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CITY OF FORT WORTH
CITY SECRETARY

CITY SECRETARY
CONTRACT NO. 53315

SUPPLIER SERVICES AGREEMENT
MOTOR FUELS, AVIATION FUELS, AND RELATED SERVICES
(NON-EXCLUSIVE COOPERATIVE AGREEMENT)

This **SUPPLIER SERVICES AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF FORT WORTH** (“City”), a Texas home rule municipal corporation, acting by and through its duly authorized Assistant City Manager, and **MANSFIELD OIL CO. OF GAINESVILLE, INC.** (“Supplier”), acting by and through its duly authorized representative, each individually referred to as a “party” and collectively referred to as the “parties.”

AGREEMENT DOCUMENTS:

The Agreement documents shall include the following:

1. This Supplier Services Agreement;
2. Exhibit A – Scope of Services;
3. Exhibit B – City of Fort Worth Specifications
4. Exhibit C – Price Schedule;
5. Exhibit D – Verification of Signature Authority Form; and
6. Exhibit E – City of Fort Worth Request for Proposals (RFP) No. 19-0000037 and Supplier’s response to the Request for Proposals.

Exhibits A, B, C, D, and E which are attached hereto and incorporated herein by reference, are made a part of this Agreement for all purposes. In the event of any conflict between the terms and conditions of Exhibits A, B, C, D, or E and the terms and conditions set forth in the body of this Agreement, the terms and conditions of this Agreement shall control.

1. SCOPE OF SERVICES.

Supplier shall provide City with the motor and aviation fuels, and related services for the City’s fleet (“Services”). Exhibit “A,” - Scope of Services and Exhibit “B” – City of Fort Worth Specifications more specifically describe the Services to be provided hereunder. Supplier agrees that the City may award non-exclusive agreements to multiple bidders for motor fuel, aviation fuel, and related services as outlined in the Request for Proposals.

In connection with this Agreement, City is acting as the Principal Procurement Agency with OMNIA Partners – Public Sector. This Agreement is a cooperative purchasing agreement allowing Supplier to Supply the City and Participating Agencies within the Dallas/Fort Worth metropolitan area and in the 48 contiguous United States, and the District of Columbia, with motor fuel, aviation fuel and related services. The general scope of this Agreement includes finished motor gasoline, finished aviation gasoline, Kerosene-Type Jet Fuel, Distillate Fuel Oil for on-highway and off-highway diesel engines, Renewable Green Diesel, Biodiesel, and Diesel Emission Fluid (collectively “Motor Fuels and Aviation Fuels”). This scope of Motor Fuels and Aviation Fuels covered by this Agreement is intended to be broad and inclusive of all motor and aviation fuels used by Participating Agencies in the United States and the District of Columbia. The specifications for the City are detailed in a dedicated section of this Agreement. Specifications for all other Participating Agencies are intentionally left at a general level to avoid omission of certain specifications or blends for any given Participating Agency, however Supplier is required to meet similar specification expectations as provided by the City, and as specified in the definitions provided in this Agreement, in the provision of fuel to other Participating Agencies.

2. TERM.

This Agreement shall begin on January 1, 2020 (“Effective Date”) and shall expire on December 31, 2020 (“Expiration Date”), unless terminated earlier in accordance with this Agreement (“Initial Term”). Upon the expiration of the Initial Term, this Agreement may be renewed under the same terms and conditions for up to four (4) one-year renewal periods (“Renewal Term”).

3. COMPENSATION.

City shall pay Supplier in accordance with the provisions of this Agreement and Exhibit “C,” – Price Schedule. The aggregate amount of all contracts City awards to multiple bidders under RPF No. 19-0000037, including this Agreement, **shall not exceed twelve million dollars (\$12,000,000.00)**. City makes no promise or guarantee of the total amount of motor fuel, aviation fuel, and related services that City will procure from Supplier under this Agreement. Supplier shall not perform any additional services or bill for expenses incurred for City not specified by this Agreement unless City requests and approves in writing the additional costs for such services. City shall not be liable for any additional expenses of Supplier not specified by this Agreement unless City first approves such expenses in writing.

4. TERMINATION.

4.1. Written Notice. City or Supplier may terminate this Agreement at any time and for any reason by providing the other party with 30 days’ written notice of termination.

4.2. Non-appropriation of Funds. In the event no funds or insufficient funds are appropriated by City in any fiscal period for any payments due hereunder, City will notify Supplier of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated.

4.3. Duties and Obligations of the Parties. In the event that this Agreement is terminated prior to the Expiration Date, City shall pay Supplier for services actually rendered up to the effective date of termination and Supplier shall continue to provide City with services requested by City and in accordance with this Agreement up to the effective date of termination. Upon termination of this Agreement for any reason, Supplier shall provide City with copies of all completed or partially completed documents prepared under this Agreement. In the event Supplier has received access to City Information or data as a requirement to perform services hereunder, Supplier shall return all City provided data to City in a machine readable format or other format deemed acceptable to City.

5. DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.

5.1. Disclosure of Conflicts. Supplier hereby warrants to City that Supplier has made full disclosure in writing of any existing or potential conflicts of interest related to Supplier’s services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Supplier hereby agrees immediately to make full disclosure to City in writing.

5.2. Confidential Information. Supplier, for itself and its officers, agents and employees, agrees that it shall treat all information provided to it by City (“City Information”) as confidential and shall not disclose any such information to a third party without the prior written approval of City.

5.3. Unauthorized Access. Supplier shall store and maintain City Information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Supplier shall notify City immediately if the security or integrity of any City

Information has been compromised or is believed to have been compromised, in which event, Supplier shall, in good faith, use all commercially reasonable efforts to cooperate with City in identifying what information has been accessed by unauthorized means and shall fully cooperate with City to protect such City Information from further unauthorized disclosure.

6. **RIGHT TO AUDIT.**

Supplier agrees that City shall, until the expiration of three (3) years after final payment under this contract, or the final conclusion of any audit commenced during the said three years, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records, including, but not limited to, all electronic records, of Supplier involving transactions relating to this Agreement at no additional cost to City. Supplier agrees that City shall have access during normal working hours to all necessary Supplier facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. City shall give Supplier reasonable advance notice of intended audits.

7. **INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Supplier shall operate as an independent contractor as to all rights and privileges and work performed under this Agreement, and not as agent, representative or employee of City. Subject to and in accordance with the conditions and provisions of this Agreement, Supplier shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, consultants and subcontractors. Supplier acknowledges that the doctrine of *respondeat superior* shall not apply as between City, its officers, agents, servants and employees, and Supplier, its officers, agents, employees, servants, vendors and subcontractors. Supplier further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Supplier. It is further understood that City shall in no way be considered a Co-employer or a Joint employer of Supplier or any officers, agents, servants, employees or subcontractors of Supplier. Neither Supplier, nor any officers, agents, servants, employees or subcontractors of Supplier shall be entitled to any employment benefits from City. Supplier shall be responsible and liable for any and all payment and reporting of taxes on behalf of itself, and any of its officers, agents, servants, employees or subcontractors.

8. **LIABILITY AND INDEMNIFICATION.**

8.1 **LIABILITY - SUPPLIER SHALL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF SUPPLIER, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.**

8.2 **GENERAL INDEMNIFICATION - SUPPLIER HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO SUPPLIER'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF SUPPLIER, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES.**

8.3 **INTELLECTUAL PROPERTY INDEMNIFICATION** – Supplier agrees to defend, settle, or pay, at its own cost and expense, any claim or action against City for infringement of any patent, copyright, trade mark, trade secret, or similar property right arising from City's use of the software and/or documentation in accordance with this Agreement, it being understood that this agreement to defend, settle or pay shall not apply if City modifies or misuses the software and/or documentation. So long as Supplier bears the cost and expense of payment for claims or actions against City pursuant to this section, Supplier shall have the right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, City shall have the right to fully participate in any and all such settlement, negotiations, or lawsuit as necessary to protect City's interest, and City agrees to cooperate with Supplier in doing so. In the event City, for whatever reason, assumes the responsibility for payment of costs and expenses for any claim or action brought against City for infringement arising under this Agreement, City shall have the sole right to conduct the defense of any such claim or action and all negotiations for its settlement or compromise and to settle or compromise any such claim; however, Supplier shall fully participate and cooperate with City in defense of such claim or action. City agrees to give Supplier timely written notice of any such claim or action, with copies of all papers City may receive relating thereto. Notwithstanding the foregoing, City's assumption of payment of costs or expenses shall not eliminate Supplier's duty to indemnify City under this Agreement. If the software and/or documentation or any part thereof is held to infringe and the use thereof is enjoined or restrained or, if as a result of a settlement or compromise, such use is materially adversely restricted, Supplier shall, at its own expense and as City's sole remedy, either: (a) procure for City the right to continue to use the software and/or documentation; or (b) modify the software and/or documentation to make it non-infringing, provided that such modification does not materially adversely affect City's authorized use of the software and/or documentation; or (c) replace the software and/or documentation with equally suitable, compatible, and functionally equivalent non-infringing software and/or documentation at no additional charge to City; or (d) if none of the foregoing alternatives is reasonably available to Supplier terminate this Agreement, and refund all amounts paid to Supplier by City, subsequent to which termination City may seek any and all remedies available to City under law.

9. **ASSIGNMENT AND SUBCONTRACTING.**

9.1 **Assignment.** Supplier shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of City. If City grants consent to an assignment, the assignee shall execute a written agreement with City and Supplier under which the assignee agrees to be bound by the duties and obligations of Supplier under this Agreement. Supplier and Assignee shall be jointly liable for all obligations of Supplier under this Agreement prior to the effective date of the assignment.

9.2 **Subcontract.** If City grants consent to a subcontract, the subcontractor shall execute a written agreement with Supplier referencing this Agreement under which subcontractor shall agree to be bound by the duties and obligations of Supplier under this Agreement as such duties and obligations may apply. Supplier shall provide City with a fully executed copy of any such subcontract.

