bid:**

In addition to the Electronic Bid Form and the Official Signature Page, the Forms listed in Table 1 **must be completed and submitted to the Office of the City Secretary on or before the date and time the bid is due.** When submitting bids via UPS/FedEx, etc. please label it with the name: Office of the City Secretary, City Hall Annex, Public Level, 900 Bagby, Houston, Texas 77002, along with the bid/proposal number:

<b>TABLE 1 - REQUIRED FORMS</b>
Affidavit of Ownership.doc
Fair Campaign Ordinance.doc
Statement of Residency.doc
Conflict of Interest Questionnaire.doc
Contractor’s Questionnaire

Table 2 lists other documents and forms that should be viewed/downloaded from the City’s website, but are not required to be submitted with the bid. The City will request these forms, as applicable, to be completed and submitted to the City by the recommended/successful bidder:

<b>TABLE 2 - DOCUMENTS &amp; FORMS</b>
EEOC.doc
Formal Instructions for Bid Terms.doc

Questions concerning the bid should be submitted in writing to: City of Houston, Strategic Purchasing Division, 901 Bagby, Room B-400, Houston, TX 77002, Attn: MARTIN L. KING (or) by fax: 832.393.8745 or by e-mail (preferred method) to [martin.king@houstontx.gov](mailto:martin.king@houstontx.gov) no later than **4:00 p.m., Monday, May 09, 2011.**

**CONTRACTOR’S QUESTIONNAIRE**

In order to receive bid award consideration, the Bidder must be able to demonstrate that they are currently manufacturing, providing or have had at least one Contract, as a prime Contractor, for **LOW EMISSION DIESEL FUEL AND UNLEADED GASOLINE** that is similar in size and scope to this Contract. **Bidder must have references documenting that it has manufactured or supplied LOW EMISSION DIESEL FUEL AND UNLEADED GASOLINE.** The reference(s) should be included in the space provided below. Please attach another piece of paper if necessary. If references are not included with the Bid, the Bidder shall be required to provide such references to the City of Houston within five working days from receipt of a written request from the City of Houston to do so. **Bidder’s capability and experience shall be a factor in determining the Contractor’s responsibility.**

- 1. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City & State: \_\_\_\_\_  
Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_
  
- 2. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City & State: \_\_\_\_\_  
Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_
  
- 3. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City & State: \_\_\_\_\_  
Name & Phone Number of Contact: \_\_\_\_\_ Years of Services: \_\_\_\_\_

**SITE INSPECTION**

The City of Houston reserves the right to inspect the Bidder’s current place of business to evaluate equipment condition and capabilities, staff experience, training and capabilities, and storage capabilities as they relate to the performance of this contract. When deemed necessary an inspection may be made by the Fleet Management Department to determine whether a bidder actually has a facility at the location they have listed in the bid document.

## **SECTION B**

### **SCOPE OF WORK/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. The contractor shall have two delivery points at separate refinery racks, with limited rack movement.
- 1.2 The Contractor shall furnish low emission, ultra low sulfur diesel TxLED fuel that shall meet or exceed the requirements of the latest edition of the test methods listed in the "American Society for Testing and Materials Test Methods" (Exhibit BB). The low emission, ultra low sulfur diesel TxLED fuel shall comply with all local, state and federal regulations.
- 1.3 The Contractor shall furnish 87 octane reformulated gasoline (RFG/Southern Region) with 10% ethanol on an "as needed basis". The 87 octane reformulated gasoline shall comply with all local, state and federal regulations.

