
RFB: ITB0007954

Page: 1

Due Date: 02/18/2011 Time: 12:00 PM

Purchasing Agent: SHERRY OWENS

Mail To:

PURCHASING DIVISION

200 E WASHINGTON ST SUITE 1522

INDIANAPOLIS, IN 46204 3313

For questions regarding specifications contact:

RON STINSON

317 327 3577

Line	Quantity	Unit	Unit Cost	Total Cost
001	5,500,000.00	EA	\$ _____	\$ _____
PLEASE DISREGARD THIS PRICING SECTION.				
Grand Total: \$ _____				

THIS IS A REQUEST FOR PROPOSAL FOR COMMERCIAL FUEL SERVICES FOR THE
DEPARTMENT OF PUBLIC WORKS, INDIANAPOLIS FLEET SERVICES DIVISION

.
PLEASE SIGN THE BID FORM AND RETURN IT WITH YOUR PROPOSAL

ALL RELEVANT INFORMATION TO VENDORS WILL BE FOUND IN THE FOLLOWING
REQUEST FOR PROPOSAL DOCUMENTS

.

Firm Name _____	Prices Firm Through _____
Address _____	Payment Terms _____
City, State, Zip _____	Delivery Date ARO _____

RFB: ITB0007954

Page: 2

Due Date: 02/18/2011 Time: 12:00 PM

Purchasing Agent: SHERRY OWENS

Phone # _____

Fax # _____

BY _____

Representative (Signature)

Typewritten Name of Representative

INSTRUCTIONS TO BIDDERS – BIDDERS MUST COMPLY WITH ALL INSTRUCTIONS AS OUTLINED

IMMEDIATE CAUSE FOR REJECTION OF BID

- A. Failure to comply with all instructions or to sign all necessary forms including the Request For Bid (RFB) form.
- B. Failure to submit a bid surety completely and correctly executed at the time of bid submission in the correct amount (if required).
- C. Failure to correctly and completely execute the non-collusion affidavit (if required).
- D. Failure to comply with any other mandatory bid requirements.

BONDING REQUIREMENTS

- A. Bidders may be required to provide with a bid, at time of submission, a bid surety in either a flat dollar amount or percentage of bid, as specified. Acceptable forms of bid surety as follows:
 - 1. Bid Bond secured from a bona fide bid surety firm.
 - 2. A Certified Check (or equivalent) if issued by a financial institution insured by an agency of the United States.
 - 3. Other Forms of Bid Surety as specified in a particular bid.All forms of Bid Surety should be made payable to the City of Indianapolis/Marion County. No cash or personal checks accepted. All bid surety will be held until formal award is made by the appropriate governing body and until successful vendor complies with all terms of the award.
- B. Successful bidder may be requested to provide a Performance Bond/Payment Bond in either a flat dollar amount or a percentage of bid as specified, made payable to the City of Indianapolis/Marion County, within ten days after receipt of award letter. Other forms of performance guarantee may be acceptable as specified in a particular bid.

GENERAL CONDITIONS/CONTRACTUAL CLAUSES

- A. The City of Indianapolis and Marion County are exempt from Local, State and Federal Taxes and will not be responsible for any taxes levied on vendor as a result of a bid award.
- B. All terms contained in this document will become part of contract between successful bidder and the City of Indianapolis/Marion County unless bidder takes exception.
- C. The City of Indianapolis and Marion County reserve the right to reject any and all bids and to waive any of the terms and conditions and provisions contained in the Invitation to Bid or other documents, or any informality, irregularity or omission in any bid, and to award to one or more bidders.
- D. Bidders may be required to submit City of Indianapolis/Marion County Form #102 (Financial Statement) for non-construction (non-public works) bids, if specified in a particular bid's technical specifications. Bidders may also be required to submit Form #102 for each construction (public works) bid under \$100,000.00, if specified in a particular bid's technical specifications.
- E. Telegraphic/Facsimile bids are not acceptable unless specified.
- F. Manufacturer and/or model number of equipment being bid must be stated.
- G. If not bidding a delivered price to point of destination, shipping charges must be shown as a separate price on the RFB form.
- H. Upon delivery and/or inspection of ordered goods or upon performance of services, should the ordering agency determine that goods/services do not meet specifications, same will not be accepted and shall be returned at vendor's expense.
- I. Reference to brand names, catalogue numbers etc., are made to establish level of quality needed and not for the purpose of limiting competition. It is the vendor's responsibility to show proof that goods being offered are of equal quality to those that were specified.
- J. Formal contracts and/or proof of insurability may be required if applicable to the bid.
- K. The City of Indianapolis/Marion County reserves the right to deny payment to vendors ordering or delivering goods/services without benefit of a verbal or written purchase order number.
- L. Any exceptions to the specifications must be clearly set forth in vendor's bid.
- M. All bidders must comply with Consolidated City of Indianapolis Mayor's Execution Order #1, 1987. The apparent low bidder must submit or have on file form CC-09, which may be obtained from the DEO office. Failure to do so may cause your bid to be rejected. Information pertaining to the DEO Program and/or any questions should be directed to: The Division of Equal Opportunity, 200 E. Washington St., Suite 1501, Indpls., IN 46204, (317) 327-5262.
- N. The Vendor agrees to indemnify and hold harmless Marion County, Indiana, the City of Indianapolis and its officers, agents, officials, and employees for any and all claims, actions, causes of action, judgments, and liens arising out of any negligent act of omission by the Vendor or any of its officers, agents, employees, or subcontractors or any defect in materials or workmanship or any supply, material, mechanism or other product which it or any of its officers, agents, employees, or subcontractors has supplied to the City/County or has used in connection with this Agreement. Such indemnity shall include attorney's fees, costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.
- O. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by City/County are at any time not forthcoming or are insufficient, through failure of any entity to appropriate funds or otherwise, then City/County shall have the right to terminate this agreement without penalty by giving prior written notice documenting the lack of funds, in which instance, unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City/County agrees that it will make its best effort to obtain sufficient funds, including but not limited to, including in its budget for each fiscal period during the term hereof a request for sufficient funds to meet its obligations hereunder in full. This contract may be terminated by either party at City's option, upon 30 days written notice.
- P. No portion of this Agreement shall be sublet, assigned or otherwise disposed of by Vendor except with the written consent of the City/County being first obtained. Consent to sublet, assign or otherwise dispose of any portion of this Agreement shall not be construed to relieve Vendor of any responsibility for the fulfillment of the Agreement.
- Q. Unless otherwise specified within the Agreement, this Agreement shall be governed by the laws of the State of Indiana, and by all Municipal Ordinances and Codes of the Consolidated City of Indianapolis, as the same shall be in full force and effect upon the date this Agreement is executed.
- R. This Agreement represents the entire and integrated Agreement between City/County and Vendor and supersedes all prior negotiations, representations, agreements, and/or contracts, either written or oral. This Agreement may be amended only by written instrument signed by both City/County and Vendor and attached hereto as an addendum.

