

**AUTHORIZING A TWO-YEAR PURCHASING AGREEMENT WITH  
PETROLEUM TRADERS CORPORATION FOR THE PURCHASE OF VEHICLE  
FUEL FOR THE PERIOD OF JANUARY 1, 2022, TO DECEMBER 31, 2023.**

**WHEREAS**, the City of DeKalb (the "City") is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

**WHEREAS**, City staff issued a request for proposals for gasoline and diesel vehicle fuel for the period of January 1, 2022 to December 31, 2023 with three (3) one-year options to extend the agreement (the "Vehicle Fuel RFP"), and Petroleum Traders Corporation (the "Contractor") made the lowest responsible bid for the Vehicle Fuel RFP as set forth in Exhibit A attached hereto and incorporated herein (the "Vehicle Fuel RFP Bid Response"); and

**WHEREAS**, the City's corporate authorities find that it is in the City's best interests for the promotion of the public health, morals and welfare to approve the Vehicle Fuel RFP Bid Response in accordance with the provisions of this Resolution; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DEKALB, ILLINOIS:**

**SECTION 1:** The recitals to this Resolution are true, correct, material, adopted, and incorporated herein by reference as if fully set forth as Section 1 to this Resolution.

**SECTION 2:** The City's corporate authorities approve the Contractor's Vehicle Fuel RFP Bid Response and further authorize, direct, and ratify the City Manager to enter into a two-year contract with Contractor for the purchase of vehicle fuel for a period of January 1, 2022 to December 31, 2023 with three (3) one-year option terms, in a form acceptable to the City Manager, and to take all acts necessary to effectuate this resolution and the City's acceptance of Contractor's Vehicle Fuel RFP Bid Response.

**SECTION 3:** This resolution shall be in full force and effect from and after its passage and approval as provided by law.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 13<sup>th</sup> day of December and approved by me as Mayor on the same day. Passed by 26-0-2 roll call vote as follows:

Morris: Absent

Larson: Aye

Smith: Aye

Perkins: Aye

McAdams: Absent

Verbic: Aye

Faivre: Aye

Barnes: Ayes



Cohen Barnes  
**COHEN BARNES, Mayor**

ATTEST:

Ruth A. Scott

Ruth A. Scott, Executive Assistant

**EXHIBIT A**  
**(The Vehicle Fuel RFP Bid Response)**



164 East Lincoln Highway  
DeKalb, Illinois 60115  
815.748.2000 • cityofdekalb.com

***ADDENDUM 1: November 15, 2021***

***ADDENDUM 2: November 17, 2021***

***ADDENDUM 3: November 18, 2021***

**Bid/Proposal Cover Sheet**

Name of Project: City of DeKalb – Vehicle Fuel Bidding

General Description of Project: This bid will cover the gasoline and diesel fuel for the City of DeKalb for two years with three optional yearly extensions.

Website Link: <http://www.cityofdekalb.com>

Type of Bid:

- ☒ Bid for Goods
- ☐ Bid for Services
- ☐ Request for Qualifications
- ☐ Request for Proposals
- ☐ \_\_\_\_\_

City Representative:

Name: Jon Ormond, Street Superintendent  
E-Mail: [jon.ormond@cityofdekalb.com](mailto:jon.ormond@cityofdekalb.com)  
Phone: 815-748-2040

Bid Release Date: November 8, 2021

Last Day for Questions: November 12, 2021

Pre-Bid Meeting: None

Attendance Mandatory: ☐ Yes ☒ No

Question Response Date: November 16, 2021

Bid Due Date: **November 24, 2021**

Deadline: 2:00 P.M.

**All Bids must be received at the City of DeKalb Public Works Water Division, 1216 Market St, DeKalb, IL 60115 not later than 2:00 p.m. on the Bid Due Date outlined above.**

Required Security: See Section 2.18 of the Proposal.

Required Insurance: See applicable terms of Exhibit E, Independent Contractor Agreement, and Section 2.10 – 2.13 of the Contract Documents.

All persons desiring to submit a bid under these Contract Documents must contact the City of DeKalb and provide an email address at which notices can be sent and received by the proposed Bidder or Contractor. This address will be used for official communications from the City, including pre-bid communications.

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**City of DeKalb**

**Legal Notice**

**Invitation for Bid**

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The City of DeKalb, IL will accept sealed bids for **Vehicle Fuel – Gasoline & Diesel**

Specifications and all Contract Documents are available on-line on the City of DeKalb's web page at <http://www.cityofdekalb.com> They may also be obtained from the City of DeKalb Public Works Division, 1216 Market St. DeKalb, IL 60115. Bids will be received by the City of DeKalb Public Works Division, at the above address until **November 23, 2011 at 2:00 p.m.** All bids will be publicly opened immediately thereafter.

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## **EQUAL EMPLOYMENT OPPORTUNITY CLAUSE**

**EQUAL EMPLOYMENT OPPORTUNITY CLAUSE** required by the Illinois Fair Employment Practices Commission as a material term of all public contracts.

During the performance of this contract, the Contractor agrees as follows:

- 1. That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or ancestry; and further, that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.**
- 2. That, if it hires additional employees in order to perform this contract, or any portion hereof, it will determine the availability (in accordance with the Commission's Rules and Regulations for Public Contracts) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.**
- 3. That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin, or ancestry.**
- 4. That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the contractor's obligations under the Illinois Fair Employment Practices Act and the Commission's Rules and Regulations for Public Contracts. If any such labor organization or representative fails or refuses to cooperate with the contractor in its efforts to comply with such Act and Rules and Regulations the contractor will promptly so notify the Illinois Fair Employment Practices Commission and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations there under.**
- 5. That it will submit reports as required by the Illinois Fair Employment Practices Commission's Rules and Regulations for Public Contracts, furnish all relevant information as may from time to time be requested by the Commission or the contracting agency, and in all respects comply with the Illinois Fair Employment Practices Act and the Commission's Rules and Regulations for Public Contracts.**
- 6. That it will permit access to all relevant books, records, accounts, and work sites by personnel of the contracting agency and the Illinois Fair Employment Practices Commission for purposes of investigation to ascertain compliance with the Illinois Fair Employment Practices Act and the Commission's Rules and Regulations for Public Contracts.**
- 7. That it will include verbatim or by reference the provisions of paragraphs 1 through 7 of this clause in every performance subcontract as defined in Section 2.10 (b) of the Commission's Rules and Regulations for Public Contracts so that such provision will be binding upon every such subcontractor; and that it will also include the provisions of paragraphs 1, 5, 6, and 7 in every supply subcontract as defined in Section 2.10(a) of the Commission's Rules and Regulations for Public Contracts so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this contract, the contractor will be liable for compliance with applicable provisions of this clause by all its subcontractors; and further it will promptly notify the contracting agency and the Illinois Fair Employment Practices Commission in the event any subcontractor fails or refuses to comply therewith. In addition, no contractor will utilize any subcontractor declared by the Commission to be non-responsible and therefore ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.**



The City of DeKalb does not discriminate on the basis of handicapped status in admission or access to, or treatment or employment in, its programs and activities.

## **Section 1: STANDARD CONDITIONS**

### **1.00 General Bid Notes:**

The City Council of the City of DeKalb reserves the right to accept or reject any and all bids, to waive any technicalities, discrepancies, or information in the bids, or to waive competitive bidding and negotiate directly with one or more contractors. The City also reserves the right to divide the contract into multiple agreements and to have multiple parties complete separate components of the required work. The City of DeKalb does not discriminate in admission, access to, treatment, or employment in its programs and activities.

General questions regarding the Legal Notice or the Bid Specifications shall be directed to the City's Representative at the contact information provided on the Bid Cover Sheet. **All detailed questions concerning the actual bid specification are to be forwarded in writing.**

Following bid opening, review, and the City's receipt of an award recommendation, pending contract awards will be posted on the City of DeKalb's web site.

Individuals with disabilities who plan to attend this meeting and who require certain accommodations to allow them to observe and/or participate in this meeting are requested to contact the City Manager's Office at 815-748-2090 at least one (1) week prior to this public meeting if possible.

All costs incurred in the preparation, submission and/or presentation of any proposal including any Bidder's travel or personal expenses shall be the sole responsibility of the Bidder and will not be reimbursed by the City.

**ALL RESPONDING BIDDERS ARE REQUIRED TO SUBMIT ALL PAGES OF THIS BID PACKAGE, INCLUDING ALL ATTACHMENTS (AND ANY CONTRACTOR-GENERATED SUPPLEMENTS THERETO), IN ORDER TO SUBMIT A VALID BID.**

**All persons desiring to submit a bid under these Contract Documents must contact the City of DeKalb and provide an email address at which notices can be sent and received by the proposed Bidder or Contractor. This address will be used for official communications from the City, including pre-bid communications.**

### **1.01 Contract Documents:**

Any drawings, plans, standard conditions, special conditions, supplemental additional conditions, specifications, bid notice, bid sheet, and addendum, if any, as specified herein shall form the "Contract Documents." For the purpose of this bid, the word "City" shall refer to the City of DeKalb, and the word "Bidder" or "Contractor" shall refer to any person, company, or entity submitting a bid. Any work shown or described in one of the documents shall be construed as if described in all the documents. For purposes of any provision in here requiring the defense, indemnity or insuring of the City, such reference shall include the City, its employees, officers, elected and appointed officials, attorneys, contractors and subcontractors. The "City Representative" shall be the person so indicated on the Bid/Proposal Cover Sheet.

### **1.02 Interpretation of Contract Documents:**

Each request for interpretation of the Contract Documents shall be made in writing addressed to the City Representative and shall be received at least five (5) business days prior to the pre-bid meeting. Interpretations and supplemental instructions will be the form of written addenda to the Contract Documents. In the event that there is no pre-bid meeting, requests for information must be received by the City Representative at least ten days prior to bid opening. The City reserves the right to determine

what constitutes a material variation from the terms of these Contract Documents, and to waive variations deemed immaterial, in its sole discretion.

### **1.03 Electronic Bid Documents:**

Bidders that download PDF documents from the City of DeKalb's internet web page must immediately notify the City Representative via e-mail as outlined on the Cover Sheet and attend the pre-bid meeting (if marked as mandatory) if they intend to submit a response to the bid documents. This step is necessary to establish a communication link between the City and the Bidder so that any addenda or other relevant information may be transmitted properly. The Bidder, not the City, is responsible for obtaining any addenda to the original specification when the Bidder chooses the option of downloading bid or proposal files. Addenda and other relevant information will be posted on the City of DeKalb web page. Bidders must provide an email address which can be used by the City to send bid addenda or other official communications. All Bidders must sign off and acknowledge receipt of all bid addenda. The form of Bid Addenda is attached hereto as Exhibit J.

### **1.04 Submittal of Bid:**

Bids must be submitted to the Public Works – Water Division Office at 1216 Market St., DeKalb, Illinois, 60115 no later than **2:00 P.M.** Bids arriving after the specified time will not be accepted, even in cases of delay by train. Bids will not be accepted at any other location or by any other City personnel. Any bids erroneously accepted at any other location or by other City personnel shall be returned unopened. Mailed bids which are delivered after the specified hour will not be accepted regardless of postmarked time on the envelope. Bidders should carefully consider all bid delivery options (US Postal Service, UPS, Federal Express, Emery Express, private delivery service, etc.) and select a method that will successfully deliver their bid by the required time and date. Bids shall be submitted in sealed envelopes carrying the following information: Bidder's name, address, subject matter and document number of bid as indicated in the specification, and designated date and time of the bid opening. **All bids must be clearly marked at the top of each side of the envelope: "Official Bid: Do Not Open."** Bids will only be accepted by delivery or US mail; bids will not be accepted by facsimile, e-mail, internet, telephone or telegraphic means. All times are based upon the official time in the City of DeKalb, Central Standard Time or Central Standard Daylight Time (whichever applies at the time of bid).

### **1.05 Pre-bid Meeting:**

~~A pre-bid meeting will be held at the DeKalb City Hall, 200 S. Fourth Street, DeKalb, IL, at the date and time indicated on the Bid Cover Sheet for the purpose of familiarizing Bidders with the project and answering questions. Bidders shall be completely familiar with the entire bid specification and all Contract Documents prior to attending this meeting and shall come prepared to ask questions.~~

~~Attendance at the pre-bid meeting is not mandatory unless indicated as Attendance Required on the Bid Cover Sheet. Strong consideration will be given to the Contractor's clear understanding and familiarity with the City's needs in determining an award of Contract.~~

### **1.06 Withdrawal of Bid:**

Bidders may withdraw or cancel their bid, in written form, at any time prior to the advertised bid opening time. Bidders must submit a written request to withdraw their bid, which must be received by the City, at the stated location for bid submission, *prior to bid opening.*

### **1.07 Bidder's Qualifications:**

No award will be made to any Bidder who cannot satisfy to the City that they have sufficient ability and experience in this class of work, as well as sufficient capital and equipment to do the job and complete the work successfully within the time named (i.e. responsible). The City's decision or judgment on these matters shall be final, conclusive, and binding. The City may make such investigations as it deems necessary. The Bidder shall furnish to the City, under oath if so required, all information and data the City may request for the purpose of investigation.

#### **1.08 Preparation of Bid:**

The Bidder's submittal shall include the completed *Bid Sheet* and *Detailed Bid Sheet* found in the Contract Documents. The City will strictly hold the Bidder to the terms of the bid. The bid must be executed by a person having the legal right and authority to bind the Bidder.

#### **1.09 Compliance with Laws:**

The Bidder shall at all times observe and conform to all laws, ordinances, and regulations of the Federal, State, and local governments, which may in any manner affect the preparation of bids or the performance of the contract. In addition, the Bid shall be subject to all applicable City of DeKalb purchasing policies and ordinances, including but not limited to the Local Preference Ordinance (City Code Section 54.14). A copy of the local preference ordinance is available at the City's website: [http://www.cityofdekalb.com/CityClerk/Municipal\\_Code.htm](http://www.cityofdekalb.com/CityClerk/Municipal_Code.htm)

#### **1.10 Alternate to Bids:**

Any reference in these specifications to manufacturer's name, trade name, or catalog number (unless otherwise specified) is intended as a standard only. The City's written decision of approval or disapproval of a proposed substitution shall be final.

Alternate bids will be considered only if received at the time stated for receipt of the bids. Submit alternate bids in a sealed envelope and identify the envelope as required for all bids, except that the phrase Alternate Bid shall be used. Bidders are cautioned that, if an alternate bid(s) involves an increase in the *Bid Sum*, the *Bid Deposit*, if required, shall be ample or be increased to cover the alternate *Bid Sum* or the entire bid may be rejected. Alternate bids should only be submitted if the proposal is believed in good faith to be equal in quality to the requirements specified by the City. The City reserves the right to rule upon a specification deviation or alternate bid in the manner as best befits the City, and to accept an alternate bid deemed adequate without rebidding or waiver of bid.

#### **1.11 Form of Contract:**

The form of contract between the City and the successful Bidder will be in the form attached hereto as Exhibit D.

#### **1.12 Freedom of Information Act (FOIA):**

The City is required by Public Act 96-542 to comply with freedom of information requests (FOIA) within five (5) business days of a record request. All contractors used by the City may be in possession of records covered by this act and therefore will be required to provide the City with those records upon request and within the time frame of the Act.

#### **1.13 Bid Review:**

The City reserves the right to reject any or all bids, to waive any irregularities or disregard any informality in the bids and bidding, and/or to waive competitive bidding and negotiate with one or more bidders or non-bidders directly when, in its opinion, the best interest of the City will be served by such action. Furthermore, the City reserves the right to award each item to a different Bidder, or all items to a single Bidder unless otherwise noted on the *Bid Sheet*. The City may determine as follows: 1) an equal or alternative is a satisfactory substitute; 2) an early delivery date is entitled to more consideration than price; 3) an early delivery date is to be disregarded because of the reputation of the Bidder for not meeting delivery dates; 4) a Bidder is not a responsible Bidder; and 5) what exceptions or deviations from written specifications will be accepted.

No bid will be accepted from or contract awarded to any person, firm, or corporation that is in arrears or is in default to the City upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to the City, or had failed to perform faithfully any previous contract with the City.

Bidders are required, if requested to do so, to effect a demonstration of the item/service being bid if the City feels it has insufficient knowledge of the item/service operations or performance capability. Such

demonstration shall be at a site which is most convenient and agreeable to the affected City personnel. If the bid specifications require the submission of samples, such samples shall be submitted to the City at no cost, at or prior to the deadline for submitting bids. All samples become the property of the City upon submission.

#### **1.14 Bid Results:**

Following the bid opening and review period, pending contract awards will be posted on the City's Internet website under the [www.cityofdekalb.com](http://www.cityofdekalb.com) web page. Bid tabulations posted on-line represent "as read" submittals at time of the bid opening. They do not represent contract award.

#### **1.15 Bid Protest:**

Firms wishing to protest bids or awards should notify the City Representative in writing within three (3) days after the bid opening. This notification should include the bid number, the name of the firm protesting, and a detailed description as to why the firm is protesting the bid. The City Representative shall respond to said protest within seven (7) calendar days. A successful protest may result in the reversal of a previously awarded bid. If the firm wishes to appeal the determination of the City Representative, it may provide a written notice to the City Manager within two (2) business days of the date of release of the City Representative's decision; the City Manager shall thereafter review and decide the protest, and the decision of the City Manager shall be final.

#### **1.16 Delivery:**

Where the bid involves the sale or delivery of materials or goods, all materials shipped to the City must be shipped F.O.B. delivered, to the designated location specified in the description of Work, DeKalb, Illinois. If special delivery terms are required (e.g. forklift, ramp, etc.), the Bidder is responsible for providing the same unless otherwise noted. The City accepts no responsibility for the condition of any merchandise purchased prior to acceptance by City personnel. The City reserves the right to refuse acceptance of delivered merchandise that differs from the specifications in the invitation to bid or as otherwise permitted by Illinois law.

#### **1.17 Inspections:**

The City shall have the right to inspect any materials, components, equipment, supplies, services, or completed work specified herein. Any of said items not complying with these specifications are subject to rejection at the option of the City. Any items rejected shall be removed from the premises of the City and/or replaced at the entire expense of the successful Bidder.

#### **1.18 Pricing:**

For bids involving the sale of materials or supplies, unit prices shall be shown for each unit on which there is a bid, and shall be inclusive of all charges necessary to comply with the terms and conditions of this bid (i.e. FOB DeKalb at the specified location). All prices shall be stated in U.S. dollars. Unit prices shall not include any local, state or federal taxes. In the case of a mistake in the extension of price, unit prices shall govern. All prices must be typewritten or written in ink; no erasures are permitted. Mistakes must be crossed out and corrections typewritten or written in ink adjacent thereto and initialed in ink by the party signing the bid.

## **Section 2: GENERAL SUPPLEMENTAL ADDITIONAL CONDITIONS**

#### **2.01 Scope of Work:**

The Bidder shall supply all required supervision, skilled labor, transportation, new materials, apparatus, and tools necessary for the entire and proper completion of the Work. The Work is as described on the attached Exhibit F, and may consist of the provision of services, professional services, materials, supplies, equipment, or some combination thereof ("the Work"). The Bidder shall supply, maintain, and remove all equipment for the performance of the work and be responsible for the safe, proper, and lawful

construction, maintenance, and use of the same. This work shall be completed to the satisfaction of the City. The Bidder shall provide adequate protection of the job site to protect the general public from any injury as a result of the job. The Bidder shall provide all safeguards and suitable barricades to protect public and adjacent property. The City is not responsible for site safety. The Bidder is solely and exclusively responsible for construction means, methods, technologies, and site safety. The Bidder is responsible for identifying whether the bid proposal involves the provision of labor, materials, professional services, or a combination thereof, and for complying with the appropriate components of these Contract Documents. Where the Work requires the provision of supplies or goods, all such goods shall be *new, unused materials*, unless the Work expressly indicates that recycled or used materials may be utilized.

#### **2.02 Licensing and Permits:**

The successful Bidder and their subcontractor(s) must be licensed with the City and shall obtain all required permits prior to the start of any component of the Work. The City will waive applicable City permit fees for the specific contract.