10. **INSURANCE.**

10.1 Supplier shall assume all risk and liability for accidents and damages that may occur to persons or property during the prosecution of the work. Supplier shall file with the City of Fort Worth Purchasing Division, before the commencement of services, a certificate of insurance documenting the

following required insurance. Supplier will be responsible for providing proof of insurance as may be required by Public Participating Agencies.

10.1.1 Statutory Workers' Compensation Insurance and Employer's Liability Insurance at the following limits

- 10.1.1.1 \$100,000 Each Accident
- 10.1.1.2 \$500,000 Disease – Policy limit
- 10.1.1.3 \$100,000 Disease – Each Employee

10.1.2 Commercial General Liability Insurance including Explosion, Collapse, and Underground Coverage shall be provided as follows:

- 10.1.2.1 \$1,000,000 Each Occurrence
- 10.1.2.2 \$2,000,000 Annual Aggregate

10.1.3 Auto Liability Insurance shall be provided as follows:

- 10.1.3.1 \$250,000 Bodily Injury Per Person Each Accident
- 10.1.3.2 \$250,000 Property Damage; or
- 10.1.3.3 \$500,000 Combined Single Limit Each Accident
- 10.1.3.4 The named insured and employees of Supplier shall be covered under this policy. Liability for damage occurring while loading, unloading, transferring, and transporting materials under this Agreement shall be included under this policy.

10.1.4 Environmental Impairment Liability (EIL) and/or Pollution Liability

- 10.1.4.1 \$2,000,000 per occurrence
- 10.1.4.2 EIL coverage(s) must be included in policies listed in subsection 10.1 above; or, such insurance shall be provided under separate policy(s). Liability for damage occurring while loading, unloading, transferring, and transporting materials under this Agreement shall be included under the Automobile Liability insurance or other policy(s).

10.2 Policies shall be endorsed to provide the City of Fort Worth a thirty (30) day notice of cancellation, material change in coverage, or non-renewal of coverage. Applicable policies shall also be endorsed to name the City of Fort Worth as an additional insured, as its interests may appear (ATIMA).

10.3 ADDITIONAL INSURANCE INFORMATION

10.3.1 The City, its officers, employees and servants shall be endorsed as an additional insured on Supplier's insurance policies excepting employer's liability insurance coverage under Supplier's workers' compensation insurance policy.

10.3.2 Certificates of insurance shall be delivered to the Purchasing Department of the City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102, prior to a purchase order being issued.

10.3.3 Any failure on part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirements specified herein.

- 10.3.4 Each insurance policy shall be endorsed to provide the City a minimum thirty days' notice of cancellation, non-renewal, and/or material change in policy terms or coverage. A ten days' notice shall be acceptable in the event of non-payment of premium.
- 10.3.5 Insurers must be authorized to do business in the State of Texas and have a current A.M. Best rating of A: VII or equivalent measure of financial strength and solvency.
- 10.3.6 Deductible limits, or self-funded retention limits, on each policy must not exceed \$10,000.00 per occurrence unless otherwise approved by the City.
- 10.3.7 Other than worker's compensation insurance, in lieu of traditional insurance, City may consider alternative coverage or risk treatment measures through insurance pools or risk retention groups. The City must approve in writing any alternative coverage.
- 10.3.8 Workers' compensation insurance policy(s) covering employees of the Supplier shall be endorsed with a waiver of subrogation providing rights of recovery in favor of the City.
- 10.3.9 City shall not be responsible for the direct payment of insurance premium costs for Supplier's insurance.
- 10.3.10 Supplier's insurance policies shall each be endorsed to provide that such insurance is primary protection and any self-funded or commercial coverage maintained by City shall not be called upon to contribute to loss recovery.
- 10.3.11 While this Agreement is in effect, Supplier shall report, in a timely manner, to the Purchasing Department any known loss occurrence that could give rise to a liability claim or lawsuit or which could result in a property loss.
- 10.3.12 Supplier's liability shall not be limited to the specified amounts of insurance required herein.
- 10.3.13 Upon the request of City, Supplier shall provide complete copies of all insurance policies required by these contract documents.

11. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

Supplier agrees that in the performance of its obligations hereunder, it shall comply with all applicable federal, state and local laws, ordinances, rules and regulations and that any work it produces in connection with this Agreement will also comply with all applicable federal, state and local laws, ordinances, rules and regulations. If City notifies Supplier of any violation of such laws, ordinances, rules or regulations, Supplier shall immediately desist from and correct the violation.

12. NON-DISCRIMINATION COVENANT.

Supplier, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Supplier's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. **IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF THIS NON-DISCRIMINATION COVENANT BY SUPPLIER, ITS PERSONAL REPRESENTATIVES, ASSIGNS, SUBCONTRACTORS OR SUCCESSORS IN INTEREST, SUPPLIER AGREES TO ASSUME SUCH LIABILITY AND TO INDEMNIFY AND DEFEND CITY AND HOLD CITY HARMLESS FROM SUCH CLAIM.**

13. NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

<p>To CITY:</p> <p>City of Fort Worth Attn: Assistant City Manager 200 Texas Street Fort Worth, TX 76102-6314 Facsimile: (817) 392-8654</p> <p>With copy to Fort Worth City Attorney's Office at same address</p>	<p>To SUPPLIER:</p> <p>Mansfield Oil Co. of Gainesville, Inc. 1025 Airport Parkway SW Gainesville, GA 30501-6813</p>
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14. SOLICITATION OF EMPLOYEES.