AFFIDAVIT OF NON-COLLUSION

THE UNDERSIGNED, HAVING BID FOR _____
in accordance with notice given by the Purchasing Division and the City of Indianapolis and/or Marion
County for such supplies, merchandise, service or contract for and in behalf of himself, or themselves,
being first duly sworn says:

That said bidder has not directly or indirectly entered into any combination, collusion, undertaking or
agreement relative to the price to be bid by any person, or to prevent any bidder, or bidders, from bidding, or
to induce any bidder, or bidders, to refrain from bidding for such supplies, merchandise, service or contract,
and that said bid so made is without reference or regard to any other bid, or bids, and without agreement,
understanding or combination, either directly or indirectly, with any person or persons, with reference to such
bidding in any way or manner whatsoever.

STATE OF _____ Signed) _____
COUNTY OF _____ } SS: _____

Subscribed and sworn to before me this _____ day of _____, 20____

My commision expires _____
Notary public (Seal)

Dated at _____
City State Date

FAILURE TO PROPERLY NOTARIZE AND RETURN THIS FORM WILL INVALIDATE YOUR BID

RFP – 11- 7954

REQUEST FOR PROPOSALS

The City of Indianapolis Purchasing Division requests proposals from qualified vendors for

Commercial Fuel Services For the The Department of Public Works, Indianapolis Fleet Services Division

PROPOSAL

The City of Indianapolis understands that respondents may have questions that cannot be answered by the information contained within this Request for Proposals ("RFP"). All questions shall be submitted in writing by 4:30 p.m. on Monday, February 7, 2011 to Ms Sherry Owens, Buyer, Purchasing Division, Suite 1522, 200 E. Washington Street, Indianapolis, IN 46204, or by FAX to (317) 327-4493, or (preferably) by e-mail to Sherry.Owens@indy.gov

PROPOSAL SUBMITTAL DEADLINE:

Date: Friday, February 18, 2011 @ 12:00 Noon Local Time

(All proposals must be delivered to Suite 1522 by 12:00 Noon.)

The City of Indianapolis reserves the right to reject any or all proposals.

NO LATE PROPOSALS WILL BE ACCEPTED FOR ANY REASON WHATSOEVER

Submit proposals to:

Ms Sherry Owens
Purchasing Division
Suite 1522
200 E. Washington Street
Indianapolis, IN 46204

ENVELOPE MUST STATE CLEARLY THAT THE ENCLOSED PROPOSAL IS FOR:

**Commercial Fuel Services
(RFP – 11 – 7954)**

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1. Executive Summary

Overview

The resulting agreement will be between the selected contractor(s) and the City of Indianapolis/Marion County, Department of Public Works (DPW), Indianapolis Fleet Services (IFS), herein referred to as "City". The basis for agreement is this Request for Proposal (RFP).

The City is issuing this RFP with the intent to establish a two (2) year term agreement for Commercial Fuel Services. The successful vendor shall provide to the City diesel and unleaded fuel from private service stations to support its various City departments including the Indianapolis Fire Department (IFD), Indianapolis Metropolitan Police Department (IMPD), Department of Public Works (DPW), Marion County Sheriff's Department (MCSD), Wishard Ambulance Service, other miscellaneous City agencies, and surrounding local Township Police and Fire Departments and Township administrative vehicles. Commercial Fuel Services shall be based on self-serve pumps only. Any interested and qualified vendors are invited to submit a proposal in accordance with the instructions found herein.