#### **2.0 Pricing Formula**

- 2.1 The Contractor agrees to supply as ordered, **Texas Low Emission, Ultra Low Sulfur Diesel (ULSD)**. A firm fixed price for **ULSD** shall be determined daily by applying the firm-fixed differential bid (plus or minus) for the **ULSD** to the prior days **average price** per gallon for the **ULSD** listed in the **PLATTS OILGRAM PRICE REPORT, Product Price Assessments, U.S. Gulf Coast** for Ultra Low Sulfur Diesel Pipeline. Weekend pricing will be as follows: Saturday, Sunday and Monday pricing will be based on the prior Friday's posted price. Prices for holidays will be the same as the prior valid day. The differential price bid shall remain firm throughout the contract term, to include the contract option years.
- 2.2 The Contractor agrees to supply as ordered, **Unleaded Reformulated Gasoline (Southern Region) with 10% ethanol**. A firm fixed price for **Unleaded Reformulated Gasoline** shall be determined daily by applying the firm-fixed differential bid (plus or minus) to the total of the prior days average 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**. Weekend pricing will be as follows: Saturday, Sunday and Monday pricing will be based on the prior Friday's posted price. Prices for holidays will be the same as the prior valid day. The differential price bid shall remain firm throughout the contract term, to include the contract option years.
- 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 Platts formula contract price.
- 2.4 Prices quoted shall be F.O.B. contractor's Houston area fuel terminal. The City will provide fuel transportation services through an independent fuel delivery contractor/transporter and/or with its own vehicles.

### **3.0 Fixed Price Option**

At any time during the agreement term, the contractor may offer/propose, and the City may accept, a fixed price option for a specific quantity of fuel during an agreed upon time period. The time period may be for 1 to 24 months. The City of Houston shall approve/disapprove the fixed price option proposal and the contractor shall be notified in writing of such approval/disapproval.

### **4.0 Fuel Formulation Change**

4.1 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 the refinery or** in federal, state and local regulations ("Alternate Formula Fuel"). The 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 the refinery** or mandated by federal, state and local regulations.

### **5.0 Product Quality**

5.1 The Contractor shall provide diesel fuel and unleaded gasoline in compliance with the product specifications mandated by the State of Texas for the Houston area.

5.2 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.

### **6.0 Additional Provisions**

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

### **7.0 Interlocal Agreements**

7.1 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.

### **8.0 Invoicing and Payment**

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

City of Houston  
Fleet Management Department  
611 Walker, 10<sup>th</sup> Floor  
Houston, Texas, 77002

Each Invoice shall contain:

1. City's Purchase Order/Service Release 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.

8.2 The 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. The 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.

8.3 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.

**9.0** 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.

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

A. City of Houston monthly minimum contract volume for Diesel: 265,000 gallons, plus or minus 30%.

B. City of Houston monthly minimum contract volume for Gasoline: 500,000 gallons, plus or minus 30%.

C. Should METRO elect to execute a contract pursuant to this solicitation: METRO's Diesel monthly minimum contract volume is 1,180,000 gallons, plus or minus 20%.

D. Should METRO execute a contract pursuant to this solicitation: METRO's Gasoline monthly minimum contract volume is 27,700 gallons, plus or minus 15%.

Exhibit BB  
AMERICAN SOCIETY FOR TESTING AND MATERIALS  
TEST METHODS

The Contractor shall ensure the Texas Low Emission Diesel (TxLED) fuel meets or exceeds the latest edition of the following American Society for Testing and Materials (ASTM) requirements:

<u>Test Methods</u>		<u>Min.</u>	<u>Max.</u>
D-86	Standard Test Method for Distillation of Petroleum Products 50 Percent 90 Percent (°F) End Point (°F)	----- 540	Report 640 675
D-93	Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester	130°F	-----
D-97	Standard Test Method for Pour Point of Petroleum Products Sept., Oct., Nov., Dec., Jan., Feb., Mar. April, May, June, July, August	----- -----	0°F +10°F
D-130	Standard Test Method for Detection of Copper Corrosion from Petroleum Products by the Copper Strip Tarnish Test Corrosion, 3 hours @ 50°C (122°F)	-----	1.0
D-287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method)	30.0	-----
D-445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity) @ 100°F (38°C)	2.0	3.6
D-482	Standard Test Method for ash from Petroleum Products	-----	0.01
D-524	Standard Test Method for Ramsbottom Carbon Residue of Petroleum Products	-----	.35
D-613	Standard Test Method for Cetane Number of Diesel Fuel Oil	48.0	-----
D-974	Standard Test Method for acid and Base Number by Color Indicator Titration (British Standard 2634) (MG KOH/G)	Less than.04	-----