Neither City nor Supplier shall, during the term of this Agreement and additionally for a period of one year after its termination, solicit for employment or employ, whether as employee or independent contractor, any person who is or has been employed by the other during the term of this Agreement, without the prior written consent of the person's employer. Notwithstanding the foregoing, this provision shall not apply to an employee of either party who responds to a general solicitation of advertisement of employment by either party.

15. GOVERNMENTAL POWERS.

It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

16. NO WAIVER.

The failure of City or Supplier to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of City's or Supplier's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

17. GOVERNING LAW / VENUE.

This Agreement shall be construed in accordance with the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought pursuant to this Agreement, venue for such action shall lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division.

18. SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

19. FORCE MAJEURE.

City and Supplier shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

20. HEADINGS NOT CONTROLLING.

Headings and titles used in this Agreement are for reference purposes only, shall not be deemed a part of this Agreement, and are not intended to define or limit the scope of any provision of this Agreement.

21. REVIEW OF COUNSEL.

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or Exhibits A, B, C, D or E.

22. AMENDMENTS/ MODIFICATIONS/ EXTENSIONS.

No amendment, modification, or extension of this Agreement shall be binding upon a party hereto unless set forth in a written instrument, which is executed by an authorized representative of each party.

23. ENTIRETY OF AGREEMENT.

This Agreement, including Exhibits A, B, C, D, and E contains the entire understanding and agreement between City and Supplier, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

24. COUNTERPARTS.

This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute one and the same instrument.

25. WARRANTY OF SERVICES.

Supplier warrants that its services will be of a high quality and conform to generally prevailing industry standards. City must give written notice of any breach of this warranty within thirty (30) days from the date that the services are completed. In such event, at Supplier's option, Supplier shall either (a) use commercially reasonable efforts to re-perform the services in a manner that conforms with the warranty, or (b) refund the fees paid by City to Supplier for the nonconforming services.

26. IMMIGRATION NATIONALITY ACT.

Supplier shall verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the Employment Eligibility Verification Form (I-9). Upon request by City, Supplier shall provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Supplier shall adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any Supplier employee who is not legally eligible to perform such services. **SUPPLIER SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY SUPPLIER, SUPPLIER'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** City, upon written notice to Supplier, shall have the right to immediately terminate this Agreement for violations of this provision by Supplier.

27. OWNERSHIP OF WORK PRODUCT.

City shall be the sole and exclusive owner of all reports, work papers, procedures, guides, and documentation, created, published, displayed, and/or produced in conjunction with the services provided under this Agreement (collectively, "Work Product"). Further, City shall be the sole and exclusive owner of all copyright, patent, trademark, trade secret and other proprietary rights in and to the Work Product. Ownership of the Work Product shall inure to the benefit of City from the date of conception, creation or fixation of the Work Product in a tangible medium of expression (whichever occurs first). Each copyrightable aspect of the Work Product shall be considered a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended. If and to the extent such Work Product, or any part thereof, is not considered a "work-made-for-hire" within the meaning of the Copyright Act of 1976, as amended, Supplier hereby expressly assigns to City all exclusive right, title and interest in and to the Work Product, and all copies thereof, and in and to the copyright, patent, trademark, trade secret, and all other proprietary rights therein, that City may have or obtain, without further consideration, free from any claim, lien for balance due, or rights of retention thereto on the part of City.

28. SIGNATURE AUTHORITY.

The person signing this Agreement hereby warrants that he/she has the legal authority to execute this Agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. This Agreement and any amendment hereto, may be executed by any authorized representative of Supplier whose name, title and signature is affixed on the Verification of Signature Authority Form, which is attached hereto as Exhibit "D". Each party is fully entitled to rely on these warranties and representations in entering into this Agreement or any amendment hereto.

29. CHANGE IN COMPANY NAME OR OWNERSHIP

Supplier shall notify City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of Supplier or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be

accompanied with supporting legal documentation such as an updated W-9, documents filed with the state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to provide the specified documentation so may adversely impact future invoice payments.

30. PROHIBITION ON CONTRACTING WITH COMPANIES THAT BOYCOTT ISRAEL

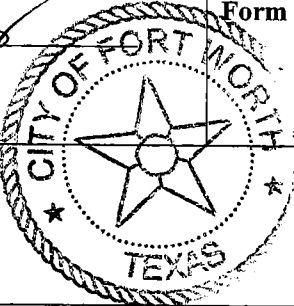
Supplier acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the City is prohibited from entering into a contract with a company with ten or more full-time employees that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the City for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The term "boycott Israel" has the meaning ascribed to it by Section 808.001 of the Texas Government Code. The term "company" has the meaning ascribed to it by Section 2270.001 of the Texas Government Code. To the extent that Chapter 2270 of the Government Code is applicable to this Agreement, by signing this Agreement, Supplier certifies that Supplier's signature provides written verification to the City that Supplier: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiples to be effective on the dates set forth in Section 2.