#### **2.03 Period of Unemployment:**

For any project involving labor or services which is governed by 30 ILCS 570 Employment of Illinois Workers on Public Works Act, such Act must be adhered to in entirety by the awarded Contractor. This act requires the use of Illinois workers on Public Works projects during periods of excess unemployment, which means any month immediately following 2 consecutive calendar months during which the level of unemployment in the State of Illinois has exceeded 5% as measured by the United States Bureau of Labor Statistics in its monthly publication of employment and unemployment figures.

#### **2.04 Prevailing Wage:**

For any work subject to the requirements of the Prevailing Wage Act, 820 ILCS 130/0.01, *et. seq.*, the successful Bidder is required to fully comply with the Act and to provide certified payroll records in compliance with the Act to the City at or before the time of requesting any payment for this project. The failure to comply with Prevailing Wage where required shall subject a bidder to the forfeit of any proceeds otherwise earned; the City will not process payment requests that are not in compliance with the Prevailing Wage Act. Additionally, separate from any other indemnification or insurance obligation in this Agreement, the successful Bidder shall indemnify, defend (with the City having exclusive choice of legal counsel) and hold harmless the City from any and all claims, demands, liabilities or other expenses in any way relating to the compliance or non-compliance with the Prevailing Wage Act.

#### **2.05 Certified Payroll Records:**

Certified payroll records shall consist of a complete copy of the following records: a list of all laborers, mechanics and other workers employed to perform work hereunder. The records shall include the following information for each worker: name, address, telephone number, classification or classifications, the hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day, along with such other information which may be required by law. The certified payroll shall be accompanied by a statement signed and sworn to by the Contractor which avers that: 1) the certified payroll record is true and accurate; 2) the hourly rate paid to each worker is not less than the general rate of prevailing wage as required by the Act; and, 3) the Contractor is aware that filing a certified payroll known to be false is a Class B Misdemeanor.

#### **2.06 Toxic Substance:**

Prior to delivery of any material which is caustic, corrosive, flammable, or dangerous to handle, the supplier will provide written directions as to methods of handling such products, as well as the antidote or neutralizing material required for its first aid. (Materials Safety Data Sheet). The successful Bidder is responsible for complying with all applicable legal regulations or recommended handling procedures.



## **2.07 Guarantees, Warranties, Manuals:**

All guarantees and warranties required shall be furnished by the Bidder and shall be delivered to the City before final payment on the contract is issued. All products provided shall be provided with any available manuals, brochures or other instructions. The Contractor shall be responsible for providing the City with training in accordance with the requirements of the description of the Work. Any required training shall be provided at no additional cost. For any Work involving the sale of goods or materials, the Contractor shall be required to provide product manuals. Manuals shall be as detailed as possible outlining all necessary operating and servicing instructions for any equipment delivered, including components. In addition, for any Work involving the sale of vehicles, equipment, mechanical devices, tools or computerized devices, technical shop manuals containing illustrated parts lists and a complete set of technician repair manuals for the entire unit including wiring diagrams and hydraulic schematics supplied with the equipment shall be provided. These materials can be provided in paper manuals or in electronic format (on DVD in PDF format). Any electronic documents required or submitted (e.g. as-builts, GPS information, or other data) shall be submitted in a format acceptable to the City Representative in his or her sole discretion.

All products supplied under this Contract shall carry the manufacturers' standard warranty. The Contractor shall guarantee the Work to be free from defects of any nature for a period of one year from and after the final acceptance and payment for the Work by the City, and the Bidder shall maintain said Work and shall make all needed repairs and/or replacements during this one year period which in the judgment of the City Representative may be necessary to ensure the delivery of the Work to the City in first-class condition and in full conformity with the plans and specifications therefore, at the expiration of the guaranty period. The City shall identify the date of completion of the project, which shall serve as the start-date for the warranty. The following provisions only apply if checked:

- ☐ The Contractor is required to post a maintenance bond equal to ten percent of the project cost, for the term of the one-year warranty.
- ☐ The Contractor shall be subject to ten percent (10%) retention upon successful conclusion of the project, for the term of the one-year warranty.

## **2.08 Termination of Contract:**

The City reserves the right to terminate in whole or any part of this contract, upon written notice to the Bidder, in the event of any default by the Bidder. Default is defined as failure of the Bidder to perform any of the provisions of this contract in strict accordance with its terms or failure to make sufficient progress so as to endanger performance of this contract in accordance with the City's expectations for completion or any expressed timeline for the same. In the event of default and termination, the City may procure, upon such terms and in such a manner as the City may deem appropriate, supplies, or services similar to those terminated.

The Bidder shall be liable for any excess costs or replacement costs for such similar supplies or service unless evidence is submitted to the City that, in the sole opinion of the City, clearly proves that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the Bidder.

## **2.09 Indemnification and Hold Harmless Agreement (Contractual or Other Liability):**

The Bidder agrees to indemnify and save harmless the City, including its elected or appointed officials, employees, attorneys and agents (collectively, the "City Indemnitees") against any and all claims, loss damage, injury, liability, and court costs and attorney's fees incident thereto, including any claims made by employees of the Bidder or any of their subcontractors, as well as all other persons, resulting directly or indirectly from the work covered by this contract or the equipment used in connection therewith. It is understood that this agreement shall apply to any and all such claims whether resulting from the negligence or the intentional acts of the Bidder, the Bidder's employees, contractors or subcontractors, the City or City Indemnitees or otherwise, with the single exception of any claim, damage, loss, or expense arising solely out of the intentional misconduct of the City or City Indemnitees. The Bidder is solely responsible for determining the accuracy and validity of any information provided to the Bidder by the City or its representatives. This indemnification shall apply to the fullest extent of the law, and in the

event that any provision hereof is determined to be unenforceable, the indemnification obligations shall be severable and the fullest extent of indemnification that may lawfully apply shall remain in full force and effect.

This indemnification shall include any claims arising out of the erection, construction, placement or operation of any scaffold, hoist, crane, stay, ladders, support or other mechanical contrivance in connection with such work including but not limited to losses, claims, damages and expenses arising pursuant to claims asserted against the City pursuant to theories premised upon Section 414 or Section 343 of the Restatement (Second) of Torts. This indemnification shall not be limited in any way by limitations on the amount or type of damages, compensation, or benefits payable by or for the Contractor under Workers' Compensation Acts, disability benefit acts, or other employee benefit acts, and serves as an express agreement to waive the protection of *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2d 155 (1991) in Illinois.

#### **2.10 Insurance:**

The insurance requirements outlined in these Contract Documents are applicable to any Work involving the performance of any services; these insurance provisions do not apply to any Work that consists solely of the sale of materials to the City without any corresponding labor or service. The Bidder will provide certificates of insurance evidencing the types and limits of insurance contemplated by the Agreement attached hereto as Exhibit E. The certificates of insurance will specifically address each of the requirements noted below. Each insurance company shall be in a form and from an issuer acceptable to the City. The General Liability coverage shall name the City of DeKalb as additional primary insured, without right of subrogation. All insurance noted below is primary and in no event will be considered contributory to any insurance purchased by the City. All insurance noted below will not be canceled, reduced, or materially changed without providing the City thirty (30) days advance notice, via certified mail. A certificate of insurance shall be provided to the City prior to the time at which any invoice or request for payment is submitted to the City.

**EACH CERTIFICATE OF LIABILITY INSURANCE SHALL REFERENCE THE SPECIFIC BID NUMBER AND PROJECT DESCRIPTION IN THE ADDITIONAL INSURED FIELD, AND MUST BE PROVIDED DIRECTLY TO THE CITY REPRESENTATIVE.**

Any and all deductibles or other forms of retention are the responsibility of the Contractor. All deductibles or other forms of retention are subject to the approval of the City. Contractor will disclose to the City in writing the amounts of any deductible or self-insured retentions on the insurance required under this contract. All deductibles or self-insured retention shall be the sole responsibility of the Contractor. At the option of the City and at no additional cost to the City, the Contractor shall either: a) the Contractor shall eliminate or reduce the deductibles/retention amounts as it relates to the City or City Indemnitees; or, b) procure a bond or letter of credit guaranteeing the payment of such amounts.

Contractor waives any right of subrogation it may have or later acquire against the City. Additionally, with regard to the Contractor's obligations to defend, indemnify, insure and hold harmless the City, to the extent of any claim, offset or special defense afforded to the Contractor by virtue of the Illinois Worker's Compensation Act or any other applicable law or statute, the Contractor acknowledges that its obligation to defend, indemnify, insure and hold harmless the City shall not be limited or abrogated by said claim, offset or defense. Any provision of these specifications requiring the Contractor to defend the City shall be read to include the City having choice of legal counsel, at Contractor's expense, for purposes of fulfilling the defense obligation. Any language in these Contract Documents regarding the Contractor's obligation to indemnify the City or to insure the City shall be read jointly, such that a waiver of subrogation or waiver of defense appearing in the Indemnification provisions shall also apply to the Insurance provisions. All such insurance or indemnification provisions shall also be read to require indemnification and insurance to be provided for the benefit of the City and City Indemnitees (as indemnified parties and as additional insureds).

Prior to receipt of a purchase order and start of work, the City Finance Department must receive and approve Certificates of Insurance and endorsements for all Contractors' employees who will be using

their personal vehicle for transportation for work-related purposes during the work day. It will be the responsibility of the Contractor to provide renewal certificates for the same, and any new employees added to the City contract, throughout the course of the contract.

#### **2.11 Insurance Rating:**

All insurance policies required by this contract shall be underwritten by insurance companies with a minimum A. M. Best rating of B++ or better. In the event that the Contractor or any Subcontractor fails to procure or maintain any insurance required by the Contract Documents, the City may, at its option, purchase such coverage and deduct the cost thereof from any monies due to the Contractor or Subcontractor, or withhold funds in an amount sufficient to protect the City, or terminate this Agreement pursuant to its terms.

#### **2.12 Special Requirement:**

If the Bidder is an architectural firm or engineering firm, or if the Work under the Contract Documents includes design, consultation or any other professional services, said Bidder shall file a certificate of insurance for professional liability, errors and omissions coverage subject to final acceptance by the City of said coverage. Professional liability insurance is not required to name the City as additional primary insured. Such insurance shall be provided on an occurrence basis, or if provided on a claims-made basis shall have a retrospective date prior to the start of Work.

#### **2.13 Provision of Insurance:**

The Bidder shall not commence Work under this contract until the Bidder has obtained all insurance required under this section and such insurance has been approved by the City, nor shall Bidder allow any subcontractor to commence work on their subcontract until the same insurance has been obtained by the subcontractor. The Bidder and their subcontractor(s) shall maintain all insurance required under these Contract Documents for not less than two (2) years after completion of this contract. The City shall not be obligated to review such certificates or other evidence of insurance, or to advise Contractor or Subcontractor of any deficiencies in such documents, and receipt thereof shall not relieve the Contractor or Subcontractor from, nor be deemed a waiver of the right to enforce the terms of the obligations hereunder. The City shall have the right to examine any policy required and evidenced on the Certificate of Insurance.

Additionally, and supplemental to the indemnification outlined above, the successful Bidder shall indemnify, defend and hold harmless the City from any and all claims arising out of the payment or real or alleged failure to pay any subcontractor or materialman.

#### **2.14 Subcontractors:**

Use of any subcontractors for performance of any component of this Agreement requires the City's express, written pre-approval prior to undertaking any services, as contemplated in the terms of these specifications. Additionally, without regard to such pre-approval, any contractor, subcontractor or materialman providing services or materials relating to these specifications shall expressly be required to comply with all of the terms of these specifications. The prime contractor or successful Bidder holding the agreement resulting from these specifications shall be responsible for so confirming, and shall indemnify, defend and hold the City harmless from any failure to comply with these specifications by any subcontractor. Moreover, the failure to perform or default of any subcontractor shall be held and applied against the prime contractor under which the subcontractor is working, as if the prime contractor itself had failed to perform or had defaulted.

#### **2.15 Change Orders:**

After the contract award, changes in or additions to the work and/or a change in the amount of money to be paid to the Bidder must be the result of an approved change order first ordered by the City Representative.



For any contract which is subject to the Public Works Contract Change Order Act, 50 ILCS 525/1, *et. seq.*, the City requires the successful contractor verify any change order request received from a subcontractor will not exceed 49% of the original subcontract amount. Any needed change order that will increase the subcontract by 50% or more will require opening up that portion of the work to competitive bidding.

The contract price is and must include a "not to exceed" price. Any time the Contractor believes additional work is necessary or requested and the not to exceed price would increase, any change or addition shall require the pre-approval of the City. Unless a change order is approved, in writing, by the City Representative and/or City Manager and/or City Council, the contract price shall not be exceeded.

#### **2.16 Legal Authority to Bind:**

The City shall not be bound by the unauthorized action of any of its agents or representatives. Any bidder and the Contractor is responsible for determining whether any person purporting to act on behalf of or to bind the City has the actual authority to do so, prior to relying upon any such statement or claimed authorization.

#### **2.17 Failure to Execute:**

Failure to execute the contract shall, at the option of the City, constitute a breach of the agreement made by acceptance of the bid, and the City shall be entitled to forfeiture of the certified check, bank draft, or Bid Bond accompanying the bid that is required, not as a penalty, but as liquidated damages. In the event of failure of a Bidder to whom an award of contract has been made, to execute the contract and furnish a Performance Bond within five (5) days after notification of award, such award may be nullified and an award may be made to the next lowest responsive and responsible Bidder approved by the City. Any bidder who seeks any modification of the Contract Documents or of the Agreement is required to notify the City of the same by submitting an alternate bid. Any bidder who submits a bid without identifying any changes in the Contract Documents or the Agreement may be bound to the Contract Documents and the Agreement, without revision, at the City's discretion.

#### **2.18 Bid Security:**

Unless this section is completely crossed out, each bid shall be accompanied by a bid security in the amount of 10% of the total amount bid. Bid security shall be in the form of a certified check or cashier's check, drawn on a responsible bank doing business in the United States and made payable to the City of DeKalb, or an original Bid Bond (~~may NOT be a copy or facsimile~~) by a surety company which is satisfactory to the City and is qualified to do business in Illinois. Bids not accompanied by a bid security will be rejected. The bid security of the unsuccessful Bidders (if in the form of a certified check or cashier's check) will be returned after the contract is awarded, signed and the performance security has been provided, or earlier, if the City does not deem it necessary to retain the Bid Security. The bid security of the accepted Bidder (if in the form of a certified check or cashier's check) will be returned either upon execution of a contract and submittal of a performance bond, if required by the specifications or, where no performance bond is required, when, in the City's estimation, the contract has been satisfactorily completed and a final inspection has been satisfactorily completed. The final inspection shall occur within thirty (30) days of the date of completion/delivery. When the bid security is submitted in the form of a bid bond, the bond will become null and void following the award of contract and the City's receipt of the Performance Bond and Labor and Material Payment Bond, if required by the specifications. Should the Bidder fail to fulfill the contract as set forth, the bid security shall become payable to the City as liquidated damages. All Bid Security shall be held by the City's Finance Department. If deemed necessary by the City, the City may at any time deposit a certified or cashier's check submitted as bid security, and in the event of a refund of such security, the City shall issue a refund check drawn on its accounts.

#### **2.19 Performance Security:**

~~Unless this section is completely crossed out, the successful Bidder shall furnish as performance security a Performance Bond and a Labor and Material Payment Bond acceptable to the City prior to the start of~~

~~any work. Each of the bonds shall be in the sum of 100% of the contract amount. The performance bond shall: 1) serve as security for faithful performance of the work; and 2) guarantee the work against defective workmanship and material for a period of not less than one (1) year following acceptance of the work. The Labor and Material Bond shall serve as security that all wages are paid and materials provided for the work are paid by the successful Bidder. For contract awards that are less than \$100,000.00, a Letter of Credit, in a form suitable to the City, may be submitted as performance security, instead of a Performance Bond and a Labor and Material Payment Bond. Any bond shall include a provision that will guarantee faithful performance in accordance with the Prevailing Wage Act, 820 ILCS 130/1, et. seq., and in accordance with all of the terms of the Contract Documents (which shall be specifically referenced).~~

## **2.20 Letter of Credit – required content:**

Any letter of credit (herein after LOC) submitted as performance security, as provided for in the Performance Security section of these Construction Supplemental Additional Conditions, must be established with the following required content. ~~A bid bond in the amount of \$15,000 in lieu of a Letter of Credit is acceptable at the time of proposal submission.~~ Further discussion regarding the requirement of a performance bond/letter of credit will be discussed with the vendor selected.

The LOC must be irrevocable, made in favor of the City of DeKalb (Beneficiary), and for the account of the Bidder (Applicant). The aggregate amount of the LOC must be at least 100% of the awarded contract amount. The bank issuing the LOC must be acceptable to the City of DeKalb; written preapproval is required. The expiration date of the LOC must extend at least one (1) year beyond the anticipated completion date of the project, and will be extended at the expense of the Bidder if need be. The LOC must provide for partial drawings. Drawing(s) are to be made when the City of DeKalb presents a letter to the issuing bank, signed by the City Manager or the acting City Manager, referencing the LOC number and stating the amount of funds to be drawn against the LOC and also containing the following declaration: "I hereby certify that the applicant has not performed as required by the contract established between the applicant and the City of DeKalb". Payment(s) against the LOC will be made by the issuing bank upon presentation of this letter. The issuing bank must have a branch or office whereupon presentation and demand may be made by the City within thirty (30) miles of City Hall.

## **2.21 Waiver of Lien:**

Where applicable, a Waiver of Lien and Contractor's Affidavit must be submitted by the Bidder, verifying that all contractors, subcontractors, materialmen, and material invoices have been paid prior to the City approving payment. Waivers must be in a format acceptable to the City.

# **Section 3: INVITATION FOR BID**

## **3.01 Intent:**

The intent of these specifications is to solicit sealed bids from reputable contractors who are capable of providing the specified products and services. The use of the words "Contractor" and "Contract" in this document refer to the firm whose services would be engaged upon successful acceptance of a bid and the agreement that would be executed between the City of DeKalb (hereafter City) and the successful firm.

## **3.02 Scope:**

The Scope of this bid shall include completion of the Work as described in the attached Exhibit F.

The bid shall include all aspects associated with the Contractor furnishing products, services, materials, supervision, labor, tools, and equipment necessary to complete the Work as defined herein in a workmanlike and acceptable manner, meeting or exceeding the quality standards as indicated in the specifications. Services performed or products provided shall be performed/provided with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality

under similar conditions. In the event that the Contractor fails to meet the foregoing standard, Contractor shall perform at its own cost, and without reimbursement from the City, the professional services necessary to correct errors and omissions caused by the Contractor's failure to comply with the above standard and reported to Contractor within one (1) year from the completion of the Contractor's services for this project and shall indemnify the City from any damages caused as a result thereof.

In the execution of the Work herein provided for there may be interference with and/or damage to trees, shrubbery, crops, fences, railroad tracks, overhead structures, underground structures, water mains, drains, service connections, wires, pipes, conduits or other structures or items located along, adjacent to and/or crossing the locations of the Work, and that it may be necessary to relocate or reconstruct certain of such structures, improvements and installations and/or to make repairs to the same by reasons of doing the Work herein provided for, and it is particularly and specifically agreed that the Contractor shall do the Work necessary for such relocation, reconstruction and repair and shall bear and pay all of the cost and expense of such relocation, reconstruction and/or repair of and all damage done to all such items or adjacent properties existing at the date of execution of the contract or at the time of the Work which may be interfered with, damaged, and/or relocated, reconstructed, replaced or repaired in the performance of the Work, including the restoration and resurfacing of public streets and alleys, rights of way, easements and private property damaged or disturbed by the work, the same to be restored to as good condition as existed at the time of commencement of the Work. In the case of any City or publicly owned property damaged by the Contractor, the Contractor shall restore or replace the same subject to any conditions that the City may impose; the Contractor should inquire regarding restoration standards prior to bidding on the project unless it is willing to accept any directives from the City in this regard. The Contractor shall indemnify and hold harmless the City and City Indemnitees from any claims of third parties arising out of damage caused by the Contractor in the performance of the Work.

The successful Contractor shall execute a contract in the form attached hereto as Exhibit D within five days of the date of notification that it is the successful Contractor. Failure to execute the Agreement shall constitute grounds for the City to retain the bid security of the Contractor as liquidated damages, and to annul the award of the bid to the Contractor (and to either rebid the Work to contract with another bidder).

