



INVITATION TO BID

FOR

**Bulk Fuel
#23-003-IDS-001**

Bid Opening: Thursday, December 1, 2022 at 1:30pm (local time)

FOR INFORMATION, CONTACT:
Tiffany Matson, Contract Specialist
City of Anacortes
contracts@cityofanacortes.org
904 6th Street
PO Box 547
Anacortes, WA 98221

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INVITATION TO BID

Sealed bids will be received by the City of Anacortes (“City”) until 1:30pm on Thursday, December 1, 2022 at the office of the Clerk-Treasurer, Municipal Building, P.O. Box 547, 904 6th Street, Anacortes, WA 98221, for the purchase and delivery of **Bulk Fuel**, contract #23-003-IDS-001. Bids are to be submitted only on the PROPOSAL FORM provided. Bids must be submitted in a sealed envelope with the outside clearly marked with the bid opening date and time, the project name and number as it appears in this advertisement, plus the name and address of the bidder. Bids shall be addressed to the City Clerk, City of Anacortes, and 904 6th Street, PO Box 547, Anacortes, WA 98221. Proposals will be publicly opened at Anacortes City Hall and read aloud following bid closing. No bid security is required.

The City of Anacortes is soliciting bids for the purchase and delivery of Bulk Fuel for a contract term of one year from January 1, 2023-December 31, 2023, with an option to extend the contract on a year-to-year basis up to four (4) additional years with no change in rates and pricing.

Project Documents: Specification, Conditions, Addenda are available through the City of Anacortes website at www.anacorteswa.gov/Bids.aspx.

All bidding and performance shall be performed in compliance with the Invitation to Bids and any addenda issued thereto. Bids shall constitute offers to the City of Anacortes which shall be binding for one hundred eighty (180) days from the date of bid opening. The City of Anacortes reserves the right to reject any bid, any portion of any bid and/or to reject all bids. The City of Anacortes further reserves the right, but without obligation, to waive informalities and irregularities.

The contract award will be based upon the price differential plus delivery fees. The total gallon price will be calculated by multiplying the Oil Price Information Service (OPIS) price times the Differential Rate plus the applicable tax. For example, Dyed Ultra Low Sulfur Diesel Fuel w/ Stabilizer with an OPIS rate of 2.0455 multiplied by a differential of 1.14 would equal 2.33187 a gallon.

Separate lines items are provided for Will Call Bulk and Keep-Full Program fuels. The differential rate included for these prices may include supplemental administrative or overhead costs applicable to the circumstances as no surcharge other than the stated delivery fee shall apply.

If a delivery fee applies for bulk fuel deliveries, delivery fee shall be bid on a per trip basis: (1) per trip to the City of Anacortes Water Treatment Plant (WTP) located at 14489 River Bend Road, Mount Vernon, WA 98273, and (2) a per trip basis to maintain a “keep-full program” implemented only during emergency status which requires delivery of fuel to the City’s genset sites within town and WTP. Other than emergency status, bulk fuel requirements will be provided on a Will Call basis. If no delivery fee applies, indicate by writing “\$0.00”.

Fuel Buy Back shall be priced as a percentage of the current rack price at time of buy back. Compensation shall be expressed as a credit on subsequent invoice(s).

Prices under this Bid shall be calculated on the rack prices as of **November 28, 2022 10:00a.m. PST**. Prices are exempt from Federal Excise Tax, and exclusive of all other US, State, and local taxes and Surcharges. All taxes must be listed separately on invoices and exclusive of the differential rates.

The City reserves the right to award the Purchase Contract to the lowest responsive, responsible bidder as it best serves the interest of the City. The Bidder to whom the Purchase Contract is awarded shall execute and return the Contract to the City within ten (10) calendar days from the date the Bidder receives the contract documents. In case of failure of the Bidder to execute the Contract, the Bidder shall be in default, and the City shall have the right to award the Purchase Contract to the next lowest responsive, responsible Bidder.

Title VI: The City of Anacortes, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Questions regarding the Invitation to Bid or Contract documents may be directed to Tiffany Matson, Contract Specialist, at contracts@cityofanacortes.org. Questions regarding specifications may be directed to WiL Ludemann at 360-293-1921 or ludemannw@cityofanacortes.org. A bidder may be required to submit a question in writing. No oral responses to questions by City personnel about the bid will be binding on the City.

CITY OF ANACORTES, WASHINGTON

By Steven D. Hoglund
Steven D. Hoglund, City Clerk-Treasurer

Published: Anacortes American 11/16/2022

SPECIFICATIONS/REQUIREMENTS

1. SUPPLY/SERVICE DESCRIPTIONS:

Bulk Fuel Delivery

Gasoline or diesel fuel delivered and pumped into our perspective bulk fuel and genset tanks located in Anacortes and Mount Vernon, WA as delineated in **Attachment A**. All bulk fuel is to be treated with the appropriate “power service” fuel stabilizer for long term fuel storage. Bulk fuel delivery can range from an estimated 200 gallons for gensets in town to 55,000 gallons at the City’s Water Treatment Plant.