CITY OF FORT WORTH:

<p>By: <u>[Signature]</u> Name: Kevin Gunn Title: Interim Assistant City Manager</p> <p>Date: <u>12/20/2019</u></p> <p>APPROVAL RECOMMENDED:</p> <p>By: <u>[Signature]</u> Name: Steve Cooke Title: Director, Property Management Department</p> <p>ATTEST:</p> <p>By: <u>[Signature]</u> Name: Mary Kayser Title: City Secretary</p>	<p>CONTRACT COMPLIANCE MANAGER: By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.</p> <p>By: <u>[Signature]</u> Name: Randy Rendon Title: Fuel Service Manager</p> <p>APPROVED AS TO FORM AND LEGALITY:</p> <p>By: <u>[Signature]</u> Name: Richard A. McCracken Title: Sr. Assistant City Attorney</p> <p>CONTRACT AUTHORIZATION: M&C: <u>19-0413 121719</u> Form 1295: <u>2019-558786</u></p>
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SUPPLIER:

<p>Mansfield Oil Co. of Gainesville, Inc.</p> <p>By: <u>[Signature]</u> Josh Epperson (Nov 14, 2019)</p> <p>Name: Josh Epperson Title: Director, Government Services</p> <p>Date: <u>Nov 14, 2019</u></p>	<p>ATTEST:</p> <p>By: <u>[Signature]</u> Chris Carter (Nov 14, 2019)</p> <p>Name: Chris Carter Title: Sr. Supply Manager Bids</p>
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EXHIBIT A
SCOPE OF SERVICES

1.0 DEFINITIONS

- 1.1 The following definitions are provided to establish a common understanding of the terms of this Agreement. The source for these definitions is the Energy Information Administration, which provides energy statistics for the U.S. government through the Department of Energy (<http://www.eia.doe.gov/>).
- 1.1.1 **Biodiesel:** Any liquid bio-fuel suitable as a diesel fuel substitute or diesel fuel additive or extender. Biodiesel fuels are typically made from oils such as soybeans, rapeseed, or sunflowers, or from animal tallow. Biodiesel can also be made from hydrocarbons derived from agricultural products such as rice hulls.
- 1.1.2 **Conventional Gasoline:** Finished motor gasoline not included in the oxygenated or reformulated gasoline categories.
- 1.1.3 **Renewable (Green) Diesel:** Hydrotreating (hydroprocessing hydrodeoxygenation) Also called "green" diesel, renewable diesel is a biomass-derived transportation fuel suitable for use in diesel engines. It meets the ASTM D975 specification in the United States and EN 590 in Europe.
- 1.1.4 **Distillate Fuel Oil:** A general classification for one of the petroleum fractions produced in conventional distillation operations. It includes diesel fuels and fuel oils. Products known as No. 1, No. 2, and No. 4 diesel fuel are used in on-highway diesel engines, such as those in trucks and automobiles, as well as off-highway engines, such as those in railroad locomotives and agricultural machinery.
- 1.1.5 **Finished Aviation Gasoline:** A complex mixture of relatively volatile hydrocarbons with or without small quantities of additives, blended to form a fuel suitable for use in aviation reciprocating engines. Fuel specifications are provided in ASTM Specification D 910, and Military Specification MIL-G-5572.
- 1.1.6 **Finished Motor Gasoline:** A complex mixture of relatively volatile hydrocarbons with or without small quantities of additives, blended to form a fuel suitable for use in spark-ignition engines. Motor gasoline, as defined in ASTM Specification D 4814 or Federal Specification VV-G-1690C, is characterized as having a boiling range of 122° to 158° degrees Fahrenheit at the 10 percent recovery point to 365° to 374° degrees Fahrenheit at the 90 percent recovery point. Motor Gasoline includes conventional gasoline; all types of oxygenated gasoline, including gasohol; and reformulated gasoline, but excludes aviation gasoline. Finished motor gasoline includes all ethanol-blended gasoline (e.g. E10, E85).
- 1.1.7 **Kerosene-Type Jet Fuel:** A kerosene-based product having a maximum distillation temperature of 400° degrees Fahrenheit at the 10-percent recovery point and a final maximum boiling point of 572° degrees Fahrenheit and meeting ASTM Specification D 1655 (Clear, No Additive) and Military Specifications MIL-T-5624P and MIL-T-83133D (Grades JP-5 and JP-8). It is used for

commercial and military turbojet and turboprop aircraft engines.