### **3.03 Qualifications:**

The Contractor shall be fully licensed to work in the City, and in the State of Illinois. The Contractor shall submit sufficient evidence of the Contractor's and the Contractor's subcontractors, if any, qualifications and abilities to complete the Contract, including references from similar relationships that are ongoing or recently completed. Subcontractors must also be licensed with the City.

Although price is a major consideration, product quality, references, service, delivery time and past experience, if applicable, will also be considered. No bid will be considered unless the Contractor shall furnish evidence satisfactory to the City that it has the necessary facilities, abilities, experience, equipment and financial and physical resources available to fulfill the conditions of the contract and execute the Work should the contract be awarded to it. Bid documents which are not responsive to the requirements herein may not be considered by the City for an award of the contract. The contract will be awarded to the lowest responsible bidder. In determining the responsibility of the bidder, the City may take into account other factors in addition to financial responsibility, such as past records of its or other entities transactions with the Contractor, experience, ability to work cooperatively with the City and its staff, adequacy of equipment, ability to complete performance within necessary time limits, and other pertinent considerations such as, but not limited to, reliability, reputation, competency, skill, experience, efficiency, facilities and resources. The contract will be awarded in the City's best interests based on these and other legally-allowable considerations. The City and its representatives and agents may make any investigations deemed necessary to determine the ability of the bidder to perform the Work. The Contractor shall furnish any information and data requested by the City for this purpose.

### **3.04 Professional Services Selection Act:**

The City of DeKalb complies with the Professional Services Selection Act, 50 ILCS 510/5 with regard to the selection of parties to perform covered professional services. Any reference in these terms and

conditions to supplying pricing or price as a determining factor in selection does not apply to services covered by said act.

**3.05 Contract Management:**

This Contract will be under the administration of the City Representative. Detailed daily supervision of the Contract shall be provided by the City Representative or by his or her authorized delegate(s). Any alterations or modifications of the work performed under the Contract shall be made only by written agreement between the Contractor and the City Manager or City Council, and shall be made prior to commencement of the altered or modified work. No claims for any extra work or materials shall be allowed unless preceded by written agreement.

**3.06 Protection of Public and Private Property:**

The Contractor shall exercise all necessary caution to protect pedestrian traffic from injury and to protect all public and private property from damage caused by the Contractor's operations. Any practice obviously hazardous in the opinion of the City Representative or site representatives shall be immediately discontinued by the Contractor upon receipt of either written or oral notice to discontinue such practice. The City has the right to immediately stop any operation deemed unsafe. The Contractor shall comply with all OSHA and other federal, state, and municipal safety standards and policies. The Contractor shall provide copies of OSHA logs upon request.

**3.07 Concurrent Operations:**

The proposed Contract is a nonexclusive agreement with the City. The City reserves the right to use other Contractors or its own employees to perform work similar to that being performed under the terms of the Contract. Performance of work by others shall be construed as being consistent with the terms of the Contract and shall not be cause for the Contractor to cease performance of work as directed.

**3.08 Licenses and Permits:**

The Contractor shall, at their expense, procure all necessary licenses and permits needed to conduct the work required under the terms of this Contract. The City shall waive the cost of all required City licenses, fees, and permits, with the exception of those licenses and fees associated with securing a business license to conduct business within the City.

**3.09 Severability:**

If any portion of this Contract is found to be unenforceable by a competent court of law having jurisdiction, the remaining portions of the Contract shall remain in full force and effect.

**3.10 Accidents:**

In the event of accidents of any kind, the Contractor shall immediately notify the City Supervisor and Police Department to secure a police report for insurance purposes, and shall provide a full accounting of all details of the accident. The Contractor shall furnish the City's Legal Department with copies of all reports of such accidents at the same time that the reports are forwarded to any other interested parties. The Contractor shall cooperate fully with any investigation of an accident which occurs on City property or within City buildings.

**3.11 Sexual Harassment:**

The City will not tolerate any act of sexual harassment by Contractors and their employees. Violation of this policy will be considered grounds for terminating either the Contract or the Contractor's employee from work on this Contract.

**3.12 Bloodborne Pathogens Exposure Control Plan:**

The Occupational Safety and Health Administration (OSHA) in 29 CFR Part 1910.1030 require the City and its contractors to develop a written exposure control plan for blood borne pathogens for their employees. Prior to execution of this agreement, the successful Contractor shall supply the City with a copy of their Blood Borne Pathogens Exposure Control Plan, which shall be subject to the review of and approval by the City as a condition of the contract. The successful Contractor shall also identify any other applicable regulations relating to the performance of its obligations and shall comply with such obligations (and submit a written plan to the City if required under the applicable regulations). This plan shall include engineering controls, work practices, personal protective equipment, employee training, and recordkeeping procedures for all employees who could be exposed to blood borne pathogens. Each Contractor shall be responsible for identifying covered employees, developing an exposure control plan, training employees, identifying and providing Personal Protective Equipment, and developing recordkeeping measures. Education and training records must be kept by the Contractor, to include: name of employee, date(s) of training, and employee job title. The plan(s) shall be available to the City upon request. Contractor's employees shall assume that all human blood and body fluids containing human blood are infected with blood borne pathogens and shall follow the guidelines established by the Contractor.

### **3.13 Term of Contract:**

The initial term of this Contract shall run from January 1, 2022, through December 31, 2023, subject, however, to the right of the City to cancel and terminate the same at any time by giving a thirty (30) day notice in writing to the Contractor. In the event of such cancellation, the Contractor shall be entitled to receive payment for services and work performed, and materials, supplies and equipment furnished under the terms of the Contract prior to the effective date of such cancellation but will not be entitled to receive any damages on account of such or any further payment whatsoever.

The following provisions apply only if checked:

- ☐ One time contract, no term after delivery.
- ☐ Upon normal expiration of the Contract, the Contractor shall continue, at the sole option of the City, to provide services on a month-by-month basis, under the same terms and conditions, for a period not to exceed four (4) months.
- ☒ Two-year contract. Upon mutual agreement, this contract may be extended for three additional one-year terms upon a ninety (90) day written notice from the City of its intention to exercise this option. A one (1) time economic adjustment for labor, material, supplies, and equipment costs shall be allowed for each one (1) year extension to the Contract after the initial two (2) year Contract period. This economic adjustment may not exceed the published Chicago Area Consumer Price Index (CPI) for the previous twelve (12) month period.
- ☐ Other: \_\_\_\_\_

The initial Contract places no obligation on the City to appropriate funds, and continuation of this Agreement beyond the initial term of the Contract and Contract extensions are dependent upon sufficient funds being appropriated each fiscal year by the City for this work.

### **3.14 References:**

Bidders shall provide a list of not less than five (5) current customers with their bid submittal, said information to include name and address of the firm, and contact names with their daytime phone number, that can speak to the quality of services provided by the Contractor, and the addresses of facilities maintained by the prospective firm. In the event Contractor proposes to utilize Subcontractors, five (5) references shall be provided for each Subcontractor as well.

### **3.15 Special and Unforeseen Work:**

Due to the generalized nature of the work under this Contract, instances may occur where the City desires to have additional materials or services provided outside the original intent of this Contract. Payment for these services shall be made based on a bid price per man-hour for the performance of the additional work as bid on the *Bid Sheet*. Requests for additional work shall be authorized in writing only through the Director or designee.

Contractor shall make no claim against the City and no claim shall be allowed for any damages which may arise out of any delay caused by the City or City Indemnitees. Contractor's sole remedy for a City-caused delay shall be a day-for-day extension of time to complete the Contract.

### **3.16 Exceptions:**

Any exceptions to the specifications are to be noted on the *Detail Exceptions Sheet* and included with the bid at the time of submittal.

### **3.17 Communications:**

The Contractor shall set up a communication process that will enable City representatives to contact appropriate representatives from the Contractor twenty-four (24) hour a day, seven (7) days a week. The Contractor shall provide each Supervisor with a cellular phone, at the Contractor's expense, for communicating with the City officials. The Contractor and the City shall jointly establish a written message system whereby notice may be given by the City to the Contractor indicating problems, complaints, and other Contract discrepancies. The system shall include a method by which the Contractor shall formally respond to these requests and notices.

### **3.18 Security and Access:**

The Contractor may be working in several areas which are under secured access and other areas which will be generally open to the public during reasonable hours for meetings and other uses. All secured areas shall be maintained in a secured condition and these areas shall be locked immediately upon completing the required work. All areas shall be secured when the Contractor has completed their daily operations.

Access cards or keys will be furnished to the Contractor for designated staff to use while in performance of the awarded contract. The access cards or keys will be issued from and shall be returned to a designated City employee at the completion of the contract. The Contractor's representative shall sign for each access card or key set received and a log shall be maintained by the City. The City Representative may establish additional restrictions relative to any access cards or key sets.

### **3.19 Hours of Work:**

The Contractor shall schedule normal work hours for crews that consider the hours of operations for its services. The Contractor shall provide to the City Representative, for his or her approval, a schedule of proposed regular working hours for all buildings prior to the startup of the Contract. Any changes in these regularly scheduled hours shall require prior written notice to and approval by the City Representative. All proposed hours of work shall comply with the then-current City of DeKalb noise ordinances as may be in effect, for work performed in the City of DeKalb.

### **3.20 Handling of Waste:**

The Contractor shall ensure that their personnel properly dispose of waste and recyclables. This shall include recyclable goods and bio-hazards, in accordance with the plans and procedures approved by the City. Under no circumstances shall the contractor dispose of recyclable materials in the trash.

### **3.21 Work Crew Supervision:**

The Contractor shall provide qualified Supervisors to supervise each crew engaged in work under the Contract. The Supervisor shall be authorized by the Contractor to accept and act upon all directives issued by the City Representative. Failure of a Supervisor to act on said directives shall be sufficient cause for the City to give notice that the Contractor is in default of the Contract unless such directives would create potential personal injury or safety hazards or such directives are contrary to the intent of these specifications.

The Supervisors shall be responsible for the instruction and training of personnel in the proper work methods and procedures. The Supervisors will schedule and coordinate all services and functions as required by the Contract and as specified in the task schedules.

Each Supervisor is required to check and verify Contract compliance before work crews leave each day. The Supervisor shall inform the City Representative of any item(s) which require additional follow-up to fully meet the Contract requirements. Written reports shall be submitted to the City Representative on such basis as the City Representative shall require, but not more frequently than daily.

The Supervisors shall be physically fit, fluent in both written and spoken conversational English, self-motivated, and capable of working without direct supervision.

### **3.22 Contractor's Personnel:**

The Contractor shall be expected to supply a sufficient number of personnel to be able to complete all workmanship standards as set forth in these specifications. All of the Contractor's personnel shall be fluent in both written English, where essential to the performance of responsibilities, and spoken conversational English, self-motivated, capable of working without direct supervision, and have received appropriate training in order to deal with sexual harassment and bio-hazard handling situations.

- ☐ The following bracketed paragraph applies only if this section is checked.

**All Contractor employees shall display City approved photo identification badges while working on City premises. No employees shall be allowed access to any area without displaying the required identification badge. Employees shall wear uniforms, which shall consist of a shirt/blouse and pants, consistent in color and appearance, featuring a company identification patch at all times while working on City premises. The City shall be informed of any changes in the uniform articles that the Contractor plans to introduce; uniforms shall be subject to pre-approval by the City.**

### **3.23 Background Investigation:**

Where the Contractor is engaging in work of a sensitive nature or working in an environment with exposure to confidential information, or under such other circumstance as the City shall deem appropriate, the City may require the Contractor to comply with the terms of this section 3.21.01. In such case, prior to commencing work, the Contractor shall submit to the Chief of Police, or designee, the names, home addresses, date of birth, social security numbers, immigration documents (if applicable), and drivers license numbers of all employees to be engaged in work specified herein, or having access to the buildings in an inspecting or supervisory capacity, and the Contractor shall cause to be completed fingerprint charts and personal history statements of all employees. *No employees shall commence work at any time during the Contract period until the above listed information has been submitted to and written clearance received from the Chief of Police.* The Contractor shall provide written authorization from prospective employees for the City to perform the security clearances required in this Contract. Employees of the Contractor shall be subject to the same standards of pre-employment examinations as regular full-time employees of the City and shall be held to the same standards of conduct. The Contractor will provide and maintain a current list of employees working on the City account to include locations and times at locations. Copies for the listing shall be issued to the Chief of Police, Director, and Foreman.



The City shall have and shall exercise full and complete control over granting, denying, withholding, or terminating clearance for Contractor's employees. Employees whom the City deems careless, discourteous, or otherwise objectionable or who cannot meet standards required for security or other reasons shall be prohibited from performing work.

#### **Section 4: MATERIALS AND EQUIPMENT**

##### **4.01 City to Furnish:**

In support of this Contract, the City will supply the Contractor with any items listed on the description of Work. No other items shall be supplied by the City, without the City's express, written consent.

##### **4.02 Contractor to Furnish:**

The Contractor shall provide, at his/her expense and at no additional cost to the City, all other equipment and supplies required to support the work activities as specified, with the exception of those items being provided by the City as itemized herein.

The Contractor shall make available to the City samples of the supplies they propose to use to enable the City to assess product quality and safety. If for any reason the City objects to the use of a given product, the Contractor shall discontinue use and find a substitute that is acceptable to the City. Quality assessment shall be at the sole judgment of the City, whose decision shall be final.

All products supplied and used under this Contract shall be new and within product expiration dates. Expired products will not be used. They must meet all applicable federal, state, and local standards for product safety. *Products and containers shall be properly labeled* to meet all applicable standards and regulations regarding safety, toxicity, and other standards. Material Safety Data Sheets (MSDS) shall be supplied as required for all affected products at all sites, and the Contractor is responsible to keep all MSDS books current.

##### **4.03 Standards and Workmanship:**

It is the intent of these specifications for the Contractor to provide a high level of service. The following statements indicate the general standards and workmanship to be furnished under this Contract. More detailed standards and specifications are provided later in these specifications.

##### **4.04 Restrictive or Ambiguous Specifications:**

It is the responsibility of the bidding firm to review the invitation to bid specifications and to notify the City Representative if the specifications are formulated in a manner that would unnecessarily restrict competition. Any such protest or question regarding the specifications or invitation to bid procedures must be received by the City not later than at the pre-bid meeting. In the event a contract term is not defined within the contract document, the term will be given its ordinary dictionary meaning.

#### **Section 5: PERFORMANCE AND PAYMENT**

##### **5.01 Disputes:**

The Contractor will be expected to faithfully perform all work as set forth in these specifications. If the Contractor fails to faithfully perform in accordance with the specifications or if a dispute arises as to the quality and/or quantity of work completed, the City Representative reserves the right to withhold authorization for payment of completed work until such time that performance has been improved or the dispute resolved. In those instances, when a dispute cannot be resolved between the Contractor and the City Representative, the dispute shall be resolved by the City Manager whose decision shall be final.

##### **5.02 Payment:**



Payment for all work completed and accepted will be made on a monthly basis (where possible, based upon the schedule for submittal of items to regularly scheduled City Council meetings) per the Contract prices including other agreements authorized in writing as per *Special and Unforeseen Work*. The Contractor shall submit an itemized monthly invoice, by facility, to the City for all work completed during the month, on or before the first Monday of the following month.

The Contractor shall also submit with the monthly invoice their current price list, and a copy of the Contractor's invoice for the applicable supplies provided to the City, all of which is for informational purposes only. The City will make payment within thirty (30) days of receipt of invoice and acceptance by the City.

**5.03 Taxes:**

No charge will be allowed for taxes which the City is exempt from paying. The City of DeKalb is not liable for the Illinois Retailers' Occupation Tax, the Service Occupation Tax or the Service Use Tax. The City is also exempt from the Transportation Tax.

**5.04 Penalties:**

Any deficiency communicated in writing to the Contractor, and not corrected within the time limits allotted by the City Representative, shall become subject to a financial penalty for nonperformance or substandard performance (including inappropriate materials and equipment). Penalties, if any, shall be withheld from the monthly payment by the City. Penalties, if applied, do not limit the right of the City to seek other redress for nonperformance or substandard performance. Penalties shall be assessed per occurrence. The purpose of penalties is to ensure quality of service to the City. For the purpose of penalties, the monthly fee shall be the yearly price divided by twelve (12). Assessment of any penalty shall in no way absolve the Contractor from the responsibility to complete or correct the unsatisfactory or uncompleted work. The City reserves the right to set aside additional retention if deemed necessary by the City to protect against any deficient performance or to otherwise protect the City's interests.

**Section 6: FEDERALLY REQUIRED AND OTHER MODEL CLAUSES**

## **(A1) Access to Records and Reports**

49 U.S.C. § 5325(g)

2 C.F.R. § 200.333

49 C.F.R. part 633

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT

### **Applicability to Contracts**

The record keeping and access requirements apply to all contracts funded in whole or in part with FTA funds. Under 49 U.S.C. § 5325(g), FTA has the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

### **Flow Down**

The record keeping, and access requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

There is no required language for record keeping and access requirements. Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **Access to Records and Reports**

a. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract.

including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

b. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.

c. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.

d. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

## **(A2) Bonding Requirements**

**2 C.F.R. § 200.325**

**31 C.F.R. part 223**

**THIS CLAUSE IS NOT APPLICABLE TO THIS CONTRACT**

### **Applicability to Contracts**

Bonds are required for all construction or facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. FTA may accept the bonding policy and requirements of the recipient if FTA has determined that the Federal interest is adequately protected. If such a determination has not been made, the following minimum requirements apply:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### **(A3) Bus Testing**

49 U.S.C. § 5318(e)

49 C.F.R. part 665

THIS CLAUSE IS ONLY APPLICABLE TO BUSES WHICH ARE USED TO PROVIDE TRANSIT SERVICES IN THIS CONTRACT WHICH WERE FUNDED WITH FTA GRANT FUNDS.

#### **Applicability to Contracts**

The Bus Testing requirements pertain only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.

#### **Flow Down**

There is no flow down requirement for Bus Testing.

#### **Model Clause/Language**

The operator of the bus testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the recipient during the point in the procurement process specified by the recipient, but in all cases before final acceptance of the first bus by the recipient. The complete bus testing reporting requirements are provided in 49 C.F.R. § 665.11. Although no specific certification and bus testing language is required, recipients can draw on the following language for inclusion in their federally funded procurements.

#### **Bus Testing**

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

## **(A4) Buy America Requirements**

**49 U.S.C. 5323(j)**

**49 C.F.R. part 661**

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT ONLY ON MANUFACTURED GOODS OR ROLLING STOCK USED BY THE SELECTED PROPOSER IN WHICH FTA GRANT FUNDS ARE USED FOR THEIR PURCHASE.

### **Applicability to Contracts**

FTA's Buy America law and regulations apply to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project. FTA cautions that its Buy America regulations are complex. Recipients can obtain detailed information on FTA's Buy America regulation at: The Federal Transit Administration's Buy America website

### **Flow Down**

The Buy America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

### **Model Clause/Language**

The Buy America regulation at 49 C.F.R. § 661.13 requires notification of the Buy America requirements in a recipients' bid or request for proposal for FTA funded contracts. Recipients can draw on the following language for inclusion in their federally funded procurements. Note that recipients are responsible for including the correct Buy America certification based on what they are acquiring. Recipients should not include both the rolling stock and steel, iron, or manufactured products certificates in the documents unless acquiring both in the same procurement.

## **(A5) Cargo Preference Requirements**

46 U.S.C. § 55305

46 C.F.R. part 381

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT ONLY IF CARGO IS TRANSPORTED TO SERVICE THIS CONTRACT AGREEMENT.

### **Applicability to Contracts**

The Cargo Preference Act of 1954 requirements applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.

### **Flow Down**

The Cargo Preference requirements apply to all contracts involved with the transport of equipment, material, or commodities by ocean vessel.