2. Proposal Submission

Proposal Timeline and Submittal Address

The City has established the following tentative timeline for the administration of this RFP. These dates are subject to amendment at the City's discretion.

Activity	Date & Time
RFP Released to Vendor Community	Monday, January 24, 2011
Final Written Questions Due from Vendors to City	Monday, February 7, 2011 – 4:30 PM Local Time
Final Response to Written Questions from the City	Thursday, February 10, 2011 – Posted as an Addendum
Proposals Due	Friday, February 18, 2011– 12:00 Noon Local Time

Response to this RFP shall be addressed and submitted to: **Attn: Ms Sherry Owens, Buyer, Purchasing Division, City of Indianapolis, 1522 City County Building, 200 E. Washington St., Indianapolis, Indiana 46204**

Proposal Copy and Submission Requirements:

- Vendor shall supply a sealed box/envelope containing one (1) signed original and three (3) signed hard copies.
- The box/envelope shall be clearly labeled with the vendor's name and "RFP # 11-7954 – Commercial Fuel Services, Due Date: Friday, February 18, 2011 at 12:00 noon local time. An authorized representative of the vendor must sign the proposal.
- Proposals must be received by the Purchasing Division and time stamped by the deadline. The City will not consider any proposals received after the official deadline. (The City will not make any exceptions due to failure or delay of the U.S. Postal service or any other delivery service, and vendors are strongly encouraged to take any steps necessary to ensure that the proposal is received on time.)

Questions and Answers

Any specific questions or comments concerning the RFP may:

- Be presented by fax to the attention of Ms Sherry Owens, Buyer at 317-327-4493 or

- Be e-mailed to Ms Owens at Sherry.Owens@indy.gov , Buyer, no later than 4:30 P.M. local time on Monday, February 7, 2011. (Questions or comments received after this time will not be entertained.)
- **Please be sure to reference the RFP in question by name and RFP number when submitting questions.**
- Vendors shall note that only the *written* answers provided will be binding on the City. These answers shall represent the City's official position and supersede any previous oral statements made during the Conference or at any time by City staff. The written answers will be posted on the City Purchasing Division web site (www.indy.gov/purch) as addenda to this RFP.

Addenda

Any related addenda to this RFP, including written answers to questions, will be posted on the Purchasing Division's official website at www.indy.gov/purch under the appropriate project heading. Addenda and updates will NOT be sent directly to vendors. It is recommended that any vendor submitting a proposal check the web site daily for addenda and updates after the release date. Vendors should print out, sign and return addenda acknowledgement(s) with their RFP (Reference Section H of the Response Format).

Conflicts Errors or Discrepancies

If a vendor finds conflicts, errors, discrepancies or ambiguities in the Proposal Documents or any sample form, or if the vendor is in doubt as to the intended meaning of any portion or provision therein, the vendor shall at once give written notice thereof to the City's Representative, at least seven (7) consecutive calendar days prior to the Proposal Due Date. No vendor shall be allowed any extra compensation or time extension by reason of any conflict, error, discrepancy or ambiguity of which the vendor had actual knowledge or reasonably shall have known and which he/she failed to report within the period and in the manner required herein.

3. Submission Format

General Requirements

All original and hard copies:

- Shall be presented in a professional manner such as spiral bound, perfect bound, or professional grade folder/ three ring binder. (Ref "Proposal Copy and Submission Requirements")
- Shall be appropriately titled on the front cover with the RFP name, RFP number, vendor name and the due date
- Proposals may be fastened with standard metal spring type clips or plastic clips that are easily removable, or may be placed in a basic three ring binder. Proposal pages should be sequentially numbered.
- Any manuals, foldouts that contain charts, spreadsheets, and oversize exhibits are permissible but must be bound separately and referenced in the proposal.
- Tabs or other separators should serve to divide major sections of the proposal.

All responses, as well as any reference material presented, must be written in the English language. Main text shall be a common typeface (Arial, Times New Roman, etc.) and shall not be smaller than 11 pt.

The vendor should sufficiently address each item presented in the RFP and all Appendices in accordance with the directions found herein. Each item is expected to be addressed or the proposal may be judged as "non-responsive." Answers shall be clear, sufficiently detailed and specific to the City.

Proposals shall be based only on the material contained in the RFP. In addition to the main document, this includes written responses to questions as well as any other official amendments/addenda published by the City concerning the acquisition. Proposals shall be prepared as simply as possible to provide straightforward, concise descriptions of the vendor's capability to satisfy the requirements of the RFP. Utmost attention shall be given to accuracy, completeness, and clarity of content. All parts, pages, figures, and tables shall be numbered and clearly labeled. The proposal shall be organized into the following major sections with tabs for sections numbered and titled as they appear below. Include a tab or section heading for each subsection.