<u>Test Methods</u>		<u>Min.</u>	<u>Max.</u>
D-976	Standard Test Methods for Calculated Cetane Index of Distillate Fuels One of the following properties shall be met, Cetane Index or the Aromaticity (ASTM D-1319). The Cetane is the ignition quality low cetane fuel causes poor starting, high cetane fuel causes good starting.	48.0	
D-1266	Standard Test Method for Sulfur in Petroleum Products (Lamp Method)	-----	.0015
D-1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Absorption Lamp Method – This measures the part of fuels that are difficult to burn. High aromatics causes poor combustion and high white smoke at start-ups.	-----	10
D-1500	<u>Standard Test Method for ASTM Color of Petroleum Products</u> ASTM Color	-----	2.5
	Color Visual	Undyed	-----
D-1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method (Laboratory Procedure) Measures bottom sediment, water content and any non-usable Material in fuel.	-----	<0.05
D-2274	Standard Test Method for Oxidation Stability of Distillate Fuel Oil (Accelerated Method) (mg/100ml)	-----	2.5
D-2276	Particulate Contamination mg/L max Measures the solid contaminates present in fuel. Higher amounts result in fuel system deposits, filter fouling, increases smoke and loss of usable fuel. Examples include; dirt, rust, and other foreign materials.	-----	1.0
D-2500	Standard Test Method for Cloud Point of Petroleum Products Sept., Oct., Nov., Dec., Jan., Feb., March April, May, June, July, August	----- -----	+15 <sup>0</sup> F +20 <sup>0</sup> F
D-2622	Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry.	-----	.0015
D-4176	Standard Test Method for Free Water and Particulate Contamination in Distillate Fuels Procedure 2 Haze Rating @ 25 <sup>0</sup> C (77 <sup>0</sup> F)	-----	2.0

<u>Test Methods</u>	<u>Min.</u>	<u>Max.</u>
D-4294 Standard Test Method for Total Sulfur in Petroleum Products By Energy-Dispersive X-Ray Fluorescence Spectroscopy	-----	.0015

1.1 If the Cetane number by test method D-613 is not available, D-976, or D-4737 (Standard Test Method for Calculated Cetane Index by Four Variable Equation), shall be used. A minimum Cetane index of 48 shall be met, regardless of the Cetane number. The Contractor shall conduct a Thermal Stability Test; 90-minutes at 300<sup>0</sup> F Pad Rating (DuPont Scale), with 7.0 as the maximum acceptable requirement.

1.2 The Contractor shall conduct a Lubricity Test in accordance with the proposed ASTM requirements. The lubricity level shall be determined using the following requirements:

D-6078 Scuffing Load Ball-on-Cylinder Lubricity Evaluator (SBOCLE)	3100g	
or		
D-6079 High Frequency Reciprocating Rig (HFRR)		.52μ

This measures the ability to lubricate; also called film strength. The lubricity, prevents any scuffing or damage to internal parts of the fuel system components such as injectors.

Note: Using the HFRR, a wear scar of 0.52μ at 60<sup>0</sup> C (maximum) is equivalent to a SBOCLE test result of 3100g (minimum).

1.3 The TxLED fuel provided under this contract shall meet all applicable Federal requirements for sulfur content.

**SECTION C  
GENERAL TERMS & CONDITIONS**

**THE STATE OF TEXAS**

**BID #** \_\_\_\_\_

**COUNTY OF HARRIS**

**ORDINANCE #** \_\_\_\_\_

**CONTRACT #** \_\_\_\_\_

**I. PARTIES**

**1.0 ADDRESS**

THIS AGREEMENT for **LOW EMISSION DIESEL FUEL AND UNLEADED GASOLINE** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON** ("**City**"), **TEXAS**, a municipal corporation and \_\_\_\_\_ ("**Contractor or Vendor**"), a Texas Home-Rule City 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 for Director

City of Houston

**P.O. Box 1562**

**Houston, Texas 77251**

**Contractor**

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

The Parties agree as follows:

**2.0 TABLE OF CONTENTS**

2.1 This Agreement consists of the following sections:

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## EXHIBITS

- \* A. DEFINITIONS
- \* B. SCOPE OF WORK/SPECIFICATIONS
- \* C. FEES AND COSTS

\* **Note:** These Exhibits shall be inserted into the contract Agreement at the time of contract execution.