### **Model Clause/Language**

The Maritime Administration (MARAD) regulations at 46 C.F.R. § 381.7 contain suggested contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Cargo Preference - Use of United States-Flag Vessels**

The selected PROPOSER agrees:

- (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the selected PROPOSER in the case of a subcontractor's bill-of-lading.); and
- (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **(A6) Charter Service**

**49 U.S.C. 5323(d) and (r)**

**49 C.F.R. part 604**

**THIS CLAUSE IS APPLICABLE TO THIS CONTRACT ONLY IF THE SELECTED PROPOSER PROVIDES CHARTER SERVICE AS PART OF THEIR BUSINESS.**

### **Applicability to Contracts**

The Charter Bus requirements apply to contracts for operating public transportation service.

### **Flow Down Requirements**

The Charter Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specific clause or language. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Charter Service**

The selected PROPOSER agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(d);
2. FTA regulations, "Charter Service," 49 C.F.R. part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The selected PROPOSER agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply.

The selected PROPOSER should also include the substance of this clause in each subcontract that may involve operating public transit services.



## **(A7) Clean Air Act and Federal Water Pollution Control Act**

42 U.S.C. §§ 7401 – 7671q

33 U.S.C. §§ 1251-1387

2 C.F.R. part 200, Appendix II (G)

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.

### **Applicability to Contracts**

The Clean Air and Clean Water Act requirements apply to each contract and subcontract exceeding \$150,000. Each contract and subcontract must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

### **Flow Down**

The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

Recipients can draw on the following language for inclusion in their federally funded procurements.

The Contractor agrees:

- 1) It will not use any violating facilities;
- 2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- 3) It will report violations of use of prohibited facilities to FTA; and
- 4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

## **(A8) Civil Rights Laws and Regulations**

**THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.**

### **Applicability to Contracts**

The following Federal Civil Rights laws and regulations apply to all contracts.

1. **Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

a. **Nondiscrimination in Federal Public Transportation Programs.** 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b. **Prohibition against Employment Discrimination.** Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

2. **Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

3. **Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age A-25 Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

4. **Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### **Flow Down**

The Civil Rights requirements flow down to all third party contractors and their contracts at every tier.

### **Model Clause/Language**

Every federally funded contract must include an Equal Opportunity clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Civil Rights and Equal Opportunity**

The CITY is an Equal Opportunity Employer. As such, the CITY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the CITY agrees to comply with the requirements of 49 U.S.C. §

5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**1. Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5. Or any other legally protected classification.**

## **(A9) Disadvantaged Business enterprise (DBE)**

49 C.F.R. part 26

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.

### **Background and Applicability**

The Disadvantaged Business Enterprise (DBE) program applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year. All FTA recipients above this threshold must submit a DBE program and overall triennial goal for DBE participation. The overall goal reflects the anticipated amount of DBE participation on DOT-assisted contracts. As part of its DBE program, FTA recipients must require that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 C.F.R. § 26.49. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, are eligible to bid.

FTA recipients must meet the maximum feasible portion of their overall goal using race-neutral methods. Where appropriate, however, recipients are responsible for establishing DBE contract goals on individual DOT-assisted contracts. FTA recipients may use contract goals only on those DOT-assisted contracts that have subcontracting responsibilities. See 49 C.F.R. § 26.51(e). Furthermore, while FTA recipients are not required to set a contract goal on every DOT-assisted contract, they are responsible for achieving their overall program goals by administering their DBE program in good faith.

FTA recipients and third party contractors can obtain information about the DBE program at the following website locations:

Federal Transit Administration website Disadvantaged Business Enterprise page click here

Department of Transportation website Disadvantaged Business Enterprise Program click here

### **Flow Down**

The DBE contracting requirements flow down to all third-party contractors and their contracts at every tier. It is the recipient's and prime contractor's responsibility to ensure the DBE requirements are applied across the board to all subrecipients/contractors/subcontractors. Should a subcontractor fail to comply with the DBE regulations, FTA would look to the recipient to make sure it intervenes to monitor compliance. The onus for compliance is on the recipient.

### **Clause Language**

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The selected PROPOSER, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The selected PROPOSER shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the selected PROPOSER to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the selected PROPOSER from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each

payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the selected PROPOSER shall utilize the specific DBEs listed unless the selected PROPOSER obtains the recipient's written consent; and that, unless the recipient's consent is provided, the selected PROPOSER shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

As an additional resource, recipients can draw on the following language for inclusion in their federally funded procurements.

#### **Overview**

It is the policy of the AGENCY and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts. It is also the policy of the AGENCY to:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 C.F.R. part 26 eligibility standards are permitted to participate as DBE's;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE program.

This Contract is subject to 49 C.F.R. part 26. Therefore, the Contractor must satisfy the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The CITY shall make all determinations with regard to whether or not a Bidder/Offeree is in compliance with the requirements stated herein. In assessing compliance, the CITY may consider during its review of the Bidder/Offeree's submission package, the Bidder/Offeree's documented history of non-compliance with DBE requirements on previous contracts with the CITY.

#### **Contract Assurance**

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the CITY deems appropriate.

#### **DBE Participation**

For the purpose of this Contract, the CITY will accept only DBE's who are:

1. Certified, at the time of bid opening or proposal evaluation, by the [*certifying agency or the Unified Certification Program (UCP)*]; or
2. An out-of-state firm who has been certified by either a local government, state government or Federal government entity authorized to certify DBE status or an agency whose DBE certification process has received FTA approval; or
3. Certified by another agency approved by the CITY.

#### **DBE Participation Goal**

The DBE participation goal for this Contract is set at **1.0%**. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling **not less than 1.0%** of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeree non-responsive.

#### **Proposed Submission**

Each Bidder/Offeree, as part of its submission, shall supply the following information:

1. A completed **DBE Utilization Form** (see below) that indicates the percentage and dollar value of the total bid/contract amount to be supplied by Disadvantaged Business Enterprises under this Contract.
2. A list of those qualified DBE's with whom the Bidder/Offeree intends to contract for the performance of portions of the work under the Contract, the agreed price to be paid to each DBE for work, the Contract items or parts to be performed by each DBE, a proposed timetable for the performance or delivery of the Contract item, and other information as required by the **DBE Participation Schedule** (see below). No work shall be included in the Schedule that the Bidder/Offeree has reason to believe the listed DBE will subcontract, at any tier, to other than another DBE. If awarded the Contract, the Bidder/Offeree may not deviate from the DBE Participation Schedule submitted in response to the bid. Any subsequent changes and/or substitutions of DBE firms will require review and written approval by the CITY.
3. An original **DBE Letter of Intent** (see below) from each DBE listed in the DBE Participation Schedule.
4. An original **DBE Affidavit** (see below) from each DBE stating that there has not been any change in its status since the date of its last certification.

#### **Good Faith Efforts**

If the Bidder/Offeree is unable to meet the goal set forth above (DBE Participation Goal), the CITY will consider the Bidder/Offeree's documented good faith efforts to meet the goal in determining responsiveness. The types of actions that the CITY will consider as part of the Bidder/Offeree's good faith efforts include, but are not limited to, the following:

1. Documented communication with the CITY's DBE Coordinator (questions of IFB or RFP requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion);
2. Pre-bid meeting attendance. At the pre-bid meeting, the CITY generally informs potential Bidder/Offeree's of DBE subcontracting opportunities;
3. The Bidder/Offeree's own solicitations to obtain DBE involvement in general circulation media, trade association publication, minority-focus media and other reasonable and available means within sufficient time to allow DBEs to respond to the solicitation;
4. Written notification to DBE's encouraging participation in the proposed Contract; and
5. Efforts made to identify specific portions of the work that might be performed by DBE's.

The Bidder/Offeree shall provide the following details, at a minimum, of the specific efforts it made to negotiate in good faith with DBE's for elements of the Contract:

1. The names, addresses, and telephone numbers of DBE's that were contacted;
2. A description of the information provided to targeted DBE's regarding the specifications and bid proposals for portions of the work;
3. Efforts made to assist DBE's contacted in obtaining bonding or insurance required by the Bidder or the Authority.

Further, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted when a non-DBE subcontractor was selected over a DBE for work on the contract. 49 C.F.R. § 26.53(b) (2) (VI). In determining whether a Bidder has made good faith efforts, the Authority may take into account the performance of other Bidders in meeting the Contract goals. For example, if the apparent successful Bidder failed to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, the Authority may view this as evidence of the Bidder having made good faith efforts.

#### **Administrative Reconsideration**

Within five (5) business days of being informed by the CITY that it is not responsive or responsible because it has not documented sufficient good faith efforts, the Bidder/Offeree may request administrative reconsideration. The Bidder should make this request in writing to the CITY's Transit Manager. The Transit Manager will forward the Bidder/Offeree's request to a reconsideration official who will not have played any role in the original determination that the Bidder/Offeree did not document sufficient good faith efforts.

As part of this reconsideration, the Bidder/Offeree will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The Bidder/Offeree will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The CITY will send the Bidder/Offeree a written decision on its reconsideration, explaining the basis for finding that the Bidder/Offeree did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### **Termination of DBE Subcontractor**

The Contractor shall not terminate the DBE subcontractor(s) listed in the **DBE Participation Schedule** (see below) without the CITY's prior written consent. The AGENCY may provide such written consent only if the Contractor has good cause to terminate the DBE firm. Before transmitting a request to terminate, the Contractor shall give notice in writing to the DBE subcontractor of its intent to terminate and the reason for the request. The Contractor shall give the DBE five days to respond to the notice and advise of the reasons why it objects to the proposed termination. When a DBE subcontractor is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE and immediately notify the AGENCY in writing of its efforts to replace the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the Contract as the DBE that was terminated, to the extent needed to meet the Contract goal established for this procurement. Failure to comply with these requirements will be in accordance with Section 8 below (Sanctions for Violations).

#### **Continued Compliance**

The CITY shall monitor the Contractor's DBE compliance during the life of the Contract. In the event this procurement exceeds ninety (90) days, it will be the responsibility of the Contractor to submit quarterly written reports to the CITY that summarize the total DBE value for this Contract. These reports shall provide the following details:

- DBE utilization established for the Contract;
- Total value of expenditures with DBE firms for the quarter;
- The value of expenditures with each DBE firm for the quarter by race and gender;
- Total value of expenditures with DBE firms from inception of the Contract; and
- The value of expenditures with each DBE firm from the inception of the Contract by race and gender.

Reports and other correspondence must be submitted to the DBE Coordinator. Reports shall continue to be submitted quarterly until final payment is issued or until DBE participation is completed.

The successful Bidder/Offeror shall permit:

- The CITY to have access to necessary records to examine information as the CITY deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices, and contract between the successful Bidder/Offeror and other DBE parties entered into during the life of the Contract.
- The authorized representative(s) of the AGENCY, the U.S. Department of Transportation, the Comptroller General of the United States, to inspect and audit all data and record of the Contractor relating to its performance under the Disadvantaged Business Enterprise Participation provision of this Contract.
- All data/record(s) pertaining to DBE shall be maintained as stated in Section [insert reference to record keeping requirements for the Project.]

#### **Sanctions for Violations**

If at any time the CITY has reason to believe that the Contractor is in violation of its obligations under this Agreement or has otherwise failed to comply with terms of this Section, the AGENCY may, in addition to pursuing any other available legal remedy, commence proceedings, which may include but are not limited to, the following:

- Suspension of any payment or part due the Contractor until such time as the issues concerning the Contractor's compliance are resolved; and
- Termination or cancellation of the Contract, in whole or in part, unless the successful Contractor is able to demonstrate within a reasonable time that it is in compliance with the DBE terms stated herein.



## **(A10) Employee Protections**

**49 U.S.C. § 5333(a)**

**40 U.S.C. §§ 3141 – 3148**

**29 C.F.R. part 5**

**18 U.S.C. § 874**

**29 C.F.R. part 3**

**40 U.S.C. §§3701-3708**

**29 C.F.R. part 1926**

**THIS CLAUSE IS NOT APPLICABLE TO THIS CONTRACT.**

### **Applicability to Contracts**

Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third-party contractor complies with all federal laws, regulations, and requirements, including:

## **(A11) Energy Conservation**

42 U.S.C. 6321 et seq.

49 C.F.R. part 622, subpart C

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.

### **Applicability to Contracts**

The Energy Policy and Conservation requirements are applicable to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.

### **Flow Down**

These requirements extend to all third-party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

No specific clause is recommended in the regulations because the Energy Conservation requirements are so dependent on the state energy conservation plan. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Energy Conservation**

The selected PROPOSER agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **(A12) Fly America**

**49 U.S.C. § 40118**

**41 C.F.R. part 301-10**

**48 C.F.R. part 47.4**

**THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.**

### **Applicability to Contracts**

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act. 7

### **Flow Down Requirements**

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

### **Model Clause/Language**

The relevant statutes and regulations do not require any specific clause or language that recipients use in their third party contracts. A sample clause is provided for Federal contracts at 48 C.F.R. 52.247-63. Recipients can draw on the following language for inclusion in their federally funded procurements.

FTA proposes the following language, modified from the Federal clause.

#### **Fly America Requirements**

**a) Definitions. As used in this clause—**

*"International air transportation"* means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

*"United States"* means the 50 States, the District of Columbia, and outlying areas.

*"U.S.-flag air carrier"* means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- b)** When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c)** If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) d)** In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

#### **Statement of Unavailability of U.S.-Flag Air Carriers**

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [*State reasons*]:

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(End of statement)

- e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

(End of Clause)

## **(A13) Government-Wide Debarment and Suspension**

**2 C.F.R. part 180**

**2 C.F.R. part 1200**

**2 C.F.R. § 200.213**

**2 C.F.R. part 200 Appendix II (I)**

**Executive Order 12549**

**Executive Order 12689**

**THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.**

### **Background and Applicability**

A contract award (of any tier) in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.

### **Flow Down**

Recipients, contractors, and subcontractors who enter into covered transactions with a participant at the next lower level, must require that participant to: (a) comply with subpart C of 2 C.F.R. part 180, as supplemented by 2 C.F.R. part 1200; and (b) pass the requirement to comply with subpart C of 2 C.F.R. part 180 to each person with whom the participant enters into a covered transaction at the next lower tier.

### **Model Clause/Language**

There is no required language for the Debarment and Suspension clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Debarment, Suspension, Ineligibility and Voluntary Exclusion**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the CITY. If it is later determined by the CITY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **(A14) Lobbying Restrictions**

31 U.S.C. § 1352

2 C.F.R. § 200.450

2 C.F.R. part 200 appendix II (J)

49 C.F.R. part 20

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.

### **Applicability to Contracts**

The lobbying requirements apply to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

### **Flow Down**

The lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5).

### **Model Clause/Language**

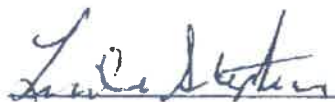
49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

### **Lobbying Restrictions**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Signature of Contractor's Authorized Official

Linda Stephens, Vice President Name and Title of Contractor's Authorized Official

11/22/2021

Date



## **(A15) No Government Obligation to Third Parties**

**THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.**

### **Applicability to Contracts**

The No Obligation clause applies to all third party contracts that are federally funded.

### **Flow Down**

The No Obligation clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

There is no required language for the No Obligations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **No Federal Government Obligation to Third Parties.**

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **(A16) Patent Rights and Rights in Data**

**2 C.F.R. part 200, Appendix II (F)**

**37 C.F.R. part 401**

**THIS CLAUSE IS NOT APPLICABLE TO THIS CONTRACT.**

### **Applicability to Contracts**

If the recipient or subrecipient wishes to enter into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award, the recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a nonexclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

1. Obtain, reproduce, publish, or otherwise use the data produced under a Federal award;  
and
2. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

## **(A17) Pre-Award and Post-delivery Audits of Rolling Stock Purchases**

**49 U.S.C. 5323(m)**

**49 C.F.R. part 663**

**THIS CLAUSE IS NOT APPLICABLE TO THIS CONTRACT AS THE CITY MAKES ALL ITS OWN ROLLING STOCK PURCHASES WHICH USE FEDERAL FUNDING.**

### **Applicability to Contracts**

Recipients purchasing revenue service rolling stock with FTA funds must comply with the preaward and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663. For more information about pre-award and post-delivery audit requirements, please go to FTA's Buy America page on its website.

### **Flow Down**

There is no flow down requirement for Pre-Award and Post-Delivery Audits of Rolling Stock.

### **Model Clause/Language**

Part 663 of Title 49, Code of Federal Regulations, does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Recipients are advised to use the model certificates and language contained in the audit handbook. Additionally, recipients can draw on the following language for inclusion in their federally funded procurements.

### **Pre-Award and Post-Delivery Audit Requirements**

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

## **(A18) Program Fraud and False or Fraudulent Statements and Related Acts**

49 U.S.C. § 5323(l) (1)

31 U.S.C. §§ 3801-3812

18 U.S.C. § 1001

49 C.F.R. part 31

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.

### **Applicability to Contracts**

The Program Fraud clause applies to all third party contracts that are federally funded.

### **Flow Down**

The Program Fraud clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier. These requirements flow down to contractors and subcontractors who make, present, or submit covered claims and statements.

### **Model Clause/Language**

There is no required language for the Program Fraud clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Program Fraud and False or Fraudulent Statements or Related Acts**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **(A19) Public Transportation Employee Protective Arrangements**

49 U.S.C. § 5333(b) ("13(c)")

29 C.F.R. part 215

THIS CLAUSE IS NOT APPLICABLE TO THIS CONTRACT.

### **Applicability to Contracts**

The Public Transportation Employee Protective Arrangements apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.

### **Flow Down**

The employee protective arrangements clause flows down to all third party contractors and their contracts at every tier.

### **Model Clause/Language**

There is no required language for the Public Transportation Employee Protective Arrangements clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Public Transportation Employee Protective Arrangements**

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

1. **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
3. **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

## **(A20) Recycled Products**

42 U.S.C. § 6962

40 C.F.R. part 247

2 C.F.R. part § 200.322

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.

### **Applicability to Contracts**

Resource Conservation and Recovery Act, as amended, (42 U.S.C. § 6962 et seq.), requires States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

### **Flow Down**

These requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

### **Model Clause/Language**

There is no required language for preference for recycled products. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Recovered Materials**

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

## **(A21) Safe Operation of Motor Vehicles**

**23 U.S.C. part 402**

**Executive Order No. 13043**

**Executive Order No. 13513**

**U.S. DOT Order No. 3902.10**

**THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.**

### **Applicability to Contracts**

The Safe Operation of Motor Vehicles requirements apply to all federally funded third party contracts. In compliance with Federal Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. Section 402 note, FTA encourages each third party contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project. Additionally, recipients are required by FTA to include a Distracted Driving clause that addresses distracted driving, including text messaging in each of its third party agreements supported with Federal assistance.

### **Flow Down Requirements**

The Safe Operation of Motor Vehicles requirements flow down to all third party contractors at every tier.

### **Model Clause/Language**

There is no required language for the Safe Operation of Motor Vehicles clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **Safe Operation of Motor Vehicles**

#### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or CITY.

#### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

## **(A22) School Bus Operations**

**49 U.S.C. 5323(f)**

**49 C.F.R. part 605**

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT ONLY IF THE SELECTED PROPOSER PROVIDES SCHOOL BUS OPERATIONS AS PART OF THEIR OVERALL BUSINESS.

### **Applicability to Contracts**

The School Bus requirements apply to contracts for operating public transportation service.

### **Flow Down Requirements**

The School Bus requirements flow down from FTA recipients and subrecipients to first tier service contractors.

### **Model Clause/Language**

The relevant statutes and regulations do not mandate any specific clause or language. Recipients can draw on the following language for inclusion in their federally funded procurements.

### **School Bus Operations**

The selected PROPOSER agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 U.S.C. § 5323(f);
2. FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

1. Bar the Contractor from receiving Federal assistance for public transportation; or
2. Require the selected PROPOSER to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the selected PROPOSER may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.



## **(A23) Seismic Safety**

42 U.S.C. 7701 *et seq.*

49 C.F.R. part 41

Executive Order (E.O.) 12699

THIS CLAUSE IS NOT APPLICABLE TO THIS CONTRACT.

### **Applicability to Contracts**

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

### **Flow Down**

The Seismic Safety requirements flow down from FTA recipients and subrecipients to first tier contractors to assure compliance with the applicable building standards for Seismic Safety, including the work performed by all subcontractors.