3.1 Response Format – Section Definitions and Requirement Details

The format for RFP response submission is presented below. Please organize and format your proposal response in the following manner:

Response Section	Description
A.	Transmittal Letter
B.	Company Background and Team Arrangement
C.	Reference Reviews
D.	Vendor History
E.	Scope of Services
F.	MBE/WBE/VBE Participation
G.	Basic Service Agreement Acceptance
H.	Additional Information
I.	Cost Proposal / Budget

(The rest of this page left intentionally blank.)

A. Transmittal Letter

A.1. The vendor shall first submit a formal transmittal letter on *official company letterhead* that contains the following:

- **Statement of Interest** – This statement shall indicate your firm's general interest and capability to perform the project. It shall also include a brief summary of any information that you feel might be especially important to the City.
- **Statement of Proposal Life** – The proposal must have a proposal life of at least one hundred eighty (180) calendar days from the RFP due date. This shall represent the minimum time during which the proposal is a firm offer and a contract may be entered into.
- **Contact Person** – Please include the name, title, address, telephone number, fax number and E-mail of the key contact person for any questions regarding your proposal.
- **Signature of Authorized Representative** – An authorized representative of the firm must sign the transmittal letter.

B. Company Background and Team Arrangement

This section should give a brief overview of the company and provide the following information:

- Company name & local business address (Include any regional offices and/or headquarters.)
- Year established (Include former names and year established, if applicable)
- Type of ownership and parent company (if applicable)

If a joint venture or subcontracts are contemplated, provide the same information as above for any subcontractors, and explain their role in the contract. (The Prime Contractor must assume all responsibility for the entire project, including the work of any subcontractors.) Please include any general pre-printed literature regarding your company in this section.

C. Reference Reviews

Please provide a detailed list of references showing your expertise and experience in providing the fuel services requested. A minimum of three (3) references are required for this RFP. References should include project description, contact names, addresses, phone and e-mail.

D. Vendor History

The vendor must be a "responsible" vendor that is both ethically and financially in good standing within the industry, as determined by the City. If the vendor's local office has had a contract terminated for default during the past three (3) years, this fact shall be disclosed in the RFP response along with the vendor's position on the matter(s). If the vendor has experienced no such terminations for default in the past three years, then it should so indicate.

Prime vendors who are not actual fuel manufacturers should discuss their relationship with the manufacturer, including the history of the partnership, formal training programs, formal certifications or authorizations, and any additional contractual or warranty benefits that will accrue to the City based on the business relationship between the two entities. A warranty statement or letter from the manufacturer attesting to its commitment to the warranty should be included.

E. Scope of Services

Based on the vendor's understanding of the project, the vendor shall respond to each of the following items. Responses shall be kept in the order in which they are presented herein by paragraph number.

- E.1. Vendor shall provide a detailed description of the Scope of Services to be completed including how the vendor will address the main areas. All the areas of the Scope of Services listed below must be clearly addressed in order for the contractor(s) to be fully qualified by City. For ease of scoring, responses to this section shall be kept in the same order in which they appear herein.

- E.1.1. The successful vendor shall provide the City of Indianapolis, Indianapolis Fleet Services Division (IFS) with diesel and unleaded fuel from private service stations to support various City Departments. These Departments shall include, but not be limited to; The Indianapolis Fire Department (IFD), Indianapolis Metropolitan Police Department (IMPD), Department of Public Works (DPW), The Marion County Sheriff's Department (MCSD), Wishard Ambulance Service, Township Police and Fire Departments, Township administrative vehicles and other miscellaneous City agency units. Commercial Fuel Services shall be based on self-serve pumps only. Vendor must be able to provide refueling accessibility to all vehicles in the Indianapolis fleet.
- E.1.2. All gasoline shall be virgin product; re-refined product is unacceptable. Unleaded E-10 fuel shall be minimum 87 Octane neat or blended.
- E.1.3. All #2 ultra low sulfur diesel fuels shall be provided at a minimum Cetane of 40 and a maximum sulfur content of .05. All vendors shall indicate the blend of diesel fuel during the winter months. Gelling and icing of fuel in the tanks are a concern to the City and blending of fuel will help circumvent this problem. Vendors should also include potential availability of Urea for SCR emission systems used in the newer diesel engines.
- E.1.4. Nothing herein contained shall be construed as an obligation by IFS to order the quantities as stated. The said quantities are estimated based upon anticipated annual usage but are not guaranteed to be the exact amounts to be supplied under the contract. (See RFP "Attachment A" for estimated quantities to be purchased.)
- E.1.5. Vendors shall have numerous stations located within Marion County as well as the contiguous counties. Some vehicles are driven into the counties immediately adjacent to Marion, so stations in Johnson, Boone, Hamilton, Hancock, Hendricks, Morgan and Shelby Counties will benefit this program. Vendors with stations in all of the contiguous counties will receive favorable consideration during analysis of proposals.
- E.1.6. Vendors shall supply the address, hours of operation, and types of fuels available, including alternative fuels (i.e. E- 85, propane) for each service station within Marion and contiguous counties. The same discount pricing structure must be applied collectively at all service stations based on total usage for a month's period. Vendors with twenty-four (24) hour stations and stations that can supply diesel fuel will benefit the program and will receive favorable consideration during analysis of proposals.
- E.1.7. The successful vendor shall be required to provide approximately 2,500 – 3,500 primary charge cards with special account numbers for each as prescribed by IFS at no charge. The card program shall include a driver identification number for security and tracking purposes that will be used in conjunction with the card for any given transaction.
- E.1.8. The successful vendor shall be required to provide weekly reports of all fuel transactions by account. Reports shall be in an electronic form specified by our software vendor to be downloaded into an Excel format. Electronic fuel information reports shall be required by the second (2nd) working day of the following week for the prior week's transactions. Reports shall include: Account number, card number, transaction date/time, vehicle number, odometer, store location, product, quantity, cost, total and Driver I.D. number.
- E.1.9. For each month that this Agreement is in effect, vendor shall allow and initiate an electronic transfer of data from its system to shall take the form of a flat ASCII data file to be converted by the City into its fuel management system. City shall provide vendor with the table layouts and data field definitions as necessary to facilitate the data transfer.
- E.1.10. Vendor's monthly billing text file data transfer shall be in any electronic media acceptable to the City and compatible with the City's hardware specifications. City shall not unreasonably withhold approval of vendor's transfer medium.