- D. EQUAL EMPLOYMENT OPPORTUNITY

### **3.0 PARTS INCORPORATED**

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

### **4.0 CONTROLLING PARTS**

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

### **5.0 DEFINITIONS**

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

**6.0 SIGNATURES**

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

ATTEST/SEAL: (if a corporation) \_\_\_\_\_  
WITNESS: (if not corporation)

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:  
Federal Tax ID Number: \_\_\_\_\_

ATTEST/SEAL:

CITY OF HOUSTON, TEXAS  
Signed by:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

APPROVED:

COUNTERSIGNED BY:

\_\_\_\_\_  
City Purchasing Agent / Deputy Director

\_\_\_\_\_  
City Controller

DATE COUNTERSIGNED:

\_\_\_\_\_

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.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Legal Assistant

## II. DUTIES OF CONTRACTOR

### 1.0 **SCOPE OF SERVICES**

- 1.1 In consideration of the payments specified in this Agreement, Contractor shall provide all supervision, labor, tools, equipment, permits, parts, expendable items, material, and supplies necessary to provide the types of fuel specified in Exhibit "B."

### 2.0 **INDEMNIFICATION**

- 2.1 **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.**

- 2.2 **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.**

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

### 3.0 **INDEMNIFICATION PROCEDURES**

- 3.1 **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:

3.1.1 a description of the indemnification event in reasonable detail,

3.1.2 the basis on which indemnification may be due, and the anticipated amount of the indemnified loss.

3.2 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.

### 3.3 Defense of Claims

3.3.1 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.

3.3.2 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.

## 4.0 WARRANTIES

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

4.1.1 that Contractor has free and clear title to the deliverables under this agreement,

4.1.2 that each item meets or exceeds Contractor's specifications,

4.1.3 that such deliverables shall be delivered free from lawful security interests, liens, taxes and encumbrances.

4.1.4 The Contractor makes no other warranties, expressed or implied, including the implied warranty of merchantability and that of fitness for a particular purpose.

**5.0 LICENSES AND PERMITS**

The Contractor shall obtain and pay for all licenses, permits, and certificates required by any statute, ordinance, rule or regulation.

**6.0 NON-EXCLUSIVE CONTRACT**

This contract award 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.

**7.0 COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE**

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

**8.0 ENVIRONMENTAL LAWS**

8.1 The 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.

8.2 The 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.

**9.0 INSURANCE REQUIREMENTS**

9.1 The Contractor shall purchase and maintain in effect during the entire period of this contract, including any maintenance period thereof:

COMMERCIAL GENERAL LIABILITY INSURANCE including Products/Completed Operations and Contractual Liability with limits of liability not less than:

\$1,000,000	Each Occurrence Combined Single Limit for Bodily Injury and Property Damage
\$2,000,000	Annual Aggregate Limit for Products and Completed Operations
\$2,000,000	General Aggregate for Other Than Products and Completed Operations

9.2 The policies providing Commercial General Liability shall be endorsed to name the City of Houston and its directors and employees, as Additional Insureds as respects Contractor's operations in performance of this contract. Such insurance shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to the City of Houston.