### **Model Clauses/Language**

The regulations do not provide suggested language for third party contract clauses. Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **Seismic Safety**

The selected PROPOSER agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The selected PROPOSER also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

## **(A24) Substance Abuse Requirements**

49 U.S.C. § 5331

49 C.F.R. part 655

49 C.F.R. part 40

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT. OPTION 2 IS THE METHOD WHICH SHALL BE USED IN THIS CONTRACT.

### **Applicability to Contracts**

Third party contractors who perform safety-sensitive functions must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, *Safety-sensitive function* means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
5. Carrying a firearm for security purposes.

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

### **Flow Down Requirements**

The Substance Abuse requirements flow down to all third party contractors at every tier who perform a safety-sensitive function for the recipient or subrecipient.

### **Model Clause/Language**

FTA's drug and alcohol rules, 49 C.F.R. part 655, are unique among the regulations issued by FTA. First, they require recipients to ensure that any entity performing a safety-sensitive function on the recipient's behalf (usually subrecipients and/or contractors) implement a complex drug and alcohol testing program that complies with part 655. Second, the rules condition the receipt of certain kinds of FTA funding on the recipient's compliance with the rules; thus, the recipient is not in compliance with the rules unless every entity that performs a safety-sensitive function on the recipient's behalf is in compliance with the rules. Third, the rules do not specify how a recipient ensures that its subrecipients and/or contractors comply with them.

How a recipient does so depends on several factors, including whether the selected PROPOSER is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that the recipient has with the selected PROPOSER, and the financial resources available to the recipient to oversee the selected PROPOSER's drug and alcohol testing program. In short, there are a variety of ways a recipient can ensure that its subrecipients and contractors comply with the rules.

FTA has developed three model contract provisions for recipients to use "as is" or to modify to fit their particular situations.

### **Explanation of Model Contract Clauses**

#### **Option 2**

The recipient relies on the selected PROPOSER to implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, but retains the ability to monitor the selected PROPOSER's testing program; thus, the recipient has less control over its compliance with the drug and alcohol testing rules than it does under Option 1. The advantage of this approach is that it places the responsibility for complying with the rules on the entity that is actually performing the safety-sensitive function. Moreover, it reserves to the recipient the power to ensure that the selected PROPOSER complies with the program. The disadvantage of Option 2 is that, without adequate monitoring of the selected PROPOSER's program, the recipient may find itself out of compliance with the rules.

#### **SUBSTANCE ABUSE TESTING**

##### **Option 2**

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. parts 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of [name of State], or A-67 AGENCY, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with parts 655 before February 1<sup>st</sup> of each year and to submit the Management Information System (MIS) reports before March 1<sup>st</sup> of each year to the City of DeKalb Transit Manager. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

## **(A25) Termination**

2 C.F.R. § 200.339

2 C.F.R. part 200, Appendix II (B)

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.

### **Applicability to Contracts**

All contracts in excess of \$10,000 must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.

### **Flow Down**

For all contracts in excess of \$10,000, the Termination clause extends to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.

### **Model Clause/Language**

There is no required language for the Terminations clause. Recipients can draw on the following language for inclusion in their federally funded procurements.

#### **Termination for Convenience (General Provision)**

The CITY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the CITY's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to CITY to be paid the Contractor. If the Contractor has any property in its possession belonging to CITY, the Contractor will account for the same, and dispose of it in the manner CITY directs.

#### **Termination for Default (Breach or Cause) (General Provision)**

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the CITY may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the CITY that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the CITY, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

#### **Opportunity to Cure (General Provision)**

The CITY, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to CITY's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from CITY setting forth the nature of said breach or default, CITY shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude CITY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### **Waiver of Remedies for any Breach**

In the event that CITY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by CITY shall not limit CITY's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

**Termination for Convenience (Professional or Transit Service Contracts)**

The CITY, by written notice, may terminate this contract, in whole or in part, when it is in the CITY's interest. If this contract is terminated, the CITY shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

## **(A26) Violation and Breach of Contract**

2 C.F.R. § 200.326

2 C.F.R. part 200, Appendix II (A)

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.

### **Applicability to Contracts**

All contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

### **Flow Down**

The Violations and Breach of Contracts clause flow down to all third party contractors and their contracts at every tier.

### **Model Clauses/Language**

FTA does not prescribe the form or content of such provisions. The provisions developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA third party contracts. Recipients can draw on these examples for inclusion in their federally funded procurements.

### **Rights and Remedies of the CITY**

The CITY shall have the following rights in the event that the CITY deems the Contractor guilty of a breach of any term under the Contract.

1. The right to take over and complete the work or any part thereof as agency for and at the expense of the Contractor, either directly or through other contractors;
2. The right to cancel this Contract as to any or all of the work yet to be performed;
3. The right to specific performance, an injunction or any other appropriate equitable remedy; and
4. The right to money damages. For purposes of this Contract, breach shall include [CITY to define].

### **Rights and Remedies of Contractor**

Inasmuch as the Contractor can be adequately compensated by money damages for any breach of this Contract, which may be committed by the CITY, the Contractor expressly agrees that no default, act or omission of the CITY shall constitute a material breach of this Contract, entitling Contractor to cancel or rescind the Contract (unless the CITY directs Contractor to do so) or to suspend or abandon performance.

### **Remedies**

Substantial failure of the Contractor to complete the Project in accordance with the terms of this Agreement will be a default of this Agreement. In the event of a default, the CITY will have all remedies in law and equity, including the right to specific performance, without further assistance, and the rights to termination or suspension as provided herein. The Contractor recognizes that in the event of a breach of this Agreement by the Contractor before the CITY takes action contemplated herein, the CITY will provide the Contractor with sixty (60) days written notice that the CITY considers that such a breach has occurred and will provide the Contractor a reasonable period of time to respond and to take necessary corrective action.

### **Disputes**

- **Example 1:** Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City. This decision shall be final and conclusive unless within [10] days from the date of receipt of its copy, the Contractor mails or

otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide by the decision.

- **Example 2:** The CITY and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the AGENCY and the Contractor's organization.

In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court *de novo* and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the CITY's direction or decisions made thereof.

#### **Performance during Dispute**

Unless otherwise directed by CITY, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

#### **Claims for Damages**

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

#### **Remedies**

Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the CITY and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the CITY is located. Rights and Remedies The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the CITY or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**(A27) Disputes, breaches, defaults, and litigation**  
**2 C.F.R. § 180.220 & 1200.220**

THIS CLAUSE IS APPLICABLE TO THIS CONTRACT.

**Applicability to Contracts**

The contractor agrees to give notice to the City of DeKalb if a current or prospective legal matter that may affect the Federal Government emerges.

**Flow Down**

The contractor must include a similar notification requirement in its Third-Party Agreements and must require each Third-Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. § 180.220 & 1200.220.



## ATTACHMENT A - Certification Regarding Debarment and Suspension

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the COD. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the COD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Authorized Official: Linda Stephens, Vice President

Signature: 

Date: 11/22/2021

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Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this proposal.

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of the contents of the statement submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 ET Seq. are applicable thereto.

Authorized Official: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT B – Affidavit of Non-Collusion


I hereby swear (or affirm) under the penalty for perjury:

1. That I am the proposer (if the proposer is an individual), a partner in the proposal (if the proposer is a partnership), or an officer or employee of the proposing corporation having authority to sign on its behalf (if the proposer is a corporation);
2. That the attached proposal has been arrived at by the proposer independently and have been submitted without collusion and without any agreement, understanding, or planned common course of action with any other vendor or materials, supplies, equipment, or service described in the Request for Qualifications, designed to limit independent proposals or competition;
3. That the contents of this bid proposal has not been communicated by the proposer or its employees or agents to any person not an employee or agent of the proposer or its surety on any bond furnished with the proposal, and will not be communicated to any such person prior to the official opening of the proposal; and
4. That I have fully informed myself regarding the accuracy of the statements made in the affidavit.

Signed:   
Linda Stephens, Vice President

Company Name: Petroleum Traders Corporation

Subscribed and sworn to before me this 22 day of November, 20 21

Notary Public:   
Michelle Beard

My Commission expires July 10, 20 22



Proposer's Federal Employer Identification Number: 35-162227  
(Number used on Employer's Quarterly Federal Tax Return)

## ATTACHMENT C – Certifications of Compliance with Federal Lobbying Regulations

The undersigned certifies to the best of his/her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form 1111, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

By: \_\_\_\_\_

Signature of Company Official

11/22/2021

Date

Linda Stephens, Vice President

Official's Title

## ATTACHMENT D – Firm Data Sheet

The prime consultant is responsible for submitting the information requested below for all firms on the project team, both prime and subcontractors. All firms are to be reported on one combined sheet unless the number of firms requires the use of an additional sheet. Failure to submit complete data will result in the Expression of Interest not being considered.

Firm's Name and Address	Firm's DBE Status*	Firm's Age	Firm's Annual Gross Receipts
Petroleum Traders Corporation 7120 Pointe Inverness Way PO Box 2357 Fort Wayne, IN 46801-2357	N	42	+\$1,000,000

\* Y = DBE-Certified by IDOT  
N = Not DBE-Certified by IDOT

NA = Firm Not Claiming DBE Status  
IP = DBE-Certification In-Process

## **ATTACHMENT E – Good Faith Effort**

*(For information only – not to be returned)*

1. The COD has established a ten percent (1.0%) goal for Disadvantaged Business Enterprise (DBE) participation for this contract. Therefore, a proposer must, in order to be responsible and responsive, make a good-faith effort to meet the goal. The proposer can meet this requirement in either of two (2) ways. First, the proposer can meet or exceed the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if the proposer doesn't meet the goal, the proposer can document its good-faith efforts to meet the goal. This means that the proposer must show that it took all necessary and reasonable steps to achieve the DBE goal, or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
2. The COD will use the good-faith efforts mechanism as required by 49 CRF part 26. It is up to the COD to make a fair and reasonable judgment whether a proposer that did not meet the goal made adequate good-faith efforts. The COD will consider the quality, quantity, and intensity of the different kinds of efforts that the proposer made. The efforts employed by the proposer should be those that one could reasonably expect a proposer to take, if the proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good-faith efforts to meet the DBE contract requirements. As emphasized by the Department of Transportation, COD's determination concerning the sufficiency of the firm's good-faith efforts is a judgment call; meeting quantitative formulas is not required.
3. The COD will not require that a proposer meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the proposer shows that an adequate good-faith was made. The rule specifically prohibits the COD from ignoring bona fide good-faith efforts.
4. The following is a list of types of actions that the COD will consider as part of the proposer's good-faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - a. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The proposer must determine with certainty whether or not a DBE is certified.
  - b. The DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - c. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
  - d. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

### Good-Faith Effort (Continued)

- e. Negotiating in good-faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good-faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs, if the price difference is excessive or unreasonable.

- f. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations, and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of proposals from DBEs in the Contractor's efforts to meet the project goal.
- g. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance, as required by the recipient or contractor.
- h. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- i. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; Federal, State, and Local minority/women business assistance offices; and other organizations, as allowed on a case-by-case basis, to provide assistance in the recruitment and placement of DBEs.

## ATTACHMENT F – DBE Letter of Intent

To: Petroleum Traders Corporation  
(Name of Proposer)

The undersigned intends to perform work in connection with the above project as a DBE (circle one):

Individual \_\_\_\_\_ Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Joint Venture \_\_\_\_\_

The Disadvantaged Business Enterprise status of the undersigned is confirmed:

1. On the reference list of Disadvantaged Business Enterprises dated \_\_\_\_\_; or
2. On the attached Disadvantaged Business Enterprise Identification Statement.

The undersigned is prepared to perform the following work in connection with the above project (Specify in detail particular work items or parts thereof to be performed):

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The DBE contractor will perform this work at the following price: \_\_\_\_\_

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

Items	Projected Commencement Date	Projected Completion Date
_____	_____	_____
_____	_____	_____

The above work will not be sublet to a non-Disadvantaged Business Enterprise at any tier. The undersigned will enter into a formal agreement for the above work with you, conditioned upon your execution of a contract with COD.

Name of Disadvantaged Business Enterprise: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT G – DBE Affidavit

State of \_\_\_\_\_

Date: \_\_\_\_\_

County: \_\_\_\_\_

The undersigned, being duly sworn, deposes and says that he/she is the (sole owner, partner, president, treasurer, or other duly authorized official of a corporation) of

\_\_\_\_\_  
(Name of Official)

\_\_\_\_\_  
(Name of DBE)

and certifies that since the date of its certification through the IL UCP, the certification has not been revoked nor has it expired nor has there been any change in the minority status of

\_\_\_\_\_  
(Name of DBE)

\_\_\_\_\_  
(Signature and Title of Person Making Affidavit)

Sworn to before me this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
(Notary Public)

NOTE: The proposer must attach the DBE's most recent certification letter or document to this affidavit.



I, Linda Stephens, the Vice President  
(Name) (Title)

I contacted the following Disadvantaged Business Enterprise to obtain a proposal to perform the following work item(s):

To the best of my knowledge and belief, said Disadvantaged Business Enterprise was unavailable for work on this project, or unable to prepare a proposal, for the following reason(s):

Other vendors were non-responsive

11/22/2021

by \_\_\_\_\_ to submit a proposal to perform the above identified work.  
(Proposer)

Signed: \_\_\_\_\_  
(Disadvantaged Business Enterprise Official)

Date: \_\_\_\_\_

## Exhibit A: Detailed Cost Sheet

**Note:** The total extended cost must be transferred to the *Bid Sheet*. Failure of the Bidder to complete the *Detailed Cost Sheet* OR transfer the extended total cost to the *Bid Sheet* may be cause for rejection of the bid submittal.

**OIL PRICE INFORMATION SERVICE (OPIS) FOR BENCHMARK PRICE (ROCKFORD):** *Monday, November 15th*. Must include report with bid.

Insert OPIS Price for November 15<sup>th</sup> here: See below

### Posting Price

Unleaded Gasoline, 87 Octane \$ 2.3545

Diesel (ULSD) Fuel (Gross Wholesale) \$ 2.4040

Diesel Fuel (ULSD) – Winter Blend (Gross Wholesale) \$ 2.4040

### OPTION

Off Road Diesel (ULSD) (red dyed) \$ 2.4090

Diesel (ULSD) Fuel – 2% Bio-diesel \$ 2.3665

\*This is OPIS/Chicago/Contract Low  
Rockford, IL does not have a 2% bio posting

### BID PRICE FOR:

Delivery Price per Gallon (+) or (-)	Year 1	Year 2
Gasoline	\$ +.0260	\$ +.0260
Diesel Fuels	\$ +.0390	\$ +.0390
Diesel Fuel (ULSD) – Winter Blend	\$ +.0390	\$ +.0390
OPTION: Off Road ULSD #1 & #2 (red dyed)	\$ +.0390	\$ +.0390
Diesel (ULSD) Fuel – 2% Bio-diesel	\$ +.0834	\$ +.0834

Does your firm use metered trucks: Yes X No         
\*\*Tankwagons only are metered

## **Exhibit B: Bid Sheet**

**Note: the Bidder must complete all portions of the Bid Sheet.**

The undersigned, having examined the specifications and all conditions affecting the specified project, offer to furnish all services, labor, and incidentals specified for the price below.

The undersigned Bidder certifies that they are not barred from bidding on this contract as a result of a conviction for the violation of state laws prohibiting bid rigging or bid rotating, (720ILCS 5/33E-1, et seq.) and is not delinquent in any taxes to the Illinois Department of Revenue. (65ILCS 5/11-42.1-1)

It is understood that the City reserves the right to reject any and all bids and to waive any irregularities and that the prices contained herein will remain valid for a period of not less than sixty (60) days.

I (We) propose to complete the following project as more fully described in the specifications for the following:

**Bidding Company Name:** Petroleum Traders Corporation

**Total, Year One Not-To-Exceed Delivery Price):** \$3.50 per gallon

**Total, Year Two Not-To-Exceed Delivery Price):** \$4.00 per gallon

☐ Our firm has not altered any of the written text within this document. Only those areas requiring input by the respondent have been changed or completed.

If it is the Contractor's intention to utilize a subcontractor(s) to fulfill the requirements of this contract, the City must be advised of the subcontractor's company name, address, telephone and fax numbers, and a contact person's name at the time of bid submittal.		
Will you be utilizing a subcontractor?	YES	<input checked="" type="radio"/> NO
If yes, have you included all required information with your bid submittal?	YES	<input type="radio"/> NO
Are your subcontractors registered to do business with the City?	YES	<input type="radio"/> NO

- OR -

**INDEMNIFICATION:** The Bidder hereby agrees to protect, defend, indemnify, and save harmless the City against loss, damage, or expense from any suit, claim, demand, judgment, cause of action, or shortage initiated by any person whatsoever, arising or alleged to have arisen out of work described herein, except that in no instance shall the Bidder be held responsible for any liability, claim, demand, or cause of action attributable solely to the intentional misconduct of the City. The Bidder agrees to indemnify, defend, insure and hold harmless the City in compliance with the most stringent language in this bid package.

I hereby certify that the item(s) proposed is/are in accordance with the specifications as noted and that the prices quoted are not subject to change; and that the Company submitting this bid complies with the Bidder Certifications included in the Form of Agreement attached as Exhibit D.

**TOTAL PRICE:** The Bidder hereby affirms and states that the prices quoted herein constitute the total cost to the City for all work involved in the respective items and that this cost also includes all insurance, royalties, transportation charges, use of all tools and equipment, superintendence, overhead expenses, all profits and all other work, services and conditions, necessarily involved in the work to be done and materials to be furnished in accordance with the requirements of the Contract Documents considered severally and collectively.

Petroleum Traders Corporation  
Bidder's Firm Name

7120 Pointe Inverness Way PO Box 2357  
Street Address

Fort Wayne IN 46801-2357  
City State Zip Code

888-637-7661  
Phone Number

11/22/2021  
Date

  
Signed Name and Title

Linda Stephens, Vice President  
Print Name and Title

gnewton@petroleumtraders.com  
E-mail Address

260-203-3820  
Fax Number

## **Exhibit D: Form of Agreement**

### **Independent Contractor Agreement for Services**

THIS AGREEMENT, by and between the City of DeKalb, hereinafter referred to as the "City" and "Petroleum Trades" hereinafter referred to as the "Contractor", with the City and Contractor agreeing as follows Corp.

#### **A. Services:**

Contractor agrees to furnish to the City the following services:

See attached Exhibit F

Contractor represents that it possesses the skills and knowledge necessary to provide all such services and understands that the City is relying upon such representation. Contractor further acknowledges that Exhibit A is an integral part of this Agreement and may not be modified except in accordance with a modification to the terms of this Agreement.

#### **B. Term:**

Services will be provided as needed and directed by the City beginning on the date of execution of this agreement and continuing, until terminated by either party upon 7 days written notice to the non-terminating party. Upon termination the Contractor shall be compensated for all work performed for the City prior to termination and shall provide to the City all work completed through the date of termination. The City's issuance of a notice of termination shall function as a stop work order, beyond which the Contractor shall not incur any additional costs without the City's express, written permission.

#### **C. Compensation:**

Contractor shall receive as compensation for all work and services to be performed herein, an amount based on the fee schedule attached hereto as Exhibit A and B. All payments will be made according to the Illinois State Prompt Payment Act.

Any payment made to the Contractor shall be strictly on the basis of quantum meruit. The Contractor shall submit to the City a detailed breakdown and invoice of all charges, including detail of past payments and amounts still remaining due, accurate to the date of the invoice, with each request for payment. Any additions to or deductions from the approved total amount of the contract, and any out of scope work shall require prior, written approval from the City. Any work performed without the City's express, written consent shall be solely at the expense of the Contractor.

Prior to tendering any payment to Contractor, Contractor shall provide the City with a completed W-9 form.

#### **D. Changes in Rates of Compensation (and Prevailing Wages):**

If the Contractor seeks to impose any change in the fee schedule (whether in terms of hourly fee or lump sum fees), then the Contractor shall provide not less than ninety days written notice of its intent to change its fee schedule, and any such change in fee schedule shall require the approval of the City. To the extent applicable, the contractor shall further comply the requirements of the Prevailing Wage Act in that all laborers, mechanics and other workers performing work under this Agreement which is subject to the Prevailing Wage Act shall be paid not less than the general prevailing rate of hourly wage as provided for in 820 ILCS 130/1 et seq.