- E.1.11. Paper Statement of Accounts shall be sent in addition to the electronic file to match the information sent on the diskette for payment and also for verifying information. Transactions shall be sent by vehicle number (account number) listing each station where fuel was received and all individual fuel transactions. Two copies of invoices/statements shall be sent each month for all charges. Paper Statements shall be required by the fifth (5th) working day of the following month for all prior month transactions.
- E.1.12. The City may request and the successful vendor shall supply copies of credit card receipts for the purposes of resolving account discrepancies or for account investigation. Copies of one percent (1%) of all receipts per month shall be provided at no charge. Copies of additional receipts over the 1% per month shall be supplied by the vendor at a rate set out by the vendor in the proposal response.
- E.1.13. The successful vendor shall be able to immediately terminate charging privileges, when notified by IFS, for cards reported lost, stolen, damaged, cancelled as a result of vehicle de-activation, or suspend charging privileges as determined by IFS.
- E.1.14. The successful vendor shall be able to issue new or replacement cards within a maximum of five (5) business days after notification by IFS at no charge. All cards shall have various restricted use parameters available as requested by the City.
- E.1.15. Successful vendor shall be willing to extend this program to any other agency or fleet with municipal owned license plates, as a customer of IFS.
- E.1.16. The City of Indianapolis, Marion County and all Townships are exempt from Federal Excise Tax under the Certificate Number 3570001720018. They are also exempt from Indiana State Sales tax, but must pay the State of Indiana Motor Fuel Tax. All Federal Excise and Indiana State Sales Tax shall be excluded from the vendor's billing. The State of Indiana Road Tax must be itemized separately on the invoice from the gasoline so IFS can file for reimbursement for exempt vehicles.
- E.1.17. Pricing shall be stated as a base price set by the daily closing (M-F 6:00 PM EST) OPIS RackFax Gross rack average price for Indianapolis, Indiana plus an adjustment factor stated in cents. The base price shall include freight and exclude taxes. The adjustment factor shall be a flat rate mark up from the base price, with the mark up stated in cents per gallon. All submitted pricing examples should use February /16/2011 as a basis.
- E.1.18. The posted closing OPIS RackFax Gross rack average price may change from day to day during the contract period and consequently the base prices set forth above shall increase/decrease as the OPIS price fluctuates. In other words, the vendor's price proposal shall be stated as the adjustment factor by the gallon ranges as specified in RFP Attachment B. The adjustment factor shall be firm throughout the contract period although the closing OPIS RackFax Gross rack average may escalate / de-escalate from day to day.
- E.1.19. Billing for the month shall use the daily closing OPIS RackFax Gross rack average price and daily transactions shall be billed at that price, plus the adjustment factor, based on the volume discount for all gallons dispensed collectively from all stations, but excluding taxes.
- E.1.20. If the successful vendor cannot deliver the fuel product requested by IFS for any reason, IFS has the option to purchase from any other source without violation of contract in order to supply product for vehicles that protect the health, safety and welfare of and provide public service for the City of Indianapolis, Marion County. Failure to provide fuel product as outlined herein and as requested by IFS may be grounds for termination of the contract.
- E.1.21. Vendor shall submit a list of current contracts of equal or greater size for reference purposes.

- E.1.22. Vendor shall provide any fuel reward programs available to the City. Such programs shall be considered in evaluation for pricing. If proposal includes such a reward program, please provide detailed information concerning how the City will be able to obtain / redeem rewards along with information on how the rewards program can be tracked and reconciled. Detail of the rewards accumulated should be available via a web interface along with on-line account statements. This reward program shall be focused on the City receiving the reward and not the individual card user.
- E.1.23. Vendor shall provide fuel during emergencies (as declared by the City of Indianapolis and/or Indianapolis Fleet Services) and shall have locations that give priority to any and all authorized City emergency responders. Vendor shall supply a written narrative program outlining its policy for facilitating requirements that address providing fuel to City vehicles that may not have valid active cards during an emergency. Successful vendor and the City shall jointly finalize an emergency plan within thirty (30) days of signed contract.
- E.1.24 **RFP Attachment C - "Sample Service Agreement" shall be the basis for the City's agreement with the successful vendor.** If the vendor wishes the City to consider any terms as additions or supplements to the RFP Attachment C - "Sample Service Agreement", the vendor must attach such terms to its proposal. Such vendor proposed terms are subject to negotiation and acceptance – or rejection - by the City. In the event of a conflict between a vendor's proposed term and term in the City's Sample Agreement, the City's language shall control, **unless the vendor takes specific exception to the City's term on the Exception Sheet, RFP Attachment D**, and the City negotiates and agrees to different terms. No verbal agreements will be binding on either party.