- 9.3 All policies providing Contractor's insurance shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to the City of Houston at the address designated elsewhere in the contract for Notices.
- 9.4 The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.
- 9.5 All policies of insurance presented as proof of compliance with the above requirements shall be on forms and with insurance companies approved by the City of Houston All such insurance policies shall be provided by insurance companies having Best's ratings of A- or greater and VII or greater (A-VII) as shown in the most current issue of Best's Key Rating Guide. Policies of insurance issued by insurance companies not rated by Best's or having Best's ratings lower than A-VII will not be accepted as complying with the insurance requirements of the contract unless such insurance companies were approved in writing prior to award of contract
- 9.6 Contractor agrees to waive all rights of subrogation or recovery against the City of Houston and its directors and/or employees arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of Contractor under this agreement and/or the use of any the City of Houston premises or equipment in the performance of this agreement. The Commercial General Liability shall be endorsed to recognize this required waiver of subrogation.
- 9.7 Proof of compliance with these insurance requirements shall be furnished City of Houston in the form of an original certificate of insurance (including the ADDITIONAL INSURED endorsements; PRIMARY AND NON-CONTRIBUTORY GENERAL LIABILITY INSURANCE endorsements; and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS endorsements) signed by an authorized representative or agent of the insurance company(ies), within fourteen (14) days of notice of award of contract and before any work under this contract will be allowed to commence. Certificates will be unacceptable unless they clearly show that all of the above stipulated requirements have been met. Renewal or replacement certificates shall be furnished the City of Houston not less than seven (7) days prior to the expiration or termination date of the applicable policy(ies). Otherwise, the City of Houston may halt all work under this contract upon expiration or other termination of any required coverage, and work will not be allowed to resume until a satisfactory renewal certificate is received.
- 9.8 Contractor shall require any and all subcontractors performing work under this contract to carry insurance of the types and with limits of liability as Contractor shall deem appropriate and adequate for the work being performed. Contractor shall obtain and make available for inspection by the City of Houston upon request current certificates of insurance evidencing insurance coverages carried by such subcontractors.

## **10.0 EMERGENCY FUEL SUPPLY PROVISIONS**

The Contractor shall guarantee that the City of Houston or it's assignees will be able to withdraw a minimum of 30,000 bbl of Ultra Low Sulfur Diesel or Gasoline during hurricanes or similar emergencies over a 30 calendar day period following the event. Should a United States Federal agency waive restrictions on different types of diesel fuel during a hurricane or similar emergency, the Contractor shall be allowed to substitute a suitable alternative diesel fuel if the Contractor has a shortage of ULSD TxLED. The Contractor shall guarantee that the City of Houston or it's assignees will be given priority to load fuel from the Contractor's racks during such emergencies. The fuel supplied for hurricane or similar emergencies shall be priced according to the Contract.

### **III. DUTIES OF CITY**

#### **1.0 PAYMENT TERMS**

- 1.1 The City shall pay and Contractor shall accept fees provided in Exhibit "C" (Fees and Costs) for all services rendered and the deliverables furnished by Contractor. The fees must only be paid from Allocated Funds, as provided below.
- 1.2 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 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

#### **2.0 TAXES**

- 2.1 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 if requested.

#### **3.0 METHOD OF PAYMENT**

- 3.1 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 upon receipt of an approved invoice.

**4.0 METHOD OF PAYMENT - DISPUTED PAYMENTS**

4.1 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.

**5.0 LIMIT OF APPROPRIATION:**

5.1 The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

5.2 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:

5.3 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 \$\_\_\_\_\_ 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.

5.4 The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

5.5 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's only remedy is suspension or termination of its performance under this Agreement and it has no other remedy in law or in equity against the City and no right to damages of any kind.

**6.0 CHANGES**

- 6.1 At any time during the Agreement Term, the City Purchasing Agent or Director 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.
- 6.2 The City Purchasing Agent or Director 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]

- 6.3 The City Purchasing Agent or Director may issue more than one Change Order, subject to the following limitations:
  - 6.3.1 Council expressly authorizes the City Purchasing Agent or Director 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.
  - 6.3.2 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.
  - 6.3.3 The total of all Change Orders issued under this section may not increase the Original Agreement amount by more than 25%.
- 6.4 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.

- 6.5 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.
- 6.6 Change Orders are subject to the Allocated Funds provisions of this Agreement.

#### **IV. TERM AND TERMINATION**

##### **1.0 CONTRACT TERM**

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

##### **2.0 NOTICE TO PROCEED**

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

##### **3.0 RENEWALS**

- 3.1 Upon expiration of the Initial Term, and so long as the City makes sufficient supplemental allocations, this Agreement will be automatically renewed for two successive one-year terms on the same terms and conditions. If the Director/Chief of the City Department elects not to renew this Agreement, the City Purchasing Agent shall notify Contractor in writing of non-renewal at least 30 days before the expiration of the then current term.

