

FUEL PRODUCTS PURCHASE AGREEMENT

THIS FUEL PRODUCTS PURCHASE AGREEMENT (this “Agreement”) is entered into this _____ day of _____, 2019 (the “Effective Date”), by and between the City of Moorhead, a political subdivision of the State of Minnesota (the “City”), and _____, a *[limited liability company/corporation]* of the State of _____ (the “Contractor”).

RECITALS

WHEREAS, the City is in need of fuel and fuel delivery (“Fuel Products”) to the City’s Public Works Facility and desires to engage the Contractor to provide Fuel Products in accordance with the terms and conditions set forth herein; and

WHEREAS, the City submitted a request for proposal and determined that the Contractor has the necessary qualifications, experience, and abilities to provide Fuel Products to the City; and

WHEREAS, the Contractor agrees to provide Fuel Products to the City on the terms and conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Fuel Products – Services Provided.

- a. The City desires to purchase #2 Diesel and No Lead 10% Ethanol 87 Octane Gasoline and have the same delivered to its Public Works Facility during the first and second quarter of 2020 in amounts as follows:

FIRST QUARTER: January 1 – March 31			
Fuel Product:	Gallons:	Price/gallon:	Total Price:
#2 Diesel	40,000	\$	\$
No Lead 10% Ethanol 87 Octane	20,000	\$	\$

SECOND QUARTER: April 1 – June 30			
Fuel Product:	Gallons:	Price/gallon:	Total Price:
#2 Diesel	35,000	\$	\$
No Lead 10% Ethanol 87 Octane	25,000	\$	\$

- b. The fuel price listed above includes:

- (1) Any local freight charges; and
 - (2) Any and all local, state, and federal taxes and fees.
- c. The City uses various mixtures of fuel depending on the season. During the winter season, diesel may be a blend of #1 Diesel and #2 Diesel with a cold weather additive. During the summer months, bio diesel may be used. Splash blending for products like bio diesel will be acceptable. Blended diesel and #1 Diesel will be priced based on the #2 Diesel contracted price plus the market differential. The blended diesel total quantity will account toward the contracted quantity of #2 Diesel.
- d. Higher grades of gasoline may be purchased and will be priced based on the contracted price plus the market differential. The higher grade gasoline quantity will account toward the contracted quantity of No Lead 10% Ethanol 87 Octane Gasoline.
- e. Additional products and services purchased outside of the contracted amount will be current rack price at the time of purchase.

2. Relationship of the Parties. In providing Fuel Products under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee. The Contractor and the City acknowledge that this Agreement does not create a partnership or joint venture between them, and is exclusively a contract for fuel products and delivery. The City is not required to pay, or make any contributions to, any social security, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension, or any other employee benefit for the Contractor during the term of this Agreement. The Contractor is responsible for paying, and complying with reporting requirements for any social security, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension, or any other employee benefit related to payments made to the Contractor under this Agreement.

3. Term.

- a. The term of this Agreement (the "Term") will commence on the Effective Date and will remain in full force and effect until January 1, 2020, subject to earlier termination as provided in this Agreement. The Term of this Agreement may be extended with the written consent of the parties. Provisions within this Agreement may extend beyond the term of this Agreement.
- b. In the event that either party desires to terminate this Agreement prior to the termination date written above, that party is required to provide sixty (60) days' written notice to the other party.

4. **Performance.** The parties agree to do everything necessary to ensure that the terms of this Agreement take effect. If, during any month of the delivery period, the Contractor fails to deliver the contracted volume, and such failure is not excused, and the replacement price (cost incurred by the City to secure the contracted for volume) is greater than the contract price, then the Contractor is liable for and will pay the City the amount equal to the volume not delivered times the difference between the replacement price and the contract price previously listed.
5. **Deliveries.** Deliveries of Fuel Products will be to the City of Moorhead Public Works Facility located at 700 15th Avenue North. The tank capacity is ten thousand (10,000) gallons for diesel and ten thousand (10,000) gallons for gasoline. The typical delivery amount is seven thousand five hundred (7,500) gallons. Deliveries will be made in a timely fashion to ensure the tanks do not reach empty.
6. **Unused Fuel Product.** In the event the City does not take delivery of the contracted quantity for the delivery period, the Contractor can sell the volume not lifted in the open market the last two (2) days of the delivery period or the first five (5) days of the following delivery period. If the open market price is less than the fixed forward pricing above, the City will pay the Contractor the amount equal to the volume not lifted times the difference between the open market price and the fixed forward price. If the open market price is more than the fixed forward pricing above, the Contractor will pay the City the amount equal to the volume not lifted times the difference between the open market price and the fixed forward price.
7. **Currency.** Monetary amounts referred to in this Agreement are in US Dollars (USD).
8. **Compensation.**
 - a. The Contractor must submit invoices to the City on or before the 15th day of each month for all Fuel Products provided during the preceding month. The Contractor must personally review each invoice before it is sent to the City to determine its accuracy and fairness, and to ensure the invoice complies with the requirements in this Agreement.
 - b. After the City receives the Contractor's invoice, the City will either process the invoice for payment or give the Contractor specific reasons, in writing within fifteen (15) business days, why part or all of the City's payment is being withheld and what actions the Contractor must take to receive the withheld amount.
 - c. In the event of a disputed billing, only the disputed portion will be withheld from payment, and the City shall pay the undisputed portion. The City will exercise reasonableness in disputing any bill or portion thereof. Interest will accrue on any disputed portion of the billing determined to be due and owing to the Contractor.