F. MBE/WBE/VBE Participation

It is the policy of the City that Minority Business Enterprises (MBEs), Women Business Enterprises (WBEs), and Veteran Business Enterprises (VBEs) shall have the maximum feasible opportunity to participate in the performance of contracts. Consequently, the City, through Article IV, sections 201-401 of the revised municipal code and Executive Order 5, 2008, has established MBE participation goals of 15%, WBE participation goals of 8%, and VBE participation goals of 3% for its dollars spent on public works, goods, and services.

In order to help accomplish this goal, the City is requesting that you include with your response information regarding your status as an MBE, WBE or VBE. Additionally, please include contact information for any MBE, WBE or VBE owned contractors directly participating in your business operations. The City also requests contact information for any MBE, WBE or VBE sub-contractors that you might use in the course of doing business with the City. Some examples of this kind of service include, but are not limited to, office suppliers, courier services, shipping services, etc. These services can occur at the local, state, or national level. Please include an estimated (%) or (\$) amount that you anticipate using.

Be advised that the information provided on MBE/WBE/VBE participation shall be included as part of the scoring criteria for this RFP. Accordingly, it is imperative that you do everything possible to obtain the information above and supply it as part of the RFP response.

In order to be recognized by the City of Indianapolis as an MBE/WBE/VBE participant, your company must be certified with the Department of Minority & Women Business Development (DMWBD). The City will recognize only City of Indianapolis certified firms regardless of any other state or national affiliation.

If you should need assistance in obtaining information or certification for possible participation in a contract, please contact the Division of Minority & Women Business Development (DMWBD) <http://www.indy.gov/eGov/City/DMWBD/MBE-WBE-VBE/Pages/Certification.aspx> or (317) 327-5262. Respondents can view a list of City DMWBD approved MBE/WBE/VBE contractors by going to this web page: <http://www.indy.gov/eGov/City/DMWBD/MBE-WBE-VBE/Pages/VendorList.aspx> and clicking on the appropriate "vendor list".

G. Basic Services Agreement Acceptance

The vendor shall review the Sample Service Agreement found in Attachment C of this RFP. The vendor does NOT need to sign the sample agreement at this time. Note: Any proposed exceptions to the terms in the Sample Service Agreement shall be listed in detail on the Exceptions Sheet (Attachment D), attached and returned with the proposal as provided in Section E.1.24.

H. Additional Information

Provide any additional information deemed necessary by the vendor to ensure success of the project. Any exceptions that the vendor would like to have for this project should be provided in detail on RFP Attachment D – Exception Sheet and included in this section. This section should also include any addenda published on the Purchasing Division web site prior to the due date for the RFP.

I. Cost Proposal / Budget

Please be sure that in hard copy submissions, this section is easily detachable from the rest of the proposal.

Please reference "RFP Attachment B" for insertion into this section for pricing.

(End of Response Format Sections)

(The rest of this page left intentionally blank.)

4. Proposal Evaluation

- 4.1 Proposals will be evaluated and scored according to the following evaluation criteria. Proposals that significantly deviate from the City's requirements may be found "non-responsive" without further evaluation.

Evaluation Criteria	Percentage (Weight Factor)
Ability to provide multiple locations	20%
Ability to provide stations open 24 hours	20%
Ability to provide Diesel fuel at multiple locations	20%
Pricing	20%
Past performance and experience in providing this type of service	15%
MBE/WBE /VBE Participation Plan	5%

5. Additional Provisions

Revision to the RFP - The City may modify or amend this RFP at any time. If it becomes necessary for the City to revise any part of this RFP, the revision(s) will be posted on the City's web site (www.indy.gov/purch). In such an event, the submission deadline may be extended, at the option of the City, to allow vendors the opportunity to revise their proposals accordingly.

Use, Disclosure and Confidentiality of Information – This RFP, distributed by the City, including any other required terms, will be incorporated by reference and made a part of any resulting contract. The information supplied by a vendor as part of an RFP response will become the property of the City. Proposals will be available to interested parties in accordance with the Indiana Access to Public Records Act (IC 5-14-3). None of the proposal responses will be made available to the public until after negotiation and award of a contract or cancellation of the procurement.

To the extent requested by a vendor and allowed by law, the City will treat *trade secrets* and *confidential financial information* as confidential (if designated as confidential and submitted separately in a sealed envelope). The vendor must request confidential status before the proposals are opened. If the City believes that information designated as confidential should not be treated as such, the vendor will be notified and afforded reasonable time to present objections prior to any release of the information. The City will take into consideration the possibility of harm resulting from any disclosure, but reserves the right to make the final determination in accordance with the law. (Note: Pricing information may not be considered confidential.)