#### **E. Ownership of Records and Documents / Confidential Information:**

### **Exhibit C: Detailed Exceptions Sheet**

**EXCEPTIONS:** Any exception to any term of this document or to the Agreement must be clearly noted on the *Detail Exceptions Sheet(s)*. Failure to do so may be reason for rejection of the bid. It is not our intention to prohibit any potential Bidder from bidding by virtue of the specifications, but to describe the material(s) and service(s) actually required. The City reserves the right to accept or reject any or all exceptions.

**DETAIL EXCEPTIONS SHEET MUST BE ENCLOSED WITH BID SHEET. ATTACH ADDITIONAL PAGES IF NECESSARY.**

Bidder's exceptions are:

SECTION NUMBER	EXCEPTION TITLE	EXCEPTION DETAIL

Contractor agrees to keep and maintain all books and records and other recorded information required to comply with any applicable laws, including but not limited to the Prevailing Wage Act. Contractor agrees to keep such information confidential and not to disclose or disseminate the information to third parties without the consent of the City. Contractor further agrees to keep as confidential any information belonging or relating to the City which is of a confidential nature, including without limitation information which is proprietary, personal, required by law to be confidential, or relates to the business, operations or accounts of the City. This confidentiality shall not apply to material or information, which would otherwise be subject to public disclosure through the freedom of information act or if already previously disclosed by a third party. Contractor acknowledges that the Freedom of Information Act, 5 ILCS 140/1 et seq. (the "Act") places an obligation on the City to produce certain records that may be in the possession of Contractor. Contractor shall comply with the record retention and documentation requirements of the Local Records Act 50 ILCS 205/1 et seq. and the Act and shall maintain all records relating to this Agreement in compliance with the Local Records Retention Act and the Act (complying in all respects as if the Contractor was, in fact, the City). Contractor shall review its records promptly and produce to the City within two business days of contact from the City the required documents responsive to a request under the Act. If additional time is necessary to comply with the request, the Contractor may request the City to extend the time do so, and the City will, if time and a basis for extension under the Act permits, consider such extensions.

**F. Governing Law:**

This contract shall be governed and construed in accordance with the laws of the State of Illinois. Venue and jurisdiction for any legal action arising out of or related to this Agreement shall be exclusively fixed in the DeKalb County Circuit Court, DeKalb County, Illinois.

**G. Independent Contractor:**

Contractor shall have sole control over the manner and means of providing the work and services performed under this agreement. The City's relationship to the Contractor under this agreement shall be that of an independent contractor. Contractor will not be considered an employee to the City for any purpose. The parties agree that the Contractor is exclusively responsible for the determination of what work is required to complete the tasks outlined in Exhibit F, and for the means and methods of completing such work. The City's compensation to Contractor shall be limited to that described in Exhibits A and B, and the City shall not reimburse any expenses, provide any benefits, withhold any employment taxes or otherwise have a financial relationship with Contractor other than payment of the stated compensation. The Contractor shall be solely responsible for withholding of taxes, providing employee benefits, or otherwise complying with applicable laws relating to its employees or contractors.

In the event that the City determines, in its sole discretion, that it is economically advantageous for the City to provide certain supplies or tools for use by Contractor in lieu of paying Contractor to provide the same, the City and Contractor agree that Contractor shall then utilize the City's equipment or supplies according to its own determination of their best and appropriate use. Contractor shall be responsible for its' own personnel, training, instruction and related matters. Contractor shall be responsible for determining its sequence of performance for required work. Contractor's work shall be evaluated by the City based upon the end result of such work. Contractor shall be responsible for any expenses incurred by Contractor in the performance of its work, and shall not be authorized, expressly or impliedly, to obligate the City on any debt, contract or other agreement whatsoever. In the event that Contractor is compensated on an hourly basis under the terms of this Agreement, the City and Contractor agree that Contractor's compensation is usual and customary, based on the terms that Contractor offers its services to the market in general.

The Contractor acknowledges that neither it nor its personnel shall be acting as an employee or official representative of the City for purposes of being offered any protection or coverage under City insurance policies for tort immunity or other legal purposes.

**H. Certifications:**

Executing this Agreement constitutes acknowledgment, acceptance, and certification of the accuracy of the following certifications, and any other certifications required under any applicable law relating to the performance of this Agreement. The Contractor is responsible for identifying all such applicable regulations and certifications, and for compliance with the same.

**Sexual Harassment:** The Contractor certifies that it is in compliance with the Illinois Human Rights Act 775 ILCS 5/1.101, et seq. including establishment and maintenance of sexual harassment policies and program.

**Tax Delinquency:** The Contractor certifies that it is not delinquent in payment of any taxes to the Illinois Department of Revenue in accordance with 65 ILCS 5/11-42.1, and is not delinquent in the payment of any tax, charge or obligation to the City of DeKalb.

**Employment Status:** The Contractor certifies that if any of its personnel are an employee of the State of Illinois, they have permission from their employer to perform the service.

**Anti-Bribery:** The Contractor certifies it is not barred under 30 Illinois Compiled Statutes 500/50-5(a) - (d) from contracting as a result of a conviction for or admission of bribery or attempted bribery of an officer or employee of the State of Illinois or any other state.

**Loan Default:** If the Contractor is an individual, the Contractor certifies that he/she is not in default for a period of six months or more in an amount of \$600 or more on the repayment of any educational loan guaranteed by the Illinois State Scholarship Commission made by an Illinois institution of higher education or any other loan made from public funds for the purpose of financing higher education (5 ILCS 385/3).

**Felony Certification:** The Contractor certifies that it is not barred pursuant to 30 ILCS 500/50-10 from conducting business with the State of Illinois or any agency as a result of being convicted of a felony.

**Barred from Contracting:** The Contractor certifies that it has not been barred from contracting as a result of a conviction for bid-rigging or bid rotating under 720 ILCS 5/33E-3 (Bid Rigging) or 720 ILCS 5/33-4 (Bid Rotating) or a similar law of another state or of the federal government.

**Prevailing Wage:** The Contractor certifies that it shall comply with all applicable provisions of the Prevailing Wage Act, and further certifies that it is not in violation of said Act and has not been barred from bidding on this proposal by virtue of a past violation of the Act. A copy of the most recent available list of prevailing wages is attached hereto or has been provided to the Contractor. The Contractor is responsible for regularly updating said list as new prevailing wage rates are made available by the City or by the Illinois Department of Labor. The Illinois Department of Labor posts regular updates to prevailing wage rates on its official website, which is currently [www.illinois.gov/idol](http://www.illinois.gov/idol). This notice is given pursuant to 820 ILCS 130/4 and the balance of the Illinois Prevailing Wage Act, which is incorporated herein by reference as if fully restated. In the event that this is a public works project as defined under the Prevailing Wage Act, Proposer agrees to comply with the Substance Abuse Prevention on Public Works Projects Acts, 820 ILCS 265/1 et. seq., and further agrees that all of its subcontractors shall comply with such Act. As required by the Act, Contractor agrees that it will file with the City, prior to commencing work, its written substance abuse prevention program and/or that of its subcontractor(s) which meet or exceed the requirements of the Act.

**Drug Free Workplace:** The Contractor certifies that it is in compliance with the Drug Free Workplace Act (30 Illinois Compiled Statutes 580) as of the effective date of this contract. The Drug Free Workplace Act requires, in part, that Contractors, with 25 or more employees certify and agree to take steps to ensure a drug free workplace by informing employees of the dangers of drug abuse, of the availability of any treatment or assistance program, of prohibited activities and of sanctions that will be imposed for violations; and that individuals with contracts certify that they will not engage in the manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract. The Contractor further certifies that it maintains a substance-abuse program and provide drug testing in accordance with 820 ILCS 130/11G, Public Act 095-0635. The Contractor shall also comply with the Federal Highway Administrative Rules on Controlled Substances and Alcohol Use and Testing, 49 CFR Parts 40 and 382 and that all of Contractor's drivers are currently participating in a drug and alcohol testing program pursuant to the Rules.

**Responsible Contractor Requirements:** The Contractor certifies that it complies with the Illinois Procurement Code and the provisions of Section 30-22 thereof relating to apprenticeship and training, if applicable. The Contractor further certifies for work that will be performed by subcontract that each of its subcontractors submitted for approval either is in compliance or will begin participation in an approved



apprenticeship and training program prior to commencing any Work. The Illinois Department of Labor, at any time before or after award, may require production of a copy of each applicable Certificate of Registration issued by the United States Department of Labor evidencing such participation by the Contractor and all of its Subcontractors. Applicable apprenticeship and training programs are those that have been approved or registered with the United States Department of Labor. The Contractor shall provide to the City, upon request, copies of all Certificates of Registration, and copies of all work or craft job category included in the Work, along with such other records as the City may require. Any records or logs required to be provided by law shall be provided by the Contractor, without requiring a request from the City.

*Non-Discrimination, Certification, and Equal Employment Opportunity:* The Contractor agrees to comply with applicable provisions of the Illinois Human Rights Act (775 Illinois Compiled Statutes 5), the U.S. Civil Rights Act, the Americans with Disabilities Act, Section 504 of the U.S. Rehabilitation Act and the rules applicable to each. The equal opportunity clause of Section 750.10 of the Illinois Department of Human Rights Rules is specifically incorporated herein. The Contractor shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375, and as supplemented by U.S. Department of Labor regulations (41 C.F.R. Chapter 60). The Contractor agrees to incorporate this clause into all subcontracts under this Contract. The Contractor acknowledges that neither it nor the City shall discriminate on the basis of any protected classification.

*Record Retention and Audits:* If 30 ILCS 500/20-65 requires the Contractor (and any subcontractors) to maintain, for a period of 3 years after the later of the date of completion of this Contract or the date of final payment under the Contract, all books and records relating to the performance of the Contract and necessary to support amounts charged to the City under the Contract. The Contract and all books and records related to the Contract shall be available for review and audit by the City and the Illinois Auditor General. If this Contract is funded from contract/grant funds provided by the U.S. Government, the Contract, books, and records shall be available for review and audit by the Comptroller General of the U.S. and/or the Inspector General of the federal sponsoring agency. The Contractor agrees to cooperate fully with any audit and to provide full access to all relevant materials.

*United States Resident Certification:* (This certification must be included in all contracts involving personal services by non-resident aliens and foreign entities in accordance with requirements imposed by the Internal Revenue Services for withholding and reporting federal income taxes.) The Contractor certifies that he/she/it is a: ☐ United States Citizen or Corporation ☐ Resident Alien ☐ Non-Resident Alien. The Internal Revenue Service requires that taxes be withheld on payments made to non-resident aliens for the performance of personal services at the rate of 30%.

*Tax Payer Certification:* Under penalties of perjury, the Contractor certifies that its Federal Tax Payer Identification Number or Social Security Number is 35-1462227 and is doing business as a (check one): ☐ Individual ☐ Real Estate Agent ☐ Sole Proprietorship ☐ Government Entity ☐ Partnership ☐ Tax Exempt Organization (IRC 501(a) only) ☒ Corporation ☐ Not for Profit Corporation ☐ Trust or Estate ☐ Medical and Health Care Services Provider Corp.

*Authorized in Illinois:* The Contractor that it is authorized to lawfully transact business in the State of Illinois, under all applicable Illinois laws and regulations. The Contractor certifies that it shall comply with the Corporate Accountability for Tax Administration Act, 20 ILCS 715/1, et. seq. Where applicable, the Contractor certifies that it is not barred from bidding by virtue of having been adjudicated to have committed a willing or knowing violation of Section 42 of the Environmental Protection Act within the five years preceding this bid, pursuant to 415 ILCS 5/1, et. seq. The Contractor further certifies that it is in compliance with all applicable requirements of the Business Enterprise for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/1, et. seq.

*Export Administration, Supplies, Labor:* The Contractor certifies that neither it nor any substantially owned affiliate is participating, nor shall participate, in an international boycott which is in violation of the provisions of the US Export Administration Act of 1979 or the regulations of the US Department of Commerce promulgated under the Act, including but not limited to the requirements of 30 ILCS 582/5. The Contractor further certifies that no foreign made equipment, materials or supplies furnished under the proposal or agreement have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor, nor made in whole or in part by the labor of any child under the age of 12, under penal sanction pursuant to 30 ILCS 583/1 and 30 ILCS 584/1. The Contractor certifies that steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the City Manager grants an exception to said requirement, pursuant to 30 ILCS 565/1, et. seq.

**General Compliance and Certification:** The Contractor certifies that it has and will comply with all other applicable laws, regulations, ordinances or restrictions applicable to any component of the bidding process, agreement, or any services or materials provided in connection therewith. The Contractor acknowledges that it is responsible for identifying and complying with all applicable laws, ordinances, rules and regulations, and that it shall indemnify and hold harmless the City of DeKalb from any claim, liability or damages arising out of the failure to identify or comply with any such applicable legal restriction. The City reserves the right to reject any bid, cancel any contract or pursue any other legal remedy deemed necessary should it become aware of any violation of any laws, ordinances, rules or regulations on the part of the Contractor or any subcontractor.

**OSHA Standards:** The Contractor certifies that it will identify and comply with all requirements and standards imposed by the Occupational Safety and Health Act. All guards and protectors, all appropriate markings, and all other protections shall be in place prior to delivery of any item, and at all times during performance of any Work.

**CERCLA Indemnification:** The Contractor certifies that it shall, to the maximum extent permitted by law, indemnify, defend and hold harmless the City, and City Indemnitees from and against any and all liability, including without limitation, costs of response, removal, remediation, investigation, property damage, personal injury, damage to natural resources, health assessments, health settlements, attorneys' fees, and other related transaction costs arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601, *et. seq.*, as amended from time to time, and all other applicable statutes, regulations, ordinances, and under common law for any release or threatened release of the waste material collected by the Contractor both before and after its disposal.

**Buy America:** The Contractor certifies that, if required, it shall comply with 49 USC 5323(j), the Federal Transportation Administration's (FTA) Buy America regulations at 49 CFR Part 661, and any amendments thereto, and any implementing guidance issued by the FTA, with respect to this contract, when financed by Federal funds (through a grant agreement or cooperative agreement), and to submit to the City an executed Buy America Certificate in a form acceptable to the City.

**Collusion:** The Contractor certifies that it is not colluding with any other party or person in the preparation or submittal of this Agreement.

**I. Indemnification:**

Contractor shall indemnify and hold harmless the City and City's agents, servants, and employees against all loss, damage, taxes, liabilities, charges or expense, including but not limited to attorneys fees and court costs, which the City may sustain or for which it may become liable on account of injury to or death of persons, or on account of damage to or destruction of property resulting from the performance of work under this agreement by Contractor or its Subcontractors, due to or arising in any manner from the intentional or wrongful act or negligence of Contractor or its Subcontractors of any employee of any of them, or otherwise arising out of this Agreement or the Contractor's performance of services on behalf of the City.

The Contractor shall be responsible for any and all damages to property or persons arising out of an error, omission, and/or negligent act in the prosecution of the work or failure to prosecute the work and shall indemnify and hold harmless the City, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting therefrom. The Company shall assume all restitution and repair costs arising out of an error, omission and/or negligence.

**J. Insurance, Licensure and Intellectual Property:**

The Contractor shall comply with all insurance requirements described on the attached Exhibit E. The Contractor agrees and warrants that it has procured all licenses, permits or other official permissions required by any applicable law to perform the services contemplated herein, that it will procure all additional licenses, permits or other official permissions hereafter required by law during the term of this Agreement, and that it will keep all such licenses in effect during the term of this Agreement. The Contractor shall provide a copy of any such licenses or permits upon request. All such insurance and licensure shall be provided at the Contractor's sole expense. Contractor also warrants that it has complete ownership or authorization/entitlement to any intellectual property, software, images or other such items used in the performance of its work under this Agreement, and that it shall transfer to the City,

unrestricted, the ability to modify, amend, publicize or otherwise utilize any intellectual property provided to the City under this Agreement unless the City expressly preapproves in writing a limitation to these provisions.

The Contractor shall not commence work under this Contract until they have obtained all insurance required and such insurance has been submitted to and approved by the City, nor shall the Contractor permit any Subcontractor to commence work on any subcontract until the same insurance has been obtained by the Subcontractor. The Company and all Subcontractors shall maintain their insurance in place for not less than two (2) years following completion of all work required under this Contract.

All drawings, specifications, reports and any other project documents prepared by the Contractor in connection with any or all of the services to be furnished thereunder shall be delivered to the City for the expressed use of the City. The Contractor shall have the right to retain original documents, but shall cause to be delivered to the City such quality of documents so as to assure total reproducibility of the documents delivered. All information, worksheets, reports, design calculations, plans and specifications shall be the sole property of the City unless otherwise specified in the negotiated agreement. The Contractor agrees that basic survey notes and sketches, charts, computations and other data prepared or obtained by the Contractor pursuant to this Agreement shall be made available, upon request, to the City without cost and without restriction or limitation as to their use. All field notes, test records, and reports shall be available to the City upon request.

The prices included on this Agreement include all royalties and costs arising in the Work. Any items or services provided shall be provided to the City subject to the Contractor's legal right to provide the same. The Contractor shall indemnify and hold harmless the City and City Indemnitees from any and all claims for infringement by reason of the use of any such patent design, device, materials or process, to be performed or used under the Agreement, and shall indemnify and hold harmless the City for any costs, expenses, attorneys' fees and damages which it may be obligated to pay, by reason of any infringement at any time during the prosecution or after completion of the Work.

K. Additional Terms or Modification:

The terms of this agreement shall be further modified as provided on the attached Exhibits and the Contract Documents. Except for those Exhibits, no additional terms are included as a part of this agreement. All prior understandings and agreements between the parties are merged into this agreement, and this agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties. The City reserves the right by written amendment to make changes in requirements, amount of work, or time schedule adjustments. The Contractor shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes. The City may, at any time by written order, require the Contractor to stop all or part of the services required by this Agreement. Upon receipt of such an order, the Contractor shall immediately comply with its terms.

L. Notices:

All notices required to be given under the terms of this License shall be given mail, addressed to the parties as follows:

For the City:

City Manager  
City of DeKalb  
164 E. Lincoln Hwy.  
DeKalb, IL 60115

For the Contractor:

Petroleum Traders Corporation  
7120 Pointe Inverness Way  
PO Box 2357  
Fort Wayne, IN 46801-2357

Either of the parties may designate in writing from time-to-time substitute addresses or persons in connection with required notices.

M. Subcontractors and Third Parties:

Contractor shall not assign or subcontract for the performance of any obligation under this Agreement, except with the express, written preapproval of the City, which consent may be withheld in the City's sole and absolute discretion. Should Contractor assign any obligation arising under this Agreement with the consent of the City, the Contractor shall remain to be primarily liable to the City for the performance of the obligation in question, and further shall be liable for ensuring that the subcontractor(s) comply with all obligations arising under this Agreement as if the subcontractor(s) was/were the Contractor itself. Further, should Contractor request to assign the performance of any obligation arising hereunder to a subcontractor, Contractor expressly provides its consent to the City contracting directly with such proposed subcontractor (or another subcontractor acceptable to the City) for the performance of such work, and to the amendment of this Agreement to reduce the scope and cost accordingly.

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall it inure to the benefit of any third party.

N. Progress Reports:

Contractor shall report to the City Manager or her designee, and shall submit written progress reports identifying, in detail, the extent of work completed, the percentage of project completion, and project status, accompanying any invoice submitted to the City. Contractor shall also provide additional written or verbal progress reports to the City upon request, at any time, without additional charge. The Contractor shall attend conferences and visit the site of the work as may be outlined in the Request for Proposal and at any reasonable time when requested to do so by the City, at no additional charge.


O. Document Correction / Supplements:

Contractor agrees and acknowledges that the terms of the Contract Documents shall be binding upon this Work, notwithstanding the failure of this Agreement or the actions of the City to the contrary. No act by the City (other than a written amendment to these Contract Documents), including but not limited to payment of Contractor's invoices, shall waive the City's ability to later insist on strict compliance with the terms of these Contract Documents. Contractor agrees and acknowledges that it shall execute corrected documents upon request by the City if any error or discrepancy is identified by the City, and shall provide certificates of insurance or other security required hereunder at any time, upon request of the City, notwithstanding the City's failure to previously demand the same.