- 1.1.8 **OPRG:** "Oxygenated Fuels Program Reformulated Gasoline" is reformulated gasoline which is intended for use in an oxygenated fuels program control area during an oxygenated fuels program control period.
- 1.1.9 **Reformulated Gasoline (RFG):** Finished motor gasoline formulated for use in motor vehicles, the composition and properties of which meet the requirements of the reformulated gasoline regulations promulgated by the U.S. Environmental Protection Agency under Section 211(k) of the Clean Air Act. This category includes oxygenated fuels program reformulated gasoline (OPRG) but excludes reformulated gasoline blend-stock for oxygenate blending (RBOB).
- 1.1.10 **Diesel Emission Fluid (DEF):** commonly referred to as **AdBlue** in Europe and standardized as **ISO 22241** is an **Aqueous Urea Solution** made with 32.5% high-purity urea (AUS 32) and 67.5% deionized water. DEF is used as a consumable in selective catalytic reduction (SCR) in order to lower NO_x concentration in the diesel exhaust emissions from diesel engines.

2.0 GENERAL REQUIREMENTS

- 2.1 All fuels procured under this Agreement must conform to the applicable federal, state and local codes of each Participating Agency utilizing the resulting master agreement for each fuel type requested. This Agreement requires that as legislation, both state and federal, governing the content characteristics and /or standards of Conventional Gasoline (including RVP during summer months), Ethanol Blended Gasoline, Reformulated Gasoline, Oxygenated Gasoline, Diesel, Renewable Green Diesel and/or Biodiesel fuel, Aviation Gasoline, Kerosene-Type Jet Fuel, and Diesel Emission Fluid could be modified that the providing Supplier shall deliver product that complies with the modified legislation. Regulations governing the standards for fuels utilized by Participating Agencies may change throughout the term of any contract between a Participating Agency and a Supplier. As regulations change, amendments may be made to this Agreement to reflect those modified standards. The City reserves the right, at its sole discretion, to change the list of fuel types covered by this Agreement either by deletion of fuel types no longer needed or addition of other fuel types or fuel additives as may become necessary for Participating Agencies utilizing this agreement. When a class, type or category of fuel is to be added to this Agreement, the City shall supply specifications for such fuel to Supplier and all other suppliers awarded an Agreement no less than fifteen (15) days in advance of the first request for pricing for such fuels. This Agreement is intended to establish a "living" contract that can be adapted to the changing needs of Participating Agencies, within the scope of the RFP for motor fuels and aviation fuels.
- 2.2 All motor fuels and aviation fuels delivered under this Agreement will be of high quality and will not contain any foreign substances or water, which may damage City or any Participating Agency's vehicle or contaminate the fuel storage tanks.
- 2.3 City and each Participating Agency will have their own designated representatives and methods of requesting delivery dates, sites and tracking of orders.
- 2.4 Allocation. In the event of a fuel shortage and/or catastrophic conditions, Supplier must be capable of providing fuel to the City and all Participating Agencies. The nature

of City and Participating Agencies is such that public safety might be jeopardized if Motor Fuels and Aviation Fuels are not delivered as ordered in the event of fuel shortages or catastrophic conditions. Supplier agrees that delivery of products covered by this Agreement will be made in a priority manner to City and Participating Agencies to the exclusion of non-governmental agencies during times of shortages and / or catastrophes. Supplier agrees to provide a detailed contingency plan to City and each Participating Agency requesting such.

- 2.5 Emergency Purchasing. In the event that an emergency or disaster is declared by City or a Participating Agency according to applicable laws governing states of emergency and disasters requiring the prompt and immediate delivery of products or services, City and the Participating Agency reserve the right to obtain such products or services from any source, including but not limited to this Agreement, which will meet the needs of such emergency. Supplier shall not be entitled to any claim or lost profits for products or services procured from other sources pursuant to this paragraph.

3.0 ORDERS

Orders may be placed by telephone, fax or other method selected by City and each Participating Agency. Orders will include the specific delivery dates and sites as designated by the City and each Participating Agency. Order and Emergency contact information for Participating Agencies will be provided by the Participating Agencies.

4.0 DELIVERY/FREIGHT

- 4.1 Fuel delivery charges are to be determined separately and apart from the Market Differential discussed in this Agreement. The Market Differential must not include cost estimates for delivery. The number and location of storage tanks at City and each Participating Agency, and the number and location of each Participating Agency necessitate that delivery charges be determined directly between Supplier and the City or each Participating Agency. Supplier must quote delivery charges directly to City and each Participating Agency upon request. Delivery charges shall be a direct cost pass-through to City and each Participating Agency. No mark-up or profit shall be added to actual freight / delivery costs to City or a Participating Agency. When determining delivery charges specific to City and each Participating Agency, Supplier must identify additional charges, if any, for split deliveries at different locations or for loads smaller than tank loads. The City and Participating Agencies reserve the right to add and/or delete delivery sites during the course of this Agreement.
- 4.2 Delivery is expressed in number of calendar days required to make delivery after receipt of a purchase order. Delivery shall be made in accordance with instructions on each Purchase Order. Deliveries will be made in accordance with petroleum bulk storage regulations as designated by City and each Participating Agency. If there is a discrepancy between the purchase order and what is listed in this Agreement, it is Supplier's obligation to seek clarification from the City and the Participating Agencies.
- 4.3 Supplier's delivery trucks WILL BE EQUIPPED WITH CALIBRATED METERS to accurately measure quantities delivered. All trucks used for delivery must have the ability to measure fuel delivered and correct the recorded volume delivered to 60 degrees Fahrenheit for billing purposes. Supplier will adjust for volume changes by temperature variations. Supplier shall use 60 degrees Fahrenheit as the normal temperature reading. All

deliveries must be accompanied by a Delivery Ticket showing Brand or Grade and gross gallons, temperature and adjusted gallons delivered. City and each Participating Agency may examine, upon request, a copy of the metered ticket showing gallons loaded into the vehicle making delivery.

