THE STATE OF TEXAS

COUNTY OF HARRIS

BID # S12-L23945
ORDINANCE # 2011-0826
CONTRACT # 4600011211

I. PARTIES

1.0 ADDRESS

THIS AGREEMENT FOR **UNLEADED GASOLINE** ("Agreement") is made on the Countersignature Date between the **CITY OF HOUSTON ("City"), TEXAS,** a municipal corporation and **CONOCOPHILLIPS COMPANY** ("Contractor or Vendor"), a Delaware company authorized to do 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
P.O. Box 1562
Houston, Texas 77251

Contractor
ConocoPhillips Company
600 N. Dairy Ashford
Houston, Texas 77079
Phone: 281-293-1544
Fax: 918-662-4077

The Parties agree as follows:

2.0 TABLE OF CONTENTS

2.1 This Agreement consists of the following sections:

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A. DEFINITIONS
B. SCOPE OF WORK/SPECIFICATIONS
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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: C Smith Underwood
Title: National Account Representative

CONOCOPHILLIPS COMPANY

By: _____
Name: HUGH LINDBERG
Title: Mgr Unbranded
Federal Tax ID Number: 73-0400345

ATTEST/SEAL:

_____
City Secretary

CITY OF HOUSTON, TEXAS
Signed by:

_____
Mayor Annise D. Parker

APPROVED:

_____
City Purchasing Agent / Deputy Director

COUNTERSIGNED BY:

_____
City Controller

DATE COUNTERSIGNED:

9/22/11

APPROVED AS TO FORM:

_____
Senior Assistant City Attorney
L.D. File No. 037-1100211-001

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 AGREES, COVENANTS AND WARRANTS THAT IT WILL INDEMNIFY, 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 SECTION 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, or (iii) requires a financial payment by the City.

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 or quantity meets or exceeds industry standards, and

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

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

6.0 NON-EXCLUSIVE CONTRACT

6.1 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 Exhibit B 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, ordinances, codes, or orders of the

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

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 City facilities except in strict compliance with the Environmental Laws. "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 Term of this contract, including any extensions 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 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.

9.3 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 minimum amounts required above.

9.4 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 All such insurance policies shall be provided by insurance companies having Best's ratings of A- or greater and a Best's Financial Size Category of Class 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.

9.5 Contractor agrees to waive all rights of subrogation or recovery against the City 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 premises or equipment in the performance of this Agreement. The Commercial General Liability shall be endorsed to recognize this required waiver of subrogation.

9.6 Proof of compliance with these insurance requirements shall be furnished City in the form of a certificate or memorandum of insurance before any work under this contract will be allowed to commence. Renewal or replacement certificates shall be furnished the City prior to the expiration or termination date of the applicable policy(ies).

9.7 Contractor shall require any and all subcontractors performing work under this Agreement 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 upon request current certificates of insurance evidencing insurance coverages carried by such subcontractors.

9.8 Notwithstanding any conflicting provisions of this Agreement, Contractor's liabilities and obligations regarding the additional insured status and, primary insurance relationship, and waivers of subrogation requirements shall be solely to the extent of the Contractor's indemnity obligations to the City under this Agreement and for the minimum amounts stated herein.

10.0 EMERGENCY FUEL SUPPLY PROVISIONS

The Contractor shall guarantee that the City or its assignees will be able to withdraw a minimum of 30,000 bbl of Unleaded Gasoline during hurricanes or similar emergencies over a 30 calendar day period following the event. This quantify shall be exempt from the Force Majeure provisions in Article V, Section 2.0. Should a United States Federal agency waive restrictions on different types of unleaded gasoline during a hurricane or similar emergency, the Contractor shall be allowed to substitute a suitable alternative unleaded gasoline if the Contractor has a shortage. The Contractor shall guarantee that the City 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 Agreement.

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 and in accordance with this Article and Exhibit "B". 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 Agreement 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 delivered, and only in accordance with Section 1.0 above.

2.0 TAXES

2.1 The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. The City's Tax Exempt Number is 7406001164. 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 ACH 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 ACH payments to Contractor at its address for notices within 10 to 30 days upon receipt of an approved invoice.

4.0 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 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 **fourteen million eight-hundred and forty-two thousand and no cents ($14,842,000.00)** 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 ("Supplemental Allocation"), but they are not obligated to do so. Therefore, the parties have agreed to the following procedures and remedies.

5.3 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.

NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS

By the signature below, the City Controller certifies that, upon the request of the responsible director, the supplemental sum set out below 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.