Agreed to this 13<sup>th</sup> day of December, 2021

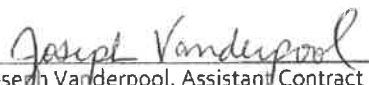
City of DeKalb

Contractor

  
City Manager/Manager

  
Gayle Newton, Contract Sales Manager

  
Executive Assistant

  
Joseph Vanderpool, Assistant Contract Sales Manager

## **Exhibit E: Insurance Requirements:**

### **1. All Contractors and All Contracts.**

Contractor shall provide any and all insurance required under any applicable law, regulation, statute or ordinance, including but not limited to workers' compensation insurance, unemployment insurance, automobile liability insurance and other legally required insurance. Contractor shall produce a certificate evidencing current coverage, upon request from the City. Contractor shall indemnify and hold harmless the City from any and all liability, damage, cost or expense which the City may incur or be liable to pay as a result of any and all accidental injuries or damages suffered by the Consultant or its employees (in addition to any other required indemnification or insurance from Consultant).

### **2. Certificates and General Conditions:**

Unless otherwise indicated herein, any certificate of insurance shall further indicate that the City is additional *primary* insured on such policy of insurance, shall indicate that such policies shall not have any right of subrogation against the City or the City's insurers, and shall indicate that said policy shall not be cancelled or revoked except after the provision of not less than thirty (30) days notice to the City. Contractor shall maintain said policy in full force and effect for the duration of this Agreement, and shall periodically provide updated certificates of insurance to evidence continuing coverage in compliance herewith. For purposes of this Agreement and insurance provided hereunder, the "City" shall include the City of DeKalb, its employees, appointed and elected officers, its committees, its attorneys, and all corporate bodies that exist as a subsidiary to the City.

### **3. Comprehensive General Liability Coverage Requirements.**

Unless this Section 3 of Exhibit E is clearly marked out as being inapplicable, Contractor shall also be required to provide the City with a Certificate of Insurance, in a form and from an issuer acceptable to the City, indicating that the Contractor has obtained and maintains comprehensive general liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00) per person / Two Million Dollars (\$2,000,000.00) per occurrence. This insurance shall include independent contractors' protective liability, products and completed operations broad form property damage coverage. The completed operations and products liability coverage shall be maintained for at least two years after final payment. The coverage shall also include contractual liability insurance coverage for the Contractor's obligations to indemnify and hold harmless the City and the City Indemnitees.

### **4. Automobile Insurance Coverage:**

Unless this Section 4 of Exhibit E is clearly marked out as being inapplicable, Contractor shall also be required to provide the City with a Certificate of Insurance, in a form and from an issuer acceptable to the City, indicating that the Contractor has obtained and maintains comprehensive automobile liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00) per person / Two Million Dollars (\$2,000,000.00) per occurrence. This policy shall include coverage for all owned, hired and non-owned automobiles used in furtherance of this Agreement.

### **5. Professional Liability Insurance Coverage / Errors & Omissions Insurance Coverage:**

Unless one or more subsections of this Section 5 of Exhibit E is clearly marked out as being in applicable:

A. Professional Liability / Malpractice: Contractor shall also be required to provide the City with a Certificate of Insurance, in a form and from an issuer acceptable to the City, indicating that the Contractor has obtained and maintains professional liability or malpractice insurance with policy limits of not less than One Million Dollars (\$1,000,000.00) per person / per occurrence. Said policy need not identify the City as additional primary insured.

B. Errors & Omissions Insurance Coverage: Contractor shall also be required to provide the City with a Certificate of Insurance, in a form and from an issuer acceptable to the City, indicating that the Contractor has obtained and maintains errors & omissions insurance with policy limits of not less than

One Million Dollars (\$1,000,000.00) per person / per occurrence. Said policy need not identify the City as additional primary insured.

**6. Indemnification.**

The policy limits, availability or inavailability of insurance coverage or the applicability of claims, defenses or limitations based upon applicable law (including but not limited to the Illinois Worker's Compensation Act or similar laws or statutes) shall in no way limit the Contractor's obligation to indemnify and hold harmless the City from any claims for damage, liabilities or other costs arising out of or relating to the Contractor's work or this Agreement.

**7. Additional Insurance Requirements.**

Contractor shall also be required to provide the following insurance:  
Please see attached insurance documents

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**EACH CERTIFICATE OF LIABILITY INSURANCE SHALL REFERENCE THE SPECIFIC BID NUMBER AND PROJECT DESCRIPTION IN THE ADDITIONAL INSURED FIELD, AND MUST BE PROVIDED DIRECTLY TO THE CITY REPRESENTATIVE.**

## **Exhibit F: Description of “the Work”**

This project consists of the provision of the following Work:

### **Purchase of Unleaded Gasoline and Diesel Fuel**

**OVERVIEW AND PURPOSE** – The bid specifications provided herein describe the minimum specifications needed in order to permit prospective qualified vendors the opportunity to bid on a two (2) year (January 1, 2022, to December 31, 2023) for the purchase and delivery of no-lead gasoline and diesel fuel to the above ground storage facilities at the City of DeKalb Public Works Department, 1316 Market St., DeKalb, Illinois 60115. In addition, fuel may also be delivered to 2200 Pleasant Street, DeKalb, Illinois, 60015 and/or 1825 Pleasant St., DeKalb, Illinois, 60115.

**DELIVERY** – Delivery should be Freight on Board (F.O.B.) to the location stated herein. All deliveries shall be made within twenty-four (24) hours after notice to deliver, sooner in emergencies.

### **CITY PROPERTY**

All underground tanks, pipes, and pipe fittings, as well as the pumps with indicating meters, are the property of the City of DeKalb. The City of DeKalb has three underground storage fuel tanks: One 10,000-gallon diesel tank, one 12,000-gallon diesel tank, and one 12,000-gallon gasoline tank. The city's contracted transit provider has one 10,000-gallon diesel tank.

#### **1316 Market St. – Public Works Garage**

One (1) – 10,000-gallon diesel tank

One (1) – 12,000 gasoline tank

#### **2200 Pleasant Street – Airport Maintenance Building**

One (1) – 12,000-gallon diesel tank

#### **1825 Pleasant Street – Contracted Transit Service Provider (Transdev Services, Inc.)**

One (1) – 10,000-gallon diesel tank

**DESCRIPTIVE LITERATURE** – Bidders shall submit specifications sheets and Material Safety Data Sheets describing the product to be furnished under this contract. Any bid which is not accompanied by descriptive literature may be rejected.

**PRICE-** All quotes submitted shall be based on a plus (+) \$ or minus (-) \$ the low posting rack price per gallon for no-lead gasoline and diesel fuel as published in Oil Price Information Service Product Prices listing for the Rockford market.

The low posting price for 87 Octane unleaded gasoline shall be derived from the 87 Octane unleaded column of the Oil Price Information Service Listing.

Likewise, the price for winter blend diesel fuel shall be computed as one-half of the low posting price for the additive having a cold filter plugging point of -15° plus one-half of the low posting price for #2 D-S15.

Price increases and decreases will be accepted only on the day of delivery and will be no more than the change in Oil Price Information Service low base price on the day of delivery. Oil Price Information Service used for the day of delivery should be based on the market date and not the publication date.

Proof of Oil Price Information Service publication prices must be furnished for the most recent date available. The successful bidder shall supply the City of DeKalb with a copy of the OPIS daily low pricing (Rockford) for all fuels purchased during the term of the contract and must be included with all invoices for the date the order is placed. The City reserves the right to correct any invoice which does not reflect current Oil Price Information Service prices as defined above.



#### FUEL USED – 2020 & 2021

	Diesel Gals.	Unleaded Gals.
2020	170,087	87,073
2021	159,713 YTD	79,096 YTD

These are references only and should not be construed as either minimum or maximum quantities.

**PHYSICAL AND CHEMICAL REQUIREMENT-** All gasoline standards are to be measured by Road Octane Rating (Research Octane plus Motor Octane divided by 2) and shall meet or exceed the following requirements which are consistent with the efficient and effective operation of the City's fleet of vehicles and equipment.

No-lead Fuel                      87 Octane Rating Minimum, Reformulated  
10% Maximum Ethanol

**#2 Grade Diesel Fuel**

Maximum Sulphur content 0.05%  
Cetane number minimum 45  
Must contain a lubricity additive that passes the SLBOCLE test  
Cloud point to a maximum of     10 Summer  
   -15° Winter  
Must contain Biocide to maximum recommended levels  
Detergent additives that meet Cummins L10 Superior Rating  
Water Dispersant to 200 P.P.M.

The winter diesel fuel shall be composed of #2 grade with diesel fuel with additive having a cold filter plugging point of -15 degrees with the following detailed diesel grade fuel specifications:

**#2 Grade Diesel Fuel**

Maximum Sulphur content 0.05%  
Cetane number minimum 45  
Cloud Point -15°  
Must contain a lubricity additive that passes the SLBOCLE test  
Cloud point to a maximum of     10 Summer  
   -15° Winter  
Must contain Biocide to maximum recommended levels  
Detergent additives that meet Cummins L10 Superior Rating  
Water Dispersant to 200 P.P.M.

All gasoline and diesel fuel must be free of any suspended material and any trace of water. The City of DeKalb will not accept quotes on gasoline containing methanol. Vendors shall supply data using latest ASTM methods on their distillation, supply data using latest ASTM methods on their distillation, potential gum, oxygen stability, corrosion, and percent of Sulphur. Bids shall be accompanied by specifications of product quoted and should indicate the brand and trade name under which it is sold. (Product must be the same as is sold by the vendor through his wholesale outlet.)

Unless otherwise noted, all services, materials, labor, knowledge, skill, expertise, or other resources required to lawfully complete the Project in accordance with all applicable regulations and these Contract Documents shall be provided exclusively by Contractor.



### Exhibit G: Project Checklist

	Yes	No
Attended Pre-Bid Meeting		
Timely Submitted Bid		
Bid Sealed and Properly Labeled		
All Pages Submitted		
Bid Bond Required?		
Bid Bond Submitted		
Date of Bid Opening:		
Date of Bid Award:		
Selected Bidder:		
Date of Bidder Notification:		
Selected Bidder Acknowledged Bid Award (Date: )		
Subcontractors identified and authorized		
Contract Signature:		
Bidder Provided Signed Contract within 5 days		
Pre-Performance Items:		
Performance Security Required?		
Performance Security Provided (prior to start of work)		
Certificates of Insurance Provided (prior to start of work)		
Pre-Performance/Pre-Delivery Meeting Conducted		
Pre-Payment Items:		
Lien Waivers Received		
Prevailing Wage Records Received		
City Punchlist Approval Received		
Warranty, Retention or Maintenance Bond Required?		
Warranty, Retention or Maintenance Bond Received		
Warranty, Retention or Maintenance Bond Period Close Reminder Docketed? <sup>1</sup>		

Warranty/Retention/Maintenance Bond Instructions:

<sup>1</sup> It is recommended to docket a reminder for this deadline at least 60 days prior to the deadline.

## **Exhibit H: Subcontractor Listing**

Any subcontractors that are proposed to be utilized in the performance of this Agreement, either as subcontractors or materialmen, shall be expressly identified below. Attach additional pages if necessary.

**#1:**

**Subcontractor or Materialman Name:**

**Address:**

**Telephone Number:**

**Email Address:**

**Primary Contact Person:**

**Primary Contact Cellular Telephone:**

**Attach a List of Five References for Subcontractor (See Section 3.13):**

**Detailed description of services to be offered by this Subcontractor or Materialman:**

**#2:**

**Subcontractor or Materialman Name:**

**Address:**

**Telephone Number:**

**Email Address:**

**Primary Contact Person:**

**Primary Contact Cellular Telephone:**

**Attach a List of Five References for Subcontractor (See Section 3.13):**

**Detailed description of services to be offered by this Subcontractor or Materialman:**

**Exhibit I: City Punchlist and Acceptance Notice**

Prior to final payment for project, this document shall be completed to identify: 1) any punchlist or corrective items identified that must be completed prior to final payment; and, 2) completion of all such items and approval, by the City Representative, of this project for final payment.

**Punchlist items for correction:**

[illegible]

**Date of Punchlist Item Completion and Project Completion:**

(Note: the following day shall serve as the first day of the warranty period for this project).

**City Representative Certification:**

I, \_\_\_\_\_ (City Representative) have reviewed this project and determined that the Work, as defined therein, has been completed in accordance with the requirements of the Contract Documents, that as of the date of this Certification, all identified punchlist items have been satisfied and corrected to my satisfaction, and that this project is otherwise ready for final payout.

---

<b>Signature</b>	<b>Date</b>
------------------	-------------

**Contractor Certification:**

I, \_\_\_\_\_ (Contractor's Representative) have reviewed this project and determined that the Work, as defined therein, has been completed in accordance with the requirements of the Contract Documents, that as of the date of this Certification, all identified punchlist items have been satisfied and corrected to the City's satisfaction, and that this project is otherwise ready for final payout.

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<b>Signature</b>	<b>Date</b>
------------------	-------------

## **Exhibit J: Form of Bid Addendum**

### **Bid Addendum:**

Name of Project: City of Dekalb - Vehicle Fuel Bidding

General Description of Project: Request for Supply and Delivery of Gasoline and Diesel Fuel

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Website Link: \_\_\_\_\_

Date of Addendum: Add 1: 11/15, Add 2: 11/17, Add 3: 11/18

Description:



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/31/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  
Lupke Rice Insurance  
127 W. Berry Street, Ste 500  
Fort Wayne IN 46802

CONTACT NAME: Cindy Surfus

PHONE (A/C, No. Extn): 260-424-4150

FAX (A/C, No.): 260-424-4187

E-MAIL ADDRESS: csurfus@lupkerice.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Crum &amp; Forster Specialty Insurance Company

44520

INSURER B: Ohio Security Insurance Company

24082

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED  
Petroleum Traders Corporation  
P.O. Box 2357  
Fort Wayne IN 46801

PETRTRA-01

## COVERAGES

CERTIFICATE NUMBER: 1871383782

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE		ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	Y	Y	EPK-136804	9/1/2021	9/1/2022	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER						GENERAL AGGREGATE \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC						PRODUCTS - COMPROP AGG \$ 2,000,000
	OTHER						\$
A	AUTOMOBILE LIABILITY	Y	Y	EPK-136804	9/1/2021	9/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
							\$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			EFX-118749	9/1/2021	9/1/2022	EACH OCCURRENCE \$ 10,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB CLAIMS-MADE						AGGREGATE \$ 10,000,000
	DED <input checked="" type="checkbox"/> RETENTIONS 0						Auto Sublim \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y	Y	XWS(22) 59 08 94 51	9/1/2021	9/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Transportation Pollution			EPK-136804	9/1/2021	9/1/2022	Pollution Each Claim \$1,000,000 Pollution Deductible \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

INFORMATIONAL

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**PETROLEUM TRADERS  
CORPORATION**

PO Box 2357  
Fort Wayne, IN 46801-2357  
888-637-7661

November, 22, 2021

City of Dekalb, IL  
Public Works Water Division  
1216 Market Street  
Dekalb, IL 60115

Re: Certificate of Insurance

To Whom It May Concern:

In the City of Dekalb, fuel bid, it asks for a certificate of insurance with City of Dekalb named as additional insured. It is Petroleum Traders Corporation's practice to only have a company listed as "additional insured" if we are awarded their bid. Therefore, if we are notified we are awarded any of the City of Dekalb fuel bid, we will be more than happy to provide a certificate naming you as additional insured.

Thank you for your understanding.

*Gayle Newton*

Gayle Newton,  
Contract Sales Manager

Rockford, IL OPIS CONTRACT BENCHMARK Daily 11/15/2021  
 \*\*OPIS Gross CBOB Ethanol 10% RVP 9 Prices\*\*

	Terms	Unl	Mid	Pre
Cenex	b 1-10	2.3965	-- --	-- --
Shell	b 125-3	2.4195	2.7260	3.0819
BP	b 125-3	2.4045	2.7275	3.0055
Citgo	b 1-10	2.3991	2.6163	3.0002
Marathon	u N-10	2.3545	2.5712	3.0045
Marathon	b 1-10	2.3960	2.5980	3.0020
XOM	b 125-3	2.3950	2.6482	3.0183
PSX	b 1-10	2.4105	2.6428	3.0065
Contract Low		2.3545	2.5712	3.0002
Contract High		2.4195	2.7275	3.0819
Contract Average		2.3970	2.6471	3.0170
Cont Branded Low		2.3950	2.5980	3.0002
Cont Branded High		2.4195	2.7275	3.0819
Cont Branded Avg		2.4030	2.6598	3.0191
Cont Unbranded Low		2.3545	2.5712	3.0045
Cont Unbranded High		2.3545	2.5712	3.0045
Cont Unbranded Avg		2.3545	2.5712	3.0045

Rockford, IL OPIS CONTRACT BENCHMARK Daily 11/15/2021  
 \*\*OPIS Gross No. 2 Distillate Prices\*\*

	Terms	LS	HS	ULS
Cenex	b 1-10	-- --	-- --	2.4599
BP	b 125-3	-- --	-- --	2.4704
Citgo	b 1-10	-- --	-- --	2.4570
Marathon	u N-10	-- --	-- --	2.4040
Marathon	b 1-10	-- --	-- --	2.4333
Growmark	u N-10	-- --	-- --	2.4106
XOM	b 125-3	-- --	-- --	2.4635
PSX	b 1-10	-- --	-- --	2.4585
Contract Low		-- --	-- --	2.4040
Contract High		-- --	-- --	2.4704
Contract Average		-- --	-- --	2.4447
Cont Branded Low		-- --	-- --	2.4333
Cont Branded High		-- --	-- --	2.4704
Cont Branded Avg		-- --	-- --	2.4571
Cont Unbranded Low		-- --	-- --	2.4040
Cont Unbranded High		-- --	-- --	2.4106
Cont Unbranded Avg		-- --	-- --	2.4073

Rockford, IL OPIS CONTRACT BENCHMARK Daily 11/15/2021  
 \*\*OPIS Gross No. 2 Red-Dyed Distillate Prices\*\*

	Terms	LS	ULS
Cenex	b 1-10	-- --	2.4639
BP	b 125-3	-- --	2.4754
Citgo	b 1-10	-- --	2.4610
Marathon	u N-10	-- --	2.4090
Marathon	b 1-10	-- --	2.4384
Growmark	u N-10	-- --	2.4151
Contract Low		-- --	2.4090
Contract High		-- --	2.4754
Contract Average		-- --	2.4438
Cont Branded Low		-- --	2.4384
Cont Branded High		-- --	2.4754
Cont Branded Avg		-- --	2.4597
Cont Unbranded Low		-- --	2.4090
Cont Unbranded High		-- --	2.4151

Cont Unbranded Avg -- -- 2.4121

Rockford, IL OPIS CONTRACT BENCHMARK Daily 11/15/2021  
\*\*OPIS Gross Ultra Low Sulfur No. 1 Prices\*\*

	Terms	ULS
BP	b 125-3	2.9104
Marathon	u N-10	2.8985
Marathon	b 1-10	2.9328
Contract Low		2.8985
Contract High		2.9328
Contract Average		2.9139
Cont Branded Low		2.9104
Cont Branded High		2.9328
Cont Branded Avg		2.9216
Cont Unbranded Low		2.8985
Cont Unbranded High		2.8985
Cont Unbranded Avg		2.8985

Chicago, IL OPIS CONTRACT BENCHMARK Daily 11/15/2021  
\*\*OPIS Gross B2 SME Prices\*\*

	Terms	ULS No.2	ULS2 RD	ULS2 WNT	ULS2D WNT
Marathon	u N-10	2.3665	2.3715	2.4370	2.4420
Marathon	b 1-10	2.3955	2.4005	2.4667	2.4717
Contract Low		2.3665	2.3715	2.4370	2.4420
Contract High		2.3955	2.4005	2.4667	2.4717
Contract Average		2.3810	2.3860	2.4519	2.4569
Cont Branded Low		2.3955	2.4005	2.4667	2.4717
Cont Branded High		2.3955	2.4005	2.4667	2.4717
Cont Branded Avg		2.3955	2.4005	2.4667	2.4717
Cont Unbranded Low		2.3665	2.3715	2.4370	2.4420
Cont Unbranded High		2.3665	2.3715	2.4370	2.4420
Cont Unbranded Avg		2.3665	2.3715	2.4370	2.4420