Aged Bulk Fuel Buy Back

The City owns a large 55,000 gallon diesel storage tanks to fuel its standby gensets. The City is constantly monitoring the condition, testing and treating the fuel as well as continually fuel polishing the fuel to extend its life. Regardless, it is foreseeable that the fuel will decrease in its effectiveness and require disposing before it is no longer usable. At the time of buy back of the old fuel the City would replenish the 55,000 gallon tank at the Water Treatment Plant with new treated fuel. The Supplier is permitted to sample and test the fuel to verify the condition of the fuel in response to the City’s request to Buy Back and replenish.

Emergency Situations – Keep Full Service

This service is described as bulk fuel delivery under emergency situations to the locations referenced under Bulk Fuel Delivery described above including the City’s Water Treatment Plant.

Definition of “*emergency situation*” under this Contract and any extensions thereof is as follows:

An emergency situation shall include but not be limited to any circumstance when the City is required to operate any generator(s) to maintain essential function(s) at any of the genset location(s), or otherwise stated, when a generator is employed due to loss of power or additional fuel is necessary to ensure continued operation and avoid loss of city services. In the event of any emergency situation and in recognition of the essential functions provided by the City, Supplier shall provide first priority to (1) genset locations, (2) City’s Water Treatment Plant, and (3) bulk tanks at City Shop.

During emergency snow storms or high wind conditions, the City will employ its City-owned snow removal and heavy construction equipment as necessary to open passage for the Supplier to deliver fuel supplies at City locations.

Keep Full service under emergency situations will be operated manually with scheduled deliveries, or electronic monitors if sustainable under emergency situation.

2. PRICE ESCALATION AND DE-ESCALATION

Because fuel pricing fluctuates from one day to another, the Oil Price Information Service (OPIS) subscription service has become the defacto standard for the basis of establishing fuel contract prices. OPIS regularly collects and reports the fuel prices at the refueling terminals (also referred to as the “Rack”) across the nation. Rack prices will increase or decrease during the life of the contract based upon OPIS Daily “Contract” Average rack prices - ANACORTES correlated to the actual delivery date will serve as the basis for establishing contract fuel prices.

3. SAFETY STANDARDS

The handling of fuel shall comply with all applicable safety laws and standards of the State of Washington and standards established by the United States Department of Transportation, the

United States Department of Labor's Occupational Safety and Health Act (OSHA), accepted industry practices, and City requirements.

4. SECURITY

Some delivery sites may have future security restrictions requiring delivery personnel to pass a criminal background check before access is granted. In such cases, any drivers used to service these accounts must complete the necessary paperwork in order to perform the criminal background check. The customer is to coordinate this activity and provide the Supplier sufficient advance notification of this requirement.

5. NEGLIGENCE

The Supplier assumes all liability and responsibilities for the handling and transportation of the fuel until it has been placed in the storage tank(s). The Supplier shall be responsible for any and all damage to buildings and/or properties caused by delivery trucks, operating personnel and damages or services necessitated by the failure to deliver fuel or the delivery of faulty product and equipment. Any repair or clean up services shall be made at the Supplier's expense and to the satisfaction of the customer. If the Supplier fails to comply with these requirements within a reasonable time, the customer may deem it expedient to repair damage and perform the necessary services at the expense of the Supplier. Should the fuel be negligently unloaded into the wrong tank (i.e. diesel fuel into a gasoline storage tank), the Supplier is responsible for the immediate removal, cleaning and replacement of both products, for any resulting damage, and the loss of revenue.

6. SPILL RESPONSIBILITIES

The Supplier is solely responsible for any and all spills, leaks or releases, which occur as a result of, or are contributed to by the actions of its agents, employees, or subSuppliers. Therefore, the Supplier shall take all measures as required by law to prevent fuel spills (which includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into any land or water). In the event of a fuel spill, leak, or release, the Supplier shall be responsible for the required notifications, containment, clean up, and disposal of the fuel spilled. Should the Supplier fail or refuse to take the appropriate and timely containment, clean up, disposal actions, the customer may do so and the Supplier shall reimburse the customer for all expenses incurred including fines levied by appropriate agencies of federal or local governments. If there are no monies due, the remediation costs shall be the responsibility of the Supplier or submitted as a claim to the bonding company.

7. VOLUME VERIFICATION REQUIREMENTS

To ensure that delivery volumes are accurately calculated, the following shall apply:

- a) Dispensing meters are to be certified by the Washington State Department of Weights and Measures and delivery volumes shall not be temperature corrected.
- b) The City reserves the right to randomly ask for stick readings.
- c) All invoices are to be accompanied with the appropriate volume delivery verification documentation including, but not limited to, a metered delivery ticket, bill of lading as well as a record of before and after delivery readings.