- d. Invoices submitted by the Contractor to the City are due within thirty (30) days of receipt. Interest will accrue at the rate of one half percent (1/2%) per month, or that permitted by law, on all past due amounts starting thirty (30) days after receipt of the invoice on any disputed portion of the billing determined to be due and owing to the Contractor.
9. **Demurrage.** In the event there is a shortage of Fuel Products at the pipeline or a considerable wait time occurs, a demurrage charge may be added after the first hour. A demurrage charge per hour must be included on the BID SHEET, attached as **Exhibit A**, commencing with the second hour of wait time.
10. **Liability Insurance.** The Contractor will, at the Contractor's sole cost and expense, provide and maintain during the term of this Agreement a blanket or general liability insurance policy against claims for personal injury, death, or property damage occurring in connection with Fuel Products provided by the Contractor, said policy will have limits of no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate. In addition, the Contractor will provide and maintain during the term of this Agreement commercial automobile insurance in the amount of two million dollars (\$2,000,000). The Contractor agrees to include the City as an additional insured on the certificate of insurance.
11. **Indemnification.** The Contractor agrees to indemnify and hold harmless the City from and against all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person or property sustained under this Agreement and will, at the Contractor's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the City or in which the City may be impleaded with others upon any such above-mentioned matters or claims. This indemnification in no way limits the Contractor's obligation to maintain a blanket or other general liability insurance policy for the benefit of the City. This indemnity and hold harmless provision will include indemnity against all costs, expenses, and liabilities incurred in or in connection with any such claims or proceedings brought thereon and the defense thereof.
12. **Remedies.** The City's remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any and all other remedies available to the City under Minnesota law. The Contractor will reimburse the City for all of the City's other costs and expenses incurred in enforcing, collecting, or attempting to collect under this Agreement, or incurred in litigating the terms or validity of this Agreement.
13. **Modification of Agreement.** Any amendment or modification of this Agreement or additional obligation assumed by either party in connection with this Agreement will only be binding if evidenced in writing signed by each party or an authorized representative of each party.
14. **Notice.** All notices, requests, demands, or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the parties at the following addresses:

If to the City: City of Moorhead
Attn: Facilities and Fleet Manager
500 Center Avenue
Moorhead, MN 56560

If to the Contractor: _____

Notice will be deemed to be properly delivered (a) immediately upon being served personally, (b) five days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier.

- 15. **Assignment.** The Contractor will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the City.
- 16. **Entire Agreement.** It is agreed that there is no representation, warranty, collateral agreement, or condition affecting this Agreement except as expressly provided in this Agreement.
- 17. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota.
- 18. **Severability.** In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.
- 19. **Waiver.** The waiver by either party of a breach, default, delay, or omission of any of the provisions of this Agreement by the other party will not be construed as a waiver of any subsequent breach of the same or other provisions.
- 20. **Counterparts.** This Agreement may be signed in counterparts, meaning that the Agreement is valid if signed by both parties even if the signatures of the parties appear on separate copies of the same Agreement rather than on a single document.

IN WITNESS WHEREOF the parties have duly affixed their signatures under hand and seal on the Effective Date first written above.

[Signatures appear on the following pages.]

CITY:

City of Moorhead

Johnathan Judd, Mayor

Christina M. Volkers, City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF CLAY)

This instrument was acknowledged before me on _____, 2019, by Johnathan Judd and Christina M. Volkers, the Mayor and City Manager, respectively, of the City of Moorhead, Minnesota.

(SEAL)

Notary Public, Clay County, MN
My commission expires:

[Signatures continue on the following page.]

Exhibit A
BID SHEET