##### **4.0 TIME EXTENSIONS**

- 4.1 If Department requests an extension of time to complete its performance, then the City Purchasing Agent may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

##### **5.0 TERMINATION FOR CONVENIENCE BY THE CITY**

- 5.1 The City Purchasing Agent or Director 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.
- 5.2 On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately 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 under this Agreement up to the termination date. The City shall then pay the fees to Contractor for services actually performed, but not already paid for, in the same manner as prescribed in Section III unless the fees exceed the allocated funds remaining under this Agreement.

5.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

## **6.0 TERMINATION FOR CAUSE BY CITY**

6.1 If Contractor defaults under this Agreement, the City Purchasing Agent or Director may either terminate this Agreement or allow Contractor to cure the default as provided below. 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:

6.1.1 Contractor fails to perform any of its duties under this Agreement;

6.1.2 Contractor becomes insolvent;

6.1.3 All or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

6.1.4 A receiver or trustee is appointed for Contractor.

6.2 If a default occurs, the City Purchasing Agent or Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The City Purchasing Agent or Director, at his or her sole option, may extend the termination date to a later date. If the City Purchasing Agent or Director 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 may terminate this Agreement on the termination date, at no further obligation of the City.

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

## **7.0 TERMINATION FOR CAUSE BY CONTRACTOR**

7.1 Contractor may terminate its performance under this Agreement only if the City defaults and fails to cure the default after receiving written notice of it. 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.

7.2 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 cures the default before the proposed termination date, then the proposed termination is ineffective. If the City does not cure the default before the proposed termination date, then Contractor may terminate its performance under this Agreement on the termination date.

## **8.0 TERMINATION FOR CONVENIENCE BY CONTRACTOR**

8.1 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.

## V. MISCELLANEOUS

### 1.0 INDEPENDENT CONTRACTOR

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

### 2.0 FORCE MAJEURE

2.1 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, and the acts of superior governmental or military authority.

2.2 This relief is not applicable unless the affected party does the following:

2.2.1 uses due diligence to remove the Force Majeure as quickly as possible, and

2.2.2 provides the other party with prompt written notice of the cause and its anticipated effect.

2.3 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.

2.4 If the Force Majeure continues for more than 30 days, the City Purchasing Agent or Director 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.

### 3.0 SEVERABILITY

3.1 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.

### 4.0 ENTIRE AGREEMENT

4.1 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.

### 5.0 WRITTEN AMENDMENT

5.1 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.

### 6.0 APPLICABLE LAWS

6.1 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.

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

## **7.0 NOTICES**

7.1 All notices to either party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in Section I of this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

## **8.0 NON-WAIVER**

8.1 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.

8.2 An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

## **9.0 INSPECTIONS AND AUDITS**

9.1 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.

## **10.0 RISK OF LOSS**

10.1 The 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.

## **11.0 AMBIGUITIES**

11.1 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.

## **12.0 INTER-LOCAL AGREEMENT**

12.1 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.

## **13.0 PARTIES IN INTEREST**

13.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

## **14.0 SUCCESSORS AND ASSIGNS**

14.1 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.

## **15.0 BUSINESS STRUCTURE AND ASSIGNMENTS**

15.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the City Purchasing Agent's or Director's prior written consent. Nothing in this clause, however, 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.

15.2 Contractor shall not delegate any portion of its performance under this Agreement without the City Purchasing Agent's or Director's prior written consent.

## **16.0 REMEDIES CUMULATIVE**

16.1 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.

**17.0 CONTRACTOR DEBT**

17.1 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 Fleet Management 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 Fleet Management 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 II (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 who are bound by this Agreement.

**EXHIBIT B**  
**SCOPE OF WORK/SPECIFICATIONS**

(To be inserted by the City at the time of contract execution)

**EXHIBIT C  
[FEES AND COST]**

(To be inserted by the City at the time of contract execution)

## **EXHIBIT D EQUAL EMPLOYMENT OPPORTUNITY**

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.