8. ENVIRONMENTAL CONSIDERATIONS

Supplier shall comply with all environmental regulations relevant to the contracted refueling service provided. All Department of Ecology Mobile Transfer rules shall apply.

9. QUALITY

All fuel supplies must meet or exceed the most current ASTM specifications relevant to the fuel type ordered. Unleaded Regular Gasoline shall be rated 87 Octane. Diesel #1 Ultra Low Sulfur Diesel shall be per ASTM D975.

10. DELIVERY

Unless prior approval has been granted and specific arrangements have been made, if the Supplier arrives outside the scheduled delivery hours and is unable to or denied access to making the delivery, the City shall incur no expense and the Supplier assumes all liabilities and responsibility for that attempted delivery. Delivery fees shall be calculated on a per trip basis and not on a per location basis. There shall not be an additional charge for a delivery to an additional site as long as the delivery only requires one truck to make one trip to the City area. This provision applies to Will Call deliveries.

11. EMERGENCY DELIVERIES

Since fuel being purchased with this Supplier serves law enforcement and other critical government services, in case of emergency, priority will be given to the City. Supplier must be equipped and prepared to successfully fulfill an emergency delivery 7 days a week, 24 hours a day. Fees for emergency deliveries will be charged at the rates quoted on the Bid Form.

12. DELIVERY

When fuel is delivered, the Supplier will be required to provide a delivery invoice (bill of lading) to the Purchaser which will be used to verify the Supplier's price with the OPIS rack price average - ANACORTES. Will Call deliveries shall be scheduled by Supplier to be made during normal working hours (8:00 AM to 5:00 PM) unless otherwise specified by the City.

ATTACHMENT A

CITY DELIVERY LOCATIONS

| Equipment Number | Department | Make & Model | Location |
|-------------------|------------|----------------------------|---|
| Anacortes, WA: | | | |
| 1-903 | Police | Generac SD275 | 1218 24 th Street |
| 2-909A | Fire | Generac 92A03625S | Fire Station #1, 1016 13 th St. |
| 6-913 | WD | ONAN 63T59 G-2 | The Point, 4155 San Juan Hill Blvd. |
| 6-935 | WD | Generac CD150 | 2205 37 th Street |
| 6-938 | WD | ONAN NTA855G5 | 301 Blue heron Circle |
| 6-952 | WD | ONAN DGB100 | Police Department, 1218 24 th St. |
| 6-953 | WD | ONAN DGFA150 | Rock Ridge, 2102 Pennsylvania Ave |
| 7-902 | WW trailer | ONAN 40DGBC | WWTP, 500 T Avenue |
| 7-903 | WW trailer | ONAN 40DGBC | WWTP, 500 T Avenue |
| 7-904 | WWLS #16 | ONAN 80DGDA | WWTP, 500 T Avenue |
| 7-905 | WWLS #18 | ONAN 230DFAB | 8071 S March Pt. Rd |
| 7-912 | WWTP | CAT 3508 | WWTP, 500 T Avenue |
| 7-913 | WWLS #15 | ONAN KTA19G2 | 1200 B Avenue |
| 7-914 | WWLS #14 | ONAN NTA855G2 | 2100 Ferry Terminal Rd |
| 7-915 | WWLS #13 | ONAN KTA19G2 | Skyline Cabana |
| 7-917 | WWLS #20 | ONAN 80 DGDA | 9430 S. March Point |
| 7-918 | WWLS #4 | ONAN 35DGBB | 2803 T Avenue |
| 7-919 | WWLS #21 | ONAN 35DGBB | 2712 Fircrest Dr. |
| 7-920 | WWLS #5 | ONAN 100DGDB | 1118 Edwards Way |
| 7-921 | WWLS #12 | ONAN 40DGHD | 103 5 th Street |
| 7-923 | WWLS #17 | ONAN 866031 | 1517 R Avenue |
| 9-902a | Operations | ONAN DGDB 100 | 2201 37 th Street |
| 9-910 | Library | ONAN 250DQDAA | 1220 10 th Street |
| Mount Vernon, WA: | | | |
| 6-966 | WTP | Cat 3512c/SR5 4160volts | WTP, 14489 River Bend Rd, Mount Vernon, WA 98273 |
| 6-967 | WTP | Cat 3512c/SR5 4160volts | WTP, 14489 River Bend Rd Mount Vernon, WA 98273 |
| 6-968 | WTP | Cat 3512c/SR5 4160volts | WTP, 14489 River Bend Rd Mount Vernon, WA 98273 |

TO: **City of Anacortes**
 (City or Owner):

FROM: Bidder: _____

CONTRACT: 23-003-IDS-001

1. GENERAL

The undersigned Bidder, having reviewed the Invitation to Bid (ITB) for the purchase and delivery of Bulk Fuel hereby proposes and agrees, if this bid is accepted, to enter into an agreement with Owner to provide the goods as specified and within the contract time indicated in this bid for an amount computed upon the basis of the goods to be provided at the following prices.