Errors in Proposals – Vendors will not be allowed to change or alter their proposals after the deadline for proposal submission. The City reserves the right, however, to correct obvious errors such as math errors in extended pricing (not unit pricing). This type of correction may only be allowed for "obvious" errors such as arithmetic, typographical, or transposition errors. Any such corrections must be approved by the Purchasing Division and countersigned by the vendor. Vendors are advised to make sure that their proposals are true and correct when submitted.

Vendor Expenses – By submitting a response to this RFP or participating in the process, each vendor agrees that all of its related expenses are its sole responsibility, and that the City will not be responsible for any costs whatsoever incurred by the vendor in connection with or resulting from the RFP process, including but not limited to costs for preparation/submission of proposals, travel & per diem, attending interviews, providing presentations or demonstrations, and participating in contract negotiation sessions.

Proposal Life – Vendors must hold their proposals open and pricing firm for one hundred eighty (180) calendar days from the proposal submission deadline. Any proposal accepted by the City for the purpose of contract negotiations shall remain valid until superseded by an executed contract or until rejected by the City.

Post- Proposal Discussions and Presentations – After the Proposal Due Date, the City may conduct discussions with representatives of one or more vendors submitting proposals for the purpose of obtaining clarification of a vendor's proposal and/or to assure full understanding of the solicitation requirements. As part of this process, the City may require a vendor to provide one or more formal presentations to City officials to further explain or clarify their proposed solution. Any presentation will be at a time and place to be determined by City staff. The vendor will be notified in advance of the specifics if such a presentation is required. The commencement of discussions or the scheduling of presentations does not signify a commitment by the City to execute an agreement or to continue discussions with the vendor.

Contract Renewal – Any resulting contract may be renewed beyond the expiration date by mutual agreement of the parties. The term of the renewal may not be longer than the term of the original contract.

Multiple Awards – The City may award a contract to a single vendor; or, at its option, may award contracts to a team of vendors if deemed to be in the best interest of the City.

Contract Negotiations – The City will use the requirements set forth in the RFP as the basis for proposal evaluations. After identifying one or more responsive and responsible vendors whose proposals appear to be most advantageous to the City, the City may enter into contract negotiations with the vendor(s), **based upon the Sample Service Agreement, the specific exceptions to any terms in that sample agreement listed by the vendor(s) on the Exceptions Sheet (Attachment D) and any additional or supplemental terms proposed and provided by the vendor(s) in the proposal(s).** If at any time the contract negotiations with a particular vendor are judged to be ineffective or not in the City's best interest, the City may cease all activities with that vendor and begin/continue contract negotiation activities with another vendor and the process may continue until a contract is executed. As a part of this process, the City may obtain "best and final offers" from all vendors judged to be finalists. The City reserves the right to cease all contract negotiation activities at any time and reject all proposals if such action is determined by the City to be in its best interest.

No Obligation to Proceed – The City is under no obligation to proceed with this project or any subsequent project, and may cancel this RFP at any time without the substitution of another, if such cancellation is deemed in the best interest of the City. Furthermore, the City may reject any and all proposals, to waive any irregularities or informalities in a proposal, and to issue a new or modified RFP, if it is found to be in the best interest of the City.

Proposal Withdrawal and Modification – The City may allow a vendor representative bearing proper authorization and identification to sign for, receive, and withdraw the vendor's unopened proposal prior to submission deadline. A vendor wishing to modify its proposal may do so by withdrawing the initial submission and then submitting a modified proposal prior to the deadline.

Bonds – There are no bond requirements with this RFP or the resulting contract.

Purchase Orders – The vendor shall furnish no services, equipment and materials or labor unless a properly executed order is received from the City directing the supply of the same.

Subcontractors – The City intends to contract with one or more prime vendors who will be solely responsible for contractual performance. In the event a prime vendor utilizes one or more subcontractors, the prime vendor will assume all responsibility for performance of services by the subcontractor(s). Additionally, the City must be named as a third party beneficiary in all subcontracts. A list of all subcontractors proposed to take part in the performance of the contract (at its outset) shall be provided to the City for approval prior to contract execution. This request may require that sufficient financial or background information be provided. To the degree available, this information shall be included in an Appendix with the proposal response.

Taxes – The City of Indianapolis and Marion County are exempt from Federal, State and Local Taxes and will not be responsible for any such taxes in connection with the award of this contract.

Licenses and Permits – The successful vendor shall furnish the City upon request any and all documentation regarding necessary licenses, permits, certifications and/or registrations required by the laws or rules and regulations of the City of Indianapolis, Marion County, other units of local government, the State of Indiana and the United States. The vendor certifies that it is now and will remain in good standing with such governmental agencies and that it will keep its licenses, permits, certifications and/or registrations in force during the term of the agreement.

Use of the City's Name – Upon entering an agreement, the successful vendor agrees not to use the name of the City of Indianapolis or Marion County in relation to the agreement in commercial advertising, trade literature or press releases to the extent without the prior written approval of the City.