$_____

5.4 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 goods and 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 remedy in law or in equity against the City and no right of 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 $50,000.00. A Change Order of more than $50,000.00 over Original Agreement amount (i.e. $88,075,000.00) 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 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 Director 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 INCLUDING BUT NOT LIMITED TO, TERMINATION OF ANY OUTSTANDING FIXED PRICE OPTIONS.

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 actually performed and/or deliverables actually delivered under this Agreement in accordance with Article III. In the event the parties have entered into a Fixed Price Option, Contractor shall pay the City the difference between the price of the Fixed Price Option and the SPOT Market for the quantities covered by the Fixed Price Option for the length of time covered by the Fixed Price Option.

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. The City has no control or supervisory powers over the manner or method of Contractor's performance under this Agreement. All personnel Contractor uses or provides are its employees or subcontractors and not the City's employees, agents, or subcontractors for any purpose whatsoever. Contractor is solely responsible for the compensation of its personnel, including but not limited to: the withholding of income, social security, and other payroll taxes and all worker's compensation benefits coverage.

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 and City Purchasing Agent are 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 Article I, Section 1.0 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, City Purchasing Agent, 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 or City Purchasing Agent are 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 in connection with this Agreement, 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 four (4) 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 Fuel 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.

15.3 Any series, as defined by the Texas Business Organization Code, affiliate, subsidiary, or successor to which Contractor assigns or transfers assets shall join in privity and be jointly and severally liable under this Agreement.

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.

18.0 SURVIVAL

18.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity and release provisions.

19.0 ENFORCEMENT

19.1 The City Attorney or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or state law or regulation.

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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.

"Allocated Funds" means the Original Allocation plus any Supplemental Allocations.

"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 Agreement, 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 Agreement.

"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 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 the City and Contractor.

"Party" means either City or Contractor as applicable.

"Total estimated contract quantity" means the five year estimate contained in Note 1 of Exhibit "C."

"Fuel" means Unleaded Reformulated Gasoline as set forth in Exhibit "B."

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. The contractor shall be the "owner" or "have control" of the racks from which the Fuel will be dispensed.

1.2 **NOT APPLICABLE.**

1.3 The Contractor shall furnish 87 octane reformulated gasoline (RFG/Southern Region) with 10% ethanol on an "as needed basis", and the 87 octane reformulated gasoline shall comply with all local, state and federal regulations as applicable to the Houston area ("Fuel").

2.0 Pricing Formula

2.1 **NOT APPLICABLE.**

2.2 The Contractor agrees to supply as ordered, **Unleaded Reformulated Gasoline (Southern Region) ("USGC") with 10% ethanol.** A firm fixed price for **Unleaded Reformulated Gasoline** shall be determined daily by applying the firm-fixed differential (plus or minus), contained in Exhibit "C", 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 based on the most recent PLATTS OILGRAM PRICE REPORT published prior to the holiday. The differential price in Exhibit "C" shall remain firm throughout the Agreement Term, to include any extenstions.

2.3 The City reserves the right to purchase up to 10% of the total estimated contract quantity at the SPOT Market price, via a separate agreement, if the SPOT price is more favorable than the price set forth in Section 2.2.

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 or with its own vehicles.

3.0 Fixed Price Option

3.1 At any time during the Agreement Term, or any extension thereof, the Contractor may offer or 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 shall approve or disapprove the fixed price option proposal and the contractor shall be notified in writing of such approval or 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 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 upon request.

6.0 Additional Provisions

6.1 The Total estimated contract quantity in Note 1 of Exhibit "C" is an estimate only.

7.0 Interlocal Agreements

7.1 Under the same terms and conditions hereunder, the Agreement may be expanded to other government entities through inter-local agreements between the City and the respective government entity that encompass all or part of the products provided under this Agreement. Contractor agrees to enter into separate contracts substantially identical to this Agreement unless the needs of each participating government entity requires a variance.

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
900 Bagby, 2nd 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.
5. Corresponding bill of laden

8.2 The City will make ACH payment within ten (10) days as applicable, 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 Section 2251.025 of the Texas Government Code.

9.0 In times of supply shortages or constraints and at Contractor's discretion, the Contractor reserves the right to allocate the City at a percentage rate no less than 16,667 gallons per day, plus or minus 30%.

EXHIBIT C
[FEES AND COST]

ITEM #	DESCRIPTION
1	**Fixed differential of + $0.0269** to be applied per gallon of unleaded gasoline with 10% ethanol additive based on the daily PLATTS OILGRAM PRICE REPORT, in accordance with the "Pricing Formula" provision in Exhibit B, Section 2.0 entitled "Pricing Formula", Sub-section 2.2 for unleaded gasoline of the contract.

NOTE 1:

The City's approximate five year estimated usage quantity is 29,800,000 gallons.

NOTE 2:

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 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.

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 subcontractor 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.