2. LIMITATION OF DAMAGES

The Bidder:

- a) agrees not to bring any Claim against the City or any of its employees, advisers, or representatives for damages in excess of an amount equivalent to the reasonable costs incurred by the Bidder in preparing its Bid for any matter in respect of this ITB, including:
 - I. if the City accepts a non-compliant Bid or otherwise breaches (including breach of material terms) the terms of this ITB; or
 - II. if the Project is modified, suspended, or cancelled for any reason (including modification of the scope of the Project or modification of this ITB or both) or the City exercises any rights under this ITB; and
- b) waives any and all Claims against the City or any of its employees, advisers, or representatives for loss of anticipated profits or loss of opportunity if no agreement is made between the City and the Bidder for any reason, including:
 - I. if the City accepts a non-compliant Bid or otherwise breaches (including breach of material terms) the terms of this ITB; or
 - II. If the Project is modified, suspended, or cancelled for any reason (including modification of the scope of the Project or modification of this ITB or both) or the City exercises any rights under this ITB.

3. BIDDER'S REPRESENTATIVE: The Bidder's Representative identified below is an officer of the company and is fully authorized to represent the Bidder in any and all matters related to its Bid.

4. IRREVOCABLE OFFER PERIOD: The undersigned Bidder understands and acknowledge that the offer submitted as your Bid is firm and irrevocable for one (1) Bulk Fuel from the City's close of business on the Bid Submission Date until 180 days after the Bid Opening Date.

5. BID SCHEDULE

Note: Bid prices for all items, all extensions and total amount of Bid must be shown below.

| Off-Road Bulk Fuel – Will Call | | | |
|--|--|--------------------------|-------------------------------|
| Fuel Type | OPIS Price 11/28/2022, 10:00am PST | Differential Rate | Total Price per Gallon |
| Dyed Ultra Low Sulfur Diesel Fuel w/ Stabilizer @ WTP | \$ | | \$ |
| Dyed Ultra Low Sulfur Diesel Fuel w/ Stabilizer at City Genset Locations in Town | \$ | | \$ |

| Keep-Full Off Road Fueling During Emergency Situations Only | | | |
|---|--|--------------------------|-------------------------------|
| Fuel Type | OPIS Price 11/28/2022, 10:00am PST | Differential Rate | Total Price per Gallon |
| Dyed Ultra Low Sulfur Diesel Fuel w/ Stabilizer @ Water Treatment Plant (WTP) | \$ | | \$ |
| Dyed Ultra Low Sulfur Diesel Fuel w/ Stabilizer @ City Genset Locations in Town | \$ | | \$ |
| Regular Unleaded @ City Shop | \$ | | \$ |
| Ultra Low Sulfur Diesel Fuel w/Stabilizer @ City Shop | \$ | | \$ |

| Aged Bulk Fuel Buy Back | | | |
|--|--|--------------------------|-------------------------|
| Fuel Type | OPIS Price 11/28/2022, 10:00am PST | Differential Rate | PRICE PER GALLON |
| BUY BACK - Off Road Dyed Ultra Low Sulfur | | | . % ** |
| Refuel 55,000 Gallon Tank @ WTP w/ Dyed Ultra Low Sulfur Fuel When Buy Back Fuel is Pumped | \$ | | \$ |

****State as a percentage of the current rack price as of the date pumping occurs**

| Delivery Fees | |
|--------------------------------------|-----------------------|
| Delivery Term | Price Per Trip |
| Will Call - 3 Day Notice | \$ |
| Will Call - > 3 Day Notice | \$ |
| Will Call - ≤ 24-Hour Notice | \$ |
| Emergency Delivery | \$ |

The above quoted rates and prices shall remain in effect during the initial contract period and subsequent option years [4 maximum]. No other surcharges, i.e. fuel surcharges, hazardous cleanup surcharges, etc. shall be allowed unless prior written approval has been granted per a written change order signed by the Supplier and City.

6. ADDENDUMS

Bidder acknowledges review of all Addenda through No. _____

NOTE: Failure to acknowledge any issued Addenda may render proposal non-responsive and therefore void. It is the sole responsibility of the Bidder to learn of Addendum, if any. Such information may be obtained from the City of Anacortes website: <https://www.anacorteswa.gov/Bids.aspx>.