- 4.4 Guaranteed delivery times will be within twenty-four (24) hours from receipt of order, or as specified by City or the Participating Agency if delivery is desired at some date beyond 24 hours. As much time as possible will be allowed the Supplier (with consideration for the stipulated guaranteed delivery) for making deliveries; however, Supplier shall be capable of making bulk deliveries within 24 hours after receipt of order, especially in emergency situations. Normal deliveries are considered to be Monday thru Sunday according to the hours of operation for each site unless an emergency situation should develop. Deliveries on Saturday or Sunday shall be priced using the OPIS contract net low for the Saturday (available from OPIS if Supplier does not currently receive Saturday prices) of the weekend during which the delivery occurred.
- 4.5 City and Participating Agencies shall ensure that storage tanks are accessible by Supplier, and it is strongly advised that a representative from City and Participating Agencies be present during the delivery. Failure of the City or Participating Agency to make appropriate arrangements, preventing delivery of product upon Supplier's arrival at delivery site, may result in a charge for the Supplier's transportation costs for that particular trip. City and Participating Agencies are responsible for the implementation of monitoring programs to insure compliance by fuel suppliers with the specification requirements as outlined herein and in accordance with any regulations stipulated by City or the Participating Agencies.
- 4.6 City and each Participating Agency shall be responsible for having the proper fuel fill and transfer vapor recovery system(s) operating on their storage tanks in accordance with the City or Participating Agency's state and local regulations. The transfers include delivery tank to storage tank (Stage I) and storage tank to vehicle tank (Stage II) systems. Suppliers have the responsibility of reporting faulty equipment to the end users and the appropriate regulatory agencies.
- 4.7 City and Participating Agencies may request "automatic replenishment" or for the Supplier to top-off tanks for testing purposes. The Supplier will comply with these requests at its option and shall notify the City or Participating Agency accordingly. Supplier must have the ability upon request from the City or a Participating Agency, to be able to remotely monitor the City or Participating Agency's fuel monitoring system and send a fuel truck when a full load is required.
- 4.8 The Supplier shall provide fuel content labels/signs for each pumping station. These labels shall satisfy the requirements of the City's, or each Participating Agency's, state and local regulations. An environmental awareness decal/label shall be provided and displayed on each affected pump.
- 4.9 City, and each Participating Agency, may pick-up fuel in their own vehicle if so capable, and/or request delivery to bulk storage tanks at the City or the Participating Agency. It is anticipated that the majority of purchases will be on a "delivered" basis, but some Participating Agencies have appropriate vehicles and the desire to pick up fuel. In the event of City, or a Participating Agency, ordering fuel to be picked up in their own vehicle, no additional freight or delivery charges will be allowed under this Agreement.

4.10 Freight terms, to be specified by City and each Participating Agency at the time of order, shall be either:

- (1) FOB Origin – Title and risk of loss of fuel shall pass to City and each Participating Agency at the point the City or the Participating Agency actually receives and takes possession of fuel when loaded in the City's or Participating Agency's vehicle at the terminal. No delivery charges shall be charged or assessed; or
- (2) FOB Destination - Title and risk of loss of fuel shall not pass to City or a Participating Agency until fuel is received and taken possession of at the point of delivery. Delivery charges to be a direct cost pass-through to City and each Participating Agency and added as a separate line item on the invoice. Delivery charges are to be pre-determined between Supplier and City, or each Participating Agency, prior to delivery.

5.0 INVOICES

5.1 City and each Participating Agency will provide their billing addresses for submission of invoices. All invoices should reference, at a minimum, delivery ticket and the City's or Participating Agency's purchase order / requisition number, specific delivery dates and delivery times, and delivery location.

5.2 Invoices must clearly indicate the OPIS Benchmark Index per the terms of this Agreement for each fuel product delivered as a separate line item on the invoice. Invoices must state as a separate line item the Market Differential for each fuel product sold per the terms of this Agreement. The OPIS Benchmark Index and Market Differential for each fuel product sold must be stated on a cost per gallon basis on the invoice, with number of gallons sold separately stated by fuel product. The extended total sales for each fuel product sold must be identified. Taxes, if any, and delivery charges, if any, should be stated as separate line items on the invoice to derive the total cost to the City or the Participating Agency. If confirmation of pricing by City, a Participating Agency, or OMNIA Partners finds any discrepancy with the terms of this Agreement, Supplier shall make correction before payment of invoice or refund any overpayment for incorrect invoices already paid without any penalty assessed upon the City or a Participating Agency.