## **PETROLEUM TRADERS CORPORATION**

PO Box 2357  
Fort Wayne, IN 46801-2357  
(260) 432-6622

### **References**

**City of Rockford, IL**  
523 South Central Avenue,  
Rockford, IL 61104  
Contact: Mark Kalousek  
Phone: 815-980-1703  
Email: [mark.kalousek@rockfordil.gov](mailto:mark.kalousek@rockfordil.gov)

**Lake County Forest Preserves**  
19808 West Grand Avenue  
Lindenhurst, IL 60046  
Contact: Miles Wright  
Phone: 847-968-3375  
Email: [mtwright@lcfpd.org](mailto:mtwright@lcfpd.org)

**City of Aurora, IL**  
720 N Broadway Ave  
Aurora, IL 60505  
Contact: Erik Meraz  
Phone: 630-256-3662  
Email: [emeraz@aurora-il.org](mailto:emeraz@aurora-il.org)

**Kane County, IL**  
41W011 Burlington Road  
Saint Charles, IL 60175  
Contact: Gary Voss  
Phone: 630-816-9706  
Email: [vossgary@co.kane.il.us](mailto:vossgary@co.kane.il.us)

**Mchenry County, IL**  
2200 N Seminary Ave  
Woodstock, IL 60098  
Contact: Rob Richardson  
Phone: 815-529-9233  
Email: [rrichardson@co.mchenry.il.us](mailto:rrichardson@co.mchenry.il.us)

# Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

## Bid Bond

### CONTRACTOR:

(Name, legal status and address)

Petroleum Traders Corporation  
7120 Pointe Inverness Way  
Fort Wayne, IN 46804

### SURETY:

(Name, legal status and principal place of business)

The Hanover Insurance Company  
440 Lincoln Street  
Worcester, MA 01653

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

### OWNER:

(Name, legal status and address)

City of Dekalb, IL  
1216 Market Street  
Dekalb, IL 60115

BOND AMOUNT: \$ \$15,000

### PROJECT:

(Name, location or address, and Project number, if any)

Supply and Delivery of approximately 80,000 gallons of gasoline and 160,000 gallons of diesel fuel.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 24 day of November 2021

  
(Witness) Amanda Durnell

  
(Witness) Karissa A. Storrs

Petroleum Traders Corporation

(Principal)

(Seal)

By:

(Title) Gayle Newton, Contract Sales Manager

The Hanover Insurance Company

(Surety)

(Seal)

By:

(Title) Deborah L. Burton, Attorney-in-Fact



**THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA**

**POWER OF ATTORNEY**

**THIS Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.  
KNOW ALL PERSONS BY THESE PRESENTS:**

That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, (hereinafter individually and collectively the "Company") does hereby constitute and appoint, **Deborah L. Burton**

Of: Louisville, KY

each individually, if there be more than one named, as its true and lawful attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States any and all surety bonds, recognizances, undertakings, or other surety obligations. The execution of such surety bonds, recognizances, undertakings or surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company, in their own proper persons. Provided however, that this power of attorney limits the acts of those named herein; and they have no authority to bind the Company except in the manner stated and to the extent of any limitation stated below.

Any such obligation in the United States, not to exceed Twenty Million and No/100 (\$20,000,000) in any single instance

That this power is made and executed pursuant to the authority of the following Resolutions passed by the Board of Directors of said Company, and said Resolutions remain in full force and effect

Surety Bond Number: Bid Bond  
Principal: Petroleum Traders Corporation  
Obligee: As Per Bid Bond Form

**RESOLVED.** That the President or any Vice President, in conjunction with any Vice President, be and they hereby are authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as it acts, to execute and acknowledge for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons.


**RESOLVED:** That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile. (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America and affirmed by each Company on March 24, 2014)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 19th day of July, 2018.

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
Bryan J. Salvendy, Executive Vice President

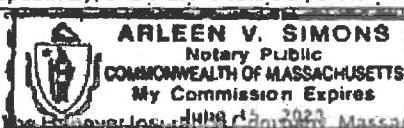
THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
James H. Kawlecki, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss



On this 19<sup>th</sup> day of July, 2018 before me came the above named Executive Vice President and Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the




  
Arleen V. Simons, Notary Public  
My Commission Expires June 15, 2023

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 24 day of November 2021

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
Carrick A. Bligh, Vice President

CERTIFIED COPY

141-0857SP (08/2018)



Illinois Department of Transportation

## C4 Petroleum Transport, Inc.

is hereby certified as a  
**Disadvantaged Business Enterprise**

This certificate is valid under current firm ownership  
and operational control only and supersedes any  
authorization or listing previously issued.

Handwritten signature of Orner M. Osman in blue ink.

Orner M. Osman, P.E.  
Acting Secretary  
Illinois Department of Transportation

Handwritten signature of Pamela R. Simon in blue ink.

Pamela R. Simon  
Director  
Office of Business & Workforce Diversity

Effective the 19<sup>th</sup> day of November 2019

## Colonial Pipeline Company

### PRODUCT SPECIFICATIONS

#### SPECIFICATIONS FOR FUNGIBLE 15 ppm SULFUR DIESEL FUEL (N) CONTAINING UP TO 5%

#### RENEWABLE HYDROTREATED DIESEL FUEL GRADE 61

3.22.1

EPA Designation: MVNRLM, Motor vehicle diesel fuel, 15 ppm sulfur

Cancels Previous Issues of Grade 61

PRODUCT PROPERTY	ASTM Test Method	Test Results		Note
		Minimum	Maximum (N)5	
[N]Renewable Fuel (volume %)				
Gravity API	D287, D1298, D4052	30		
Flash Point, °F				
Pensky-Martin	D93	130		
Physical Distillation, °C(°F)	D86			5
50%			Report	
90%		282(540)	338(640)	
End Point			366(690)	
or Simulated Distillation, °C(°F)	D2887			5
50% recovered			Report	
90% recovered		300(572)	356(673)	
End Point			421(790)	
Color ASTM	D1500, D6045		2.5	
Color Visual		Undyed		
Viscosity, cSt @ 40°C (104°F)	D445	1.9	4.1	
Pour Point	D97, D5949, D5950, D5985			2
Cloud Point	D2500, D5771, D5772, D5773			2
Corrosion, 3 hrs. @ 50°C (122°F)	D130		1	
Total Sulfur, ppmwt	D2622, D5453			
	D7039, other		[W]10-11 14	Origin Delivery 3
Cetane Number	D613, D6890, D7170	40		4
Aromatics (Volume %)	D1319		31.7	
or Aromatics by Cetane Index	D976	40		
Ash, wt. %	D482		0.01	
Carbon Residue: Ramsbottom				
on 10% Bottom	D524		0.35	
BS&W, vol. %	D2709			
	or equivalent		< 0.05	
Thermal stability, 90 minutes				
150°C Pad rating,				
DuPont scale			7	
OR				
Thermal stability	D6468			
Y/Green		73%		
W Unit		65%		
OR				
Oxidation stability, mg/100 ml	D2274		2.5	
Haze rating @ 25°C (77°F)	D4176			
	Procedure 2		2	
Nace Corrosion	TM0172	B+ (Origin)		
Electrical				
Conductivity, pS/m @ 21°C (70°F)	D2624		250	

[W] ~~December 2011~~ July 2012

## Colonial Pipeline Company

### PRODUCT SPECIFICATIONS

#### SPECIFICATIONS FOR FURGIBLE 15 ppm SULFUR DIESEL FUEL [N] CONTAINING UP TO 5%

#### RENEWABLE HYDROTREATED DIESEL FUEL GRADE 61

#### 3.22.2

Cancels Previous Issues of Grade 61

#### NOTES:

1. Additive requirements/restrictions - refer to section 3.2.
2. This schedule denotes the fluidity of the distillate at the time and place of origin.

Pour Point – August 1st through March 14th	Maximum: -18°C (0°F).
Pour Point – March 15th through July 31st	Maximum: -12°C (+10°F)

Cloud Point – August 1st through March 14th	Maximum: -9°C (+15°F)
Cloud Point – March 15th through July 31st	Maximum: -7°C (+20°F)

The referee method will be Pour point D97 and Cloud point D2500

3. Origin laboratory certifying sulfur content must qualify the test method used per EPA Performance based testing criteria (see CFR 80.584). The referee test method will be ASTM D5453.

4. Where cetane number by test method D613 is not available, test method D4737A can be used as an approximation.

5. Either physical or simulated distillation can be used. The referee test method will be ASTM D 86.

6. Downstream of Meridian Mississippi May contain up to 5% renewable diesel as defined in section 3.2.7

7. On line #17 may contain up to 5% Bio-Diesel (Colonial Grade 49). Locations affected: Griffin, Macon, South Macon, Americus, North Albany, South Albany, and Bainbridge.

Delivery test results may vary by the smaller of ASTM reproducibility for a given test or any test tolerance as allowed by state or EPA regulations at the point of delivery.

## Mobil Diesel Fuels - Off Road

P1

Handle/Transport in closed or properly vented containers and systems, consistent with all applicable laws.  
Harmful or fatal if swallowed.  
Avoid breathing the vapors and skin contact.  
Do not wash down spills with water. Prevent all spills from reaching water.

### Product Properties

	Ultra Low Sulfur No. 1-D	Ultra Low Sulfur No. 2-D
Color	Red	Red
Cetane No.	40 Min.	40 Min.
90% Distillation, °F Min./Max.	—/660	540/640
Viscosity, cSt @ 40°C. Min./Max.	1.3/2.4	1.9/4.1
Sulfur, ppm	15 Max.	15 Max.
Sulfur, Wt. %	--	--
Lubricity, HFRR, microns	520 Max.	520 Max.
Copper Strip Corrosion, 3 hr @ 60°C	No. 3 Max.	No. 3 Max.
Flash Point, °F	100 Min.	125 Min.
Cloud Point, °F, Summer	-25 Max.	20 Max.
Cloud Point, °F, Winter	-25 Max.	Meets ASTM D975
Carbon Residue (10% bottoms), Wt. %	.15 Max.	.35 Max.
Ash, Wt. %	0.01 Max.	0.01 Max.
Water & Sediment, Vol. %	0.05 Max.	0.05 Max.

### Specifications

Mobil Diesel Fuels meet the following industry specifications:	Ultra Low Sulfur No. 1-D	Ultra Low Sulfur No. 2-D
ASTM D 975	X	X

▲ Back to Top

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11-2006

ExxonMobil Fuels Marketing  
3226 Gallows Rd.  
Fairfax, VA 22037

800 662-4592

Due to continual product research and development, the information contained  
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slightly.

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## Product Information

### ULTRA LOW SULFUR No. 1 AMOCO DIESEL FUEL

#### PRODUCT DESCRIPTION

Ultra Low Sulfur No. 1 (ULS #1) Amoco Diesel Fuel is refined from selected crudes, and is carefully blended to produce a high quality fuel. ULS #1 Amoco Diesel Fuel meets the needs of most automotive, marine and stationary engine applications that require a No. 1 fuel. It also meets EPA on-road requirements for sulfur content.

#### APPLICATION

Ultra Low Sulfur No. 1 Amoco Diesel Fuel is recommended for use in all on- or off-road heavy duty trucks, automotive, transit bus, marine and stationary diesel engine applications requiring a No. 1 diesel fuel.

#### FEATURES

**Lubricity** – ULS #1 Amoco Diesel Fuel is additized to ensure it has the lubricity to protect diesel fuel injection systems.

**Excellent Stability** – ULS #1 Amoco Diesel Fuel has excellent natural stability and is therefore not additized. It can be stored longer than No. 2 Diesel without degradation and gum formation due to oxidation.

**Low Cold Flow Properties** – ULS #1 Amoco Diesel Fuel has naturally occurring low cloud and pour points, which keeps fuel flowing in extremely low temperatures, helping to prevent fuel "gelling" and storage or handling problems.

**Ultra Low Sulfur Content** – ULS #1 Amoco Diesel Fuel contains a maximum of 15 parts per million (ppm) sulfur.

### ULTRA-LOW SULFUR HIGHWAY DIESEL FUEL

(15 ppm Sulfur Maximum)

#### WARNING

*Required* for use in all model year 2007 and later highway diesel vehicles and engines.

Recommended for use in all diesel vehicles and engines.





## *Product Information – Ultra Low Sulfur No. 1 Amoco Diesel Fuel*

<u>PROPERTY</u>	<u>TEST METHOD</u>	<u>LIMIT</u>
Ash, wt. %, max.	D482	0.01
Biodiesel Content, vol.% <sup>(1)</sup>	D7371	0 – 5
Cetane Index, min.	D976	40
Cetane Number, min.	D613	40
Color, ASTM, max.	D1500	2.5
Conductivity @ 20 °C, cu, min.	D2624	50
Copper Corrosion, 3 hrs @122 °F, max.	D130	3
Distillation, °F	D86	
Temp.@ 90%, recovered, max.		550
Flash Point, °F, min.	D93	100
Gravity, °API, min.	D287	37
Lubricity, HFRR @ 60 °C, microns, max.	D6079	520
Pour Point, °F, max. <sup>(2)</sup>	D97	-30
Sulfur, total, ppm, max.	D5453, D7039	15
Viscosity, cSt @ 40 °C	D445	1.3 – 2.4
Water & Sediment, vol.%, max.	D2709	0.05

### Notes

- (1) Varies by region. Biodiesel blendstock conforms to ASTM D6751
- (2) Pour point values vary with region and season. Call Quality & Technical Service for details.

For information on Amoco fuels, contact:  
BP Quality & Technical Service  
Phone: 1-800-841-5255  
BP Naperville Complex  
50 West Warrenville Road  
Naperville, Illinois 60563  
Website: [www.BP.com](http://www.BP.com)  
6/29/2009

## Colonial Pipeline Company

3.17.1

### PRODUCT SPECIFICATIONS SPECIFICATIONS FOR 87 OCTANE INDEX CONVENTIONAL NON-OXYGENATED LOW SULFUR GASOLINE

Cancels Previous Issues of W Grades

This product does not meet requirements for reformulated gasoline, and may not be used in any reformulated gasoline covered area.

#### ALL W GRADE REQUIREMENTS (SEGREGATED AND FUNGIBLE)

Product Property		ASTM Test Method	Test Results		Note
			Minimum	Maximum	
Octane	RON	D2699	Report		
	MON	D2700	82.0		
	(R+M)/2		87.0		
Oxygen Content, weight %		D4815, D5599 GC-OFID			*1
RVP (psi)		D5191			2
<u>Grades</u>					
W0,0W				7.0	
W1,1W				7.8	
W2,2W				9.0	
W3,3W				11.5	
W4,4W				13.5	
W5,5W				15.0	

Heavy Metals are not allowed to be present.

Corrosion inhibitors, gum inhibitors and metal deactivators - Refer to section 3.2.

No additives or corrosion inhibitors containing phosphorus may be used in this gasoline.

The shipment of fuels containing Port Fuel Injector (PFI) and intake valve detergent additives is prohibited.

This is a base gasoline, not for sale to the ultimate consumer.

Any gasoline exhibiting an offensive odor and/or poses a personal health hazard will not be accepted for shipment.

Any gasoline containing more than 0.50 wt. % of dicyclopentadiene will not be accepted for shipment.

The referee method will be based on a gas chromatograph test.

For Helena and Birmingham Delivery Only of W0 and 0W Grades: This fuel may contain oxygenates due to commingling with reformulated gasoline.

April 2005

\* Denotes Change

W Grade Page 1 of 2

## Colonial Pipeline Company

3.17.2

### SPECIFICATIONS FOR 87 OCTANE INDEX CONVENTIONAL NON-OXYGENATED LOW SULFUR GASOLINE

#### PRODUCT SPECIFICATIONS

Cancels Previous Issues of W Grades

#### FUNGIBLE ONLY REQUIREMENTS:

		ASTM Test	Test Results			
Product Property		Method	Minimum	Maximum	Note	
Benzene, vol.%		D3606, D4053		4.9		
Color				Undyed		
Corrosion (Cu) 3 hrs @122°F (50°C)		D130		1		
Corrosion (Ag) 3 hrs @122°F (50°C)		D4814-04b Annex A1		1		
Doctor test		D4952		Negative (sweet)	3	
or						
Mercaptan sulfur, wt.%		D3227		0.002		
Existent Gum mg/100 ml		D381		4		
Gravity °API at 60°F		D287,D1298, D4052	Report			
Oxidation stability-minutes		D525	240			
Phosphorous, gms/gal		D3231		0.004		
Sulfur, wt.%		D2622		0.0150	5,6,7*	
		or equivalent				
Nace Corrosion		TM0172-2001	B+ (Origin)			
<u>Volatility:</u>						
Driveability Index		D4814		See Chart		
Distillation, °C (°F) @ %Evap.		D86				
Vapor/Liquid Ratio (V/L), °C (°F) @ 20					4	
		D2533, D5188				
	Driveability	10 vol%	50 vol%	90 vol%	End Pt.	V/L
<u>Grades</u>	<u>Index</u>	<u>Max</u>	<u>Min</u> <u>Max</u>	<u>Max</u>	<u>Max</u>	<u>Min</u>
W0,W1,W2	1250	70(158)	77(170)    121(250)	190(374)	221(430)	56(133)
W3	1230	60(140)	77(170)    116(240)	185(365)	221(430)	51(124)
W4	1220	55(131)	77(170)    113(235)	185(365)	221(430)	47(116)
W5	1200	50(122)	77(170)    110(230)	185(365)	221(430)	41(105)

#### NOTES (Apply to Fungible and Segregated):

1. Non-oxygenated is defined as having no more than 0.35 wt. % oxygen. The use of non-hydrocarbon blending components in these grades is prohibited.
2. For products blended to meet EPA or state imposed summer VOC requirements, tests must be performed in accordance with the procedures described in 40 CFR, Part 80.
3. Mercaptan Sulfur waived if fuel is negative by Doctor test.
4. Computer, Linear and Nomogram methods may be used to determine V/L value. D2533 will be the referee method.
5. All W0 and OW must meet 0.0080 wt. % (80 ppm) maximum sulfur content.
6. Refer to 40 CFR Part 80.195 (d)(2). Alternative sulfur test method, ASTM D 5453, may be used according to federal and state regulations.
7. Sulfur maximum of 0.0080 wt. % for all W grades effective front 35th cycle of year 2005.

April 2005

\* Denotes Change

W Grade Page 2 of 2

**SPECIFICATIONS FOR DENATURED FUEL ETHANOL**

Product 83 (1) (2) (3) (4) (5)

Specification Points	ASTM Method	Shipments	
		Min.	Max.
Octane	D-2699 D-2700	114	
Sulfur, ppm	D-5453		10 (5)
Benzene, vol%	D7576-10		0.06 (5)
Olefins, vol%	D7347-07e1		0.5 (5)
Aromatic Hydrocarbons, vol%	D7576-10		1.7 (5)
Acidity (as acetic acid), mass% (mg/L)	D-1613-96		0.007 (56)
Appearance		Clear and Bright	
Copper content, mg/kg, max	D-1688-95 (modified)		0.1
Denaturant content, vol%		1.96	5.00
Nonvolatile matter, mg/100 ml	D-1353		5
Ethanol content, vol%	D-5501-94(1998)e1	94.36	
Inorganic Chloride content, mass ppm (mg/L) max	D-512 (modified)		40 (32)
Methanol, vol%	(GC)		0.5
Solvent-washed gum, mg/100ml	D-381-00, air jet apparatus		5.0
pHe	D-6423-99	6.5	9.0
Water content, mass % (vol%)	E-203-96 or E-1064-00		1

- (1) Product 83 is a terminal inventory control code, not a pipeline product code.
- (2) Product may not be denatured, wholly or partially, with MTBE.
- (3) In addition to above KMEP specifications, product must meet ASTM D-4806 latest revision.
- (4) This specification is for community ethanol tankage intended for terminal rack blending. Neat or blended ethanol is not pumped in KMEP's pipeline system.
- (5) California terminals only.