7. BIDDER INFORMATION

This Bid is submitted on and by:

Company Name: _____

Signature: _____

Name (Print): _____

Title: _____

Email: _____

Date: _____

Address of Bidder: _____

Telephone No.: _____

8. NON-COLLUSION DECLARATION

By signing the signature page of this proposal, I declare, under penalty of perjury under the laws of the United States, that the following statement is true and correct:

1. That my firm, association or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.

9. AUTHORIZATION

I, _____ (sign and print name) authorize the above bid and I have the authority to enter into contracts on behalf of the business or other entity I represent.

END OF SECTION

1. USE AND COMPLETION OF CITY'S PROPOSAL SHEETS

A. Bidder's Proposal

Each Bidder must bid exactly as specified on the Invitation to Bid (hereinafter referred to as bid) sheets. All bids must remain open for acceptance by the City for a period of at least 180 calendar days from the date of opening of the bids.

B. Alterations of Proposals Not Allowed

Proposals that are incomplete or conditioned in any way, containing alternatives or items not called for in the General Provisions and Specifications, or not in conformity with law may be rejected as non-responsive. The City cannot legally accept any proposal containing a substantial deviation from these Specifications.

C. Filling Out City Bid Forms

All proposals must be made upon the BID PROPOSAL in the Invitation to Bid and the prices must be stated in figures either written in ink or typewritten. No proposal having erasures or interlineations will be accepted unless initialed by the Bidder in ink.

2. CLARIFICATION OF PROPOSAL FOR BIDDER

It is the responsibility of all offerors to examine the entire Invitation to Bid package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a proposal. Negligence in preparing a proposal confers no right of withdrawal after due date and time. If a prospective Bidder has any questions concerning any part of the Bid/Proposal, they may submit an email request to contracts@cityofanacortes.org no later than 9:00am PST on November 23, 2022. Any interpretation of the Bid will be made by an Addendum duly issued and posted at www.anacorteswa.gov/Bids.aspx. Such addendum must be acknowledged by signing the addendum section of the bid. Such acknowledgement must be received by the City prior to the bid opening. The City will not be responsible for any other explanation or interpretation of the bid documents.

3. BID SECURITY - Not Required.

4. DELIVERY OF PROPOSALS TO THE CITY

All bids must be delivered in the manner specified herein. Bids submitted by Bid closing date and time for public reading must include:

- ☐ **Bid Proposal Form (3 pages)** - completed signed by an authorized representative

Sealed Bid proposals must be delivered to:

City Clerk
904 6th Street
PO Box 547
Anacortes, WA, 98221-0547

Proposals must be in a sealed, properly addressed envelope with the name of the Bidder and project/bid number and description of the project plainly written on the outside of the envelope, prior to the scheduled time and date stated in the Invitation to Bid. City offices are not open for special mail or other delivery on weekends and City holidays. The City shall assume no responsibility for delay in U.S. mail or other delivery service or for bids delivered to City offices other than the specified City Office. Bids received after the time stated in the bid will not be accepted and will be returned, unopened, to the Bidder. There will be no exceptions or waivers of this requirement.

5. WITHDRAWAL OF BID

A. Prior to Bid Opening

Any Bidder may withdraw their bid prior to the scheduled bid opening time by delivering a written notice to the City Clerk. The notice may be submitted in person or by mail; however, it must be received by the City Clerk's Office prior to the time for bid opening.

B. After Bid Opening

No bidder will be permitted to withdraw their bid after the time of bid opening, as set forth in the Invitation to Bid, and before the actual award of the Contract, unless the award of Contract is delayed more than one hundred eighty (180) calendar days after the date set for bid opening. If a delay of more than 180 calendar days does occur, then the Bidder must submit written notice withdrawing his/her bid to the City Clerk.

6. OPENING OF BIDS

Shortly after the deadline specified for submitting bids, the City shall open all accepted bids, read aloud and record only the name of each Bidder and the Total Bid Price, irrespective of any irregularities or informalities in such Proposal. The public opening of bids will also take place live through Zoom on December 1, 2022, shortly after the bid closing time. (US and Canada). If no bids are received the Zoom meeting will be cancelled.

To Join Zoom Meeting: <https://us02web.zoom.us/j/86904146041>

Meeting ID: 869 0414 6041

One tap mobile

+12532158782,,86904146041# US (Tacoma)

+17193594580,,86904146041# US

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 719 359 4580 US

+1 346 248 7799 US (Houston)

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 929 436 2866 US (New York)

+1 301 715 8592 US (Washington DC)

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 360 209 5623 US

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

+1 646 931 3860 US

+1 689 278 1000 US

Find your local number: <https://us02web.zoom.us/j/kdLHiKeJAx>

7. WAIVER OR REJECTION

The City may waive any informality, irregularity, or minor defect or reject any and all bids at any time.

8. EVALUATION OF BID

A. Insertions of Material Conflicting with Specifications

Only material inserted by the Bidder to meet requirements of the Specifications will be considered. Any other material inserted by the Bidder will be disregarded as being non-responsive and may be grounds for rejection of the Bidder's bid.