5.3 A copy of the bill of lading when applicable, shall be attached to the invoice.

5.4 It shall be the sole responsibility of the Supplier to maintain all licenses necessary to fulfill all duties and obligations of Supplier under this Agreement. Supplier will hold City of Fort Worth, all Participating Agencies, and OMNIA Partners harmless of any copyright infringements or penalties.

6.0 PAYMENTS

Unless a Net 20 or Net 15 days is available and agreed upon, payment terms will be Net 30 days from the date of delivery or the receipt of an accurate invoice and bill of lading whichever is later.

7.0 REPORTING

Supplier will be required to maintain data and provide documentation and/or reports of all petroleum products and gallons purchased by City and each Participating Agency. Supplier must be able to supply reports by delivery date, fuel type, amount delivered, costs, tank location and

invoice number for City and each Participating Agency upon request.

8.0 OPIS LICENSING

The City has selected the OPIS Net Standard Contract Rack for Dallas Metro Texas Rack Average as the price index benchmark for settlement under this Agreement. OPIS prices are protected under strict copyright agreements and forwarding printed or electronic OPIS price reports is a violation of federal copyright law.

9.0 TESTING

Deliveries of fuel under this Agreement are subject to testing, to insure compliance with specifications. All tests shall be made as per methods specified or approved by the American Society of Testing Material (ASTM), unless otherwise specified. When the test analysis shows fuel meeting specification, the City or Participating Agency will pay for said test. When test analysis shows fuel does not meet specification, Supplier will pay for said test. In addition, Supplier agrees to be liable for all charges necessary to satisfactorily bring contaminated tanks within limits, including pumping out fuel and replacing as necessary.

EXHIBIT B
CITY OF FORT WORTH SPECIFICATIONS

10.0 SCOPE

The general scope for Mansfield Oil Company and this Agreement includes finished motor gasoline, ethanol based E10, E85 gasoline, aviation gasoline, Kerosene-Type Jet Fuel, Distillate Fuel Oil for on-highway and off-highway diesel engines, Renewable Green Diesel, Biodiesel, and Diesel Emission Fluid (collectively “Motor Fuels and Aviation Fuels”). This scope of motor fuels covered by this Agreement is intended to be broad and inclusive of all motor fuels used by Participating Agencies in the United States and the District of Columbia. The specifications for the City are detailed in this dedicated section of the Contract. Specifications for all other Participating Agencies are intentionally left at a general level to avoid omission of certain specifications or blends for any given Participating Agency, however Supplier is required to meet similar specification expectations as provided by the City of Fort Worth, and as specified in the definitions provided in section 1.5 of RFP 19-0000037, in the provision of fuel to other Participating Agencies.

All fuels procured under this Agreement must conform to the applicable federal, state and local codes of each Participating Agency utilizing the resulting master agreement for each fuel type requested. This Agreement requires that as legislation, both state and federal, governing the content characteristics and/or standards of Conventional Gasoline (including RVP during summer months), Ethanol Blended Gasoline, Reformulated Gasoline, Oxygenated Gasoline, Diesel, Renewable Green Diesel and/or Biodiesel fuel, could be modified that the providing Supplier shall deliver product that complies with the modified legislation. Regulations governing the standards for fuels utilized by Participating Agencies may change throughout the term of this Agreement, and as they change, amendments may be made to this Agreement to reflect those modified standards. The City of Fort Worth reserves the right, at its sole discretion, to change the list of fuel types covered by this Agreement by deletion of fuel types no longer needed or addition of other fuel types or fuel additives as may become necessary for Participating Agencies utilizing this Agreement. When a class, type or category of fuel is to be added to this Agreement, the City of Fort Worth shall supply specifications for such fuel to Supplier no less than fifteen (15) days in advance of the first request for pricing for such fuels. This Agreement is intended to establish a “living” contract that can be adapted to the changing needs of Participating Agencies, within the scope of the RFP for motor fuels.

**EXHIBIT D
VERIFICATION OF SIGNATURE AUTHORITY**

**MANSFIELD OIL CO. OF GAINESVILLE, INC.
1025 AIRPORT PARKWAY SW
GAINESVILLE, GA 30501-6813**

Execution of this **Signature Verification Form** ("Form") hereby certifies that the following individuals and/or positions have the authority to legally bind Supplier and to execute any agreement, amendment or change order on behalf of Supplier. Such binding authority has been granted by proper order, resolution, ordinance or other authorization of Supplier. City is fully entitled to rely on the warranty and representation set forth in this Form in entering into any agreement or amendment with Supplier. Supplier will submit an updated Form within ten (10) business days if there are any changes to the signatory authority. City is entitled to rely on any current executed Form until it receives a revised Form that has been properly executed by Supplier.

1. Name:
Position:

Signature

2. Name:
Position:

Signature

3. Name:
Position:

Signature

Name:

Signature of President / CEO

Other Title: _____

Date: _____

EXHIBIT E
RFP NO. 19-0000037 AND SUPPLIER'S RESPONSE

(Attached)