B. Correction of Ambiguities and Obvious Errors

The City reserves the right to correct obvious ambiguities and errors in the Bidder's bid and to waive non-material irregularities and/or omissions. In this regard, if the unit price does not compute to the extended total price, the unit price shall govern.

9. NON-RESPONSIVE BIDS

Supplier understands and acknowledges that if it adds terms and conditions to its Bid that are different from the terms set forth herein that its Bid may be rejected as non-responsive. Furthermore, if City accepts Supplier's Bid and awards a contract to Supplier based on such Bid, City shall not be bound to any exceptions, changes or additions made by Supplier, and any terms and conditions added by Supplier which are not expressly agreed to by City in writing will be void and of no force and effect and the parties will be governed according to the fully executed Contract.

10. TAXES

Sales tax shall be separately stated as provided on the PROPOSAL FORM then added to the Subtotal Bid. The Supplier must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Supplier's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate. Appropriate taxes and fees that shall be allowed and itemized on invoices are:

- US Federal lust/spill fund
- Gasoline Tax
- Washington Spill Fund
- Winterization additives

11. QUANTITY REQUIREMENTS

The quantities listed are the city's current requirements. The City will neither be obligated by nor restricted to these quantities and may increase or decrease any item(s) ordered under this contract and pay according to the unit prices quoted in the Bid.

12. BIDDER'S EXPENSES

Bidders are solely responsible for their own expenses in preparing a bid. If the City elects to reject all bids the City will not be liable to any Bidder for any claims, whether for costs or damages incurred by the Bidder in preparing the bid, loss of anticipated profit in connection with any final contract, or any other matter whatsoever.

13. OWNERSHIP OF BIDS AND PUBLIC DISCLOSURE

All documents, including bids, submitted to the City become the property of the City. All submitted documents are public and subject to disclosure. Only under limited circumstances can submittal information be considered proprietary and not subject to disclosure. In no case can a Bidder indicate that their entire submittal is proprietary, and the City shall make the sole determination of what information may be considered proprietary based upon the City interpretation of the Public Disclosure laws.

14. COOPERATIVE PURCHASING

The Washington State Interlocal Cooperative Act RCW 39.34 provides that other governmental agencies may purchase goods and services on this solicitation or contract in accordance with the terms and prices indicated therein if all parties are willing.

15. AWARD

The City reserves the right to award a contract for any or all items to one or more Bidders, to reject any and all Bids or any item(s) within the Bids, to waive any informality in the Bids, and to call for new Bids as best meets the needs of the City.

16. IRREVOCABLE OFFER

Supplier understands and acknowledges that its signature on this Bid Proposal constitutes an irrevocable offer to provide the Goods and/or Services. There is no contract unless and until City's Mayor/Mayor Pro Tem executes the Contract accepting Supplier's Bid. No City officer, employee or agent except the City Council, Mayor (or Mayor Pro Tem) has the authority to award contracts or legally obligate the City to any contract. Supplier shall not provide any Goods and/or Services to City pursuant to the Contract before the Contract is executed by City. If Supplier provides any Goods and/or Services to City pursuant to the Contract before the Contract is executed by City, such Goods and/or Services are provided at Supplier's risk and City shall have no obligation to pay for any such Goods and/or Services.

17. CONTRACT

The sample form of Contract is included in the Invitation to Bid, which form shall be used and required of the bidder to be executed for the Contract. The party to whom the Contract is awarded will be required to execute the Contract within 10 calendar days from the date when the bidder receives the contract documents. In case of failure of the bidder to execute the Contract, the City may at its option consider the bidder in default.

END OF SECTION



CONTRACT 23-003-IDS-001
Between
THE CITY OF ANACORTES
AND
“SUPPLIER”

BULK FUEL

This Contract is between the City of Anacortes, Washington, a Municipal Corporation (herein after referred to as “City”) and _____ a private company at ADDRESS (herein after referred to as “Supplier”).

1. **Scope of Work.** The Supplier shall furnish and deliver goods in accordance with and as described in the City of Anacortes document entitled “Invitation to Bid Bulk Fuel #23-003-IDS-001” issued November 16, 2022, which is hereby incorporated by reference and made a part hereof.

2. **COVID-19 Safety Requirements Compliance.** The Supplier, and its sub-Suppliers of any tier, agree to comply with all current and future COVID-19 proclamations, regulations, requirements and/or related guidance issued by the Office of the Governor of Washington State and City of Anacortes’ Mayor’s Office as it may relate to City of Anacortes projects.

3. **Price and Payment Terms.** The City agrees to pay for said services and supplies in accordance with rates set forth in the attached Contractor’s Bid Form and all other terms set forth in the Contract Documents.

4. **Contract Term.** The contract period is from January 1, 2023-December 31, 2023. The City may, at its option, extend the contract on a year-to-year basis up to four (4) additional years with no change in rates and pricing.

5. **Acceptance.** Supplier acknowledges and agrees that these General Provisions are incorporated in, and are a part of, each purchase order or other Contract relating to the provision of goods and/or related services by Supplier. These General Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

6. **Materials/Equipment.** The materials/equipment so delivered shall conform to specifications provided in the above-mentioned documents, shall be merchantable and of high quality, and fit for the purposes of use intended by the City.

7. **Delivery and Risk of Loss.** Title shall pass to the City upon delivery to designated City location. Risk of loss, destruction or damage to the equipment shall be on the Contractor until title passes to the City.

8. **Taxes.** The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Supplier must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Supplier’s gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

9. **Invoicing.** All invoices shall include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, Invoice Period, Contract Title, and Contract Number. Invoices shall be itemized, showing the OPIS Price, the Differential Rate, and Total Price per Gallon Price. Invoices or attached reporting listing each purchase must include:

- a) Date and time of purchase; amount & type of fuel purchased, OPIS price per gallon, and extended price per unit including Supplier’s Differential Rate.
- b) Separated information in part (a) according to location and equipment number.
- c) Separated & clearly identifiable equipment number & associated tax charges listed individually.

Supplier must allow 30 calendar days from receipt of the invoice for payment. Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org. Suppliers may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution.

The City shall notify the Supplier within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Supplier shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

10. **Withholding Payment.** In the event the City determines that the Supplier has failed to perform any obligation under this Contract within the times set forth in this Contract, then the City may withhold from amounts otherwise due and payable to Supplier the amount determined by the City as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Supplier to terminate or damages, provided that the City promptly gives notice in writing to the Supplier of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the City Attorney set forth in such notice to the Supplier of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Supplier acts within the times and in strict accord with the provisions of the Disputes clause of this Contract. The City may act in accordance with any determination of the City Attorney which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Supplier, (3) to set off any amount so paid or incurred from amounts due to become due the Supplier. In the event the Supplier obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Supplier by reason of good faith withholding by the City under this clause.

11. **Final Payment: Waiver Of Claim** the Supplier's acceptance of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the Supplier as unsettled at the time request for final payment is made.

12. **Defense and Indemnity.** The Supplier shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of the Contract, except for injuries and damages caused by the sole negligence of the City.

13. **Insurance Requirements**

A. Insurance Term: The Supplier shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with products and materials supplied to the City.

B. No Limitation: The Supplier's maintenance of insurance as required by the Contract shall not be construed to limit the liability of the Supplier to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance: The Supplier shall obtain insurance of the type and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01. Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement CA 99 48 shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached.
2. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. **The City of Anacortes and its officers, elected officials, employees, agents, and volunteers shall be named as an additional insured** under the Supplier's Commercial General Liability insurance policy using ISO Additional Insured-Vendors Endorsement CG 20 15 04 13 or a substitute endorsement providing at least as broad coverage.

D. Minimum Amounts of Insurance: The Supplier shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products liability aggregate limit.

E. Contractors Pollution Liability insurance covering losses caused by pollution conditions that arise from the operations of the Contractor. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

If the Contractors Pollution Liability insurance is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under the Contract is completed.

The City shall be named by endorsement as an additional insured on the Contractors Pollution Liability insurance policy.

If the scope of services as defined in this Contract includes the disposal of any hazardous materials from the job site, the Contractor must furnish to the City evidence of Pollution Liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this Contract. Coverage certified to the City under this paragraph must be maintained in minimum amounts of \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

G. Other Insurance Provision: The Supplier's Commercial General Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Supplier's insurance and shall not contribute with it.

F. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

G. Verification of Coverage: The Supplier shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Supplier **within 10 calendar days of contract execution** and before goods, materials or supplies will be accepted by the City.

H. Notice of Cancellation: The Supplier shall provide the City with written notice of any policy cancellation, within One business days of their receipt of such notice.

I. Failure to Maintain Insurance: Failure on the part of the Supplier to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Supplier to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Supplier from the City.

J. City Full Availability of Supplier Limits: If the Supplier maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Supplier, irrespective of whether such limits maintained by the Supplier are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Supplier.

14. Inspection.

A. **Of the Work:** All materials furnished and work done shall be subject to inspection. The City Project Manager administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Supplier shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Supplier of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the Contract. All material or work approved and later found to be defective shall be replaced without cost to the City.

B. **Project Manager's Authority:** The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Supplier may appeal to the City Attorney whose decision shall be final. The Contract shall be carried out under the general control of the representative of the City administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in his or her opinion, to safeguard the interest of the City. The Supplier shall comply with any and all orders and instructions given by the

representative of the particular Department administering the Contract in accordance with the terms of the Contract. Nothing herein contained, however, shall be taken to relieve the Supplier of his/her obligations or responsibilities under the Contract.

15. **Standard Title VI / Non-Discrimination Assurances.** During the performance of this contract, the Supplier, for itself, its assignees, and successors in interest agrees to the clauses in "Appendix A" and "Appendix E" of the Standard Title VI Assurances (USDOT1050.2A), which are hereby incorporated by reference and made a part hereof.

16. **Assignment/Subcontract.** Supplier shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of City. No such written approval shall relieve the Supplier of any obligations of this Contract, and any transferee or subSupplier shall be considered the agent of the Supplier. Supplier shall remain liable as between the original parties to this Contract as if no such assignment had occurred.

17. **Supplier is an Independent Supplier.** The parties intend that an independent Supplier relationship will be created by this Contract. No agent, employee or representative of the Supplier shall be deemed to be an agent, employee or representative of the City for any purpose. Supplier shall be solely responsible for all acts of its agents, employees, representatives and Sub-Suppliers during the performance of this Contract.

18. **Ownership and Use of Documents.** All finished and unfinished documents and material prepared by the Consultant with funds paid by the City pursuant to the terms of this Agreement shall become the property of the City and shall be forwarded to the City upon its request. Documents and materials shall include but not be limited to plans, specifications, reports, electronic and non-electronic data, and other design documents prepared by the Supplier. Pursuant to RCW 42.56.70, all information and documents produced under this Agreement may be subject to public disclosure.

19. **Assistance Regarding Patent and Copyright Infringement.** In the event of any claim or suit against City on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any material furnished or work or services performed hereunder, Supplier shall defend City against any such suit or claim and hold City harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.

20. **The City's Right to Terminate Contract.**

A. **Termination for Default:** If the Supplier defaults by failing to perform any of the obligations of the Contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Supplier in the U.S. mail, postage prepaid, terminate the Contract, and at the City's option, obtain performance of the work elsewhere. If the Contract is terminated for default, the Supplier shall not be entitled to receive any further payments under the Contract until the Scope of Services under this Contract has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Supplier. The Supplier shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default. If a notice of termination for default has been issued and it is later determined for any reason that the Supplier was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. **Termination for Public Convenience:** The City may terminate the Contract in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the Contract is terminated in accordance with this paragraph, the Supplier shall be entitled to payment for actual work performed at unit Contract prices for completed items of work through the date of termination. An equitable adjustment in the Contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Contract by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Contract by the City.

21. **Changes/Additional Work.** The City may engage Supplier to perform services in addition to those listed in this Contract, and Supplier will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this Contract. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that

nothing in this paragraph shall be interpreted to obligate the Supplier to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Contract is approved in writing by both parties.

22. **Non-waiver**. Waiver by the City of any provision of this Contract or any time limitation provided for in this Contract shall not constitute a waiver of any other provision.

23. **Covenant Against Contingent Fees**. The Supplier warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Supplier, to solicit or secure this Contract, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Supplier, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Contract. For breach or violation of this warranty, the City shall have the right to annul this Contract without liability or, in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

24. **Disputes**

A. **General:** Differences between the Supplier and the City, arising under and by virtue of this Contract shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this Contract.

B. **Notice of Potential Claims:** The Supplier shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Supplier has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Supplier believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Supplier shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

C. **Detailed Claim:** The Supplier shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Supplier has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. **Dispute Resolution:** In the event of a dispute between the City and the Supplier arising out of this Contract, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Supplier to have oversight over the administration of this Contract. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute.

In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties. If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

25. **Force Majeure**. Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; pandemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice of the impediment and its effect on the ability to perform, with such notice to be provided no more than two (2) working days after the force majeure event or reasonable discovery of the event's impact on performance. Failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of

same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Supplier shall have no recourse against the City.

26. **Governing Law.** This Contract shall be governed by and construed under the laws of the State of Washington. Any action brought under the Contract or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

27. **Compliance with Laws.** The Supplier in the performance of this Contract shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Contract to assure quality of services.

28. **Severability.** If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Contract are declared severable.

29. **Survival of Contract Termination.** The provisions of the following paragraphs and the liability of the Supplier for default during the term of the Contract shall survive, notwithstanding the termination or invalidity of this Contract for any reason: Taxes; Warranty; The City's Right to Terminate Contract; Governing Law; Disputes; Defense & Indemnity.

30. **Notices.** Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes
Tiffany Matson
904 6th Street
PO Box 547
Anacortes, WA 98221

SUPPLIER:

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

CITY OF ANACORTES

SUPPLIER

By _____
Matt Miller, Mayor

By _____

Date _____

Title _____

Date _____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, (***Title of Modal Operating Administration***), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the (***Title of Modal Operating Administration***) to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the (***Title of Modal Operating Administration***), as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the (***Title of Modal Operating Administration***) may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the (***Title of Modal Operating Administration***) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).