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6. Appendices

RFP Attachment A

ESTIMATED ANNUAL QUANTITIES IN GALLONS COMMERCIAL FUEL SERVICE

	MINIMUM	MAXIMUM
Unleaded E-10 Gasoline 87 Octane	1,400,000	3,000,000
Ultra Low Sulfur Diesel Fuel	30,000	150,000

The quantities listed are estimates only and are based on past history or department survey. The City may purchase more or less than the amounts shown. All orders shall be on an "as needed" basis, subject to the availability of funding and budgetary considerations. IFS does not guarantee these usage figures as stated above, and actual quantities may be less than the estimated minimum or more than the estimated maximum.

(The rest of this page left intentionally blank.)

RFP Attachment B**PROPOSAL PRICING FORM
COMMERCIAL FUEL SERVICE**

Vendor's price shall be the daily closing OPIS RackFax Gross rack average pricing for the date as specified in Section I, Scope of Work, plus an adjustment factor based on total gallons per monthly usage including freight, but excluding taxes. Usage will be calculated collectively from all stations for pricing purposes. The adjustment factor shall be a flat rate mark up from the OPIS RackFax Gross rack average price as specified in Section 1, Scope of Work, with the mark up stated in cents per gallon.

Unleaded E-10 Gasoline OPIS RackFax gross rack average price _____ based on pricing as of ____ / ____ / 2011.

VOLUME ADJUSTMENT FACTOR	GALLON RANGE	
	START	END
Per gallon _____ cents above OPIS	<u>0</u>	to <u>1,000,000gal/mo</u>
Per gallon _____ cents above OPIS	<u>1,000,000</u>	to <u>1,499,999 gal/mo</u>
Per gallon _____ cents above OPIS	<u>1,500,000</u>	to <u>1,999,999 gal/mo</u>
Per gallon _____ cents above OPIS	<u>2,000,000</u>	to <u>2,299,999 gal/mo</u>
Per gallon _____ cents above OPIS	<u>2,300,000</u>	to <u>2,799,999 gal/mo</u>
Per gallon _____ cents above OPIS	<u>2,800,000</u>	to <u>and over gal/mo</u>

Low Sulfur #2 Diesel OPIS rack average price _____ based on pricing as of ____ / ____ / 2011.

VOLUME ADJUSTMENT FACTOR	GALLON RANGE	
	START	END
Per gallon _____ cents above OPIS	<u>0</u>	to <u>29,999 gal/mo</u>
Per gallon _____ cents above OPIS	<u>30,000</u>	to <u>59,999 gal/mo</u>
Per gallon _____ cents above OPIS	<u>60,000</u>	to <u>89,999 gal/mo</u>
Per gallon _____ cents above OPIS	<u>90,000</u>	to <u>and over gal/mo</u>

Copying charge for copies of receipts over 1% per month: _____ per ticket.

**CONSOLIDATED CITY OF INDIANAPOLIS
(SAMPLE SERVICE AGREEMENT)**

This Service Agreement (hereinafter referred to as "Agreement"), entered into by and between the Consolidated City of Indianapolis, (hereinafter referred to as "City"), and _____ (hereinafter referred to as "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

1.01 The "Agreement", as referred to herein, shall mean this Agreement executed by City and Contractor, and shall include these Terms and Conditions, the Attachments described in Section 1 and attached hereto, and any written supplemental agreement or modification entered into between City and Contractor, in writing, after the date of this Agreement.

1.02 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Contractor. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Contractor which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Contractor.

1.03 In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Contractor or other rights or obligations of City or Contractor the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Contractor and affording the greater right or remedy to City, shall govern.

1.04 Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against City solely by virtue of City or City's representatives having drafted all or any portion of this Agreement.

1.05 This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency.

1.06 This Agreement shall be construed under and governed by the laws of the State of Indiana.

SECTION II. DUTIES OF CONTRACTOR

2.01 The Contractor shall provide the services as set forth in Attachment A, "Scope of Services" attached hereto and made a part thereof.

2.02 It is hereby understood by both parties that time is of the essence in this Agreement. Failure of the Contractor to provide commercial fuel services as herein provided will result in monetary damages to the City. It is hereby agreed that the City shall be damaged in the sum of ONE HUNDRED DOLLARS AND NO CENTS (\$100.00) per day for every day that Contractor is unable or refuses, to provide fuel services in the manner and amount herein provided. Contractor agrees to pay City said damages without receiving proof of actual damages, or in the alternative, it agrees that City may withhold compensation otherwise due Contractor for services performed under this Agreement. It is expressly understood by the parties hereto that these damages do not limit City's other remedies under this agreement, or as provided by applicable law.

- 2.03 City also reserves the right to obtain commercial fuel from other sources on the open market as long as the Contractor is unable or refuses to provide the commercial fuel in the manner and within the timeframe specified in this agreement.

SECTION III. TERM

3.01 This Agreement shall begin upon execution date of this Agreement by all parties and shall terminate twenty-four months from that date, unless earlier terminated in accordance with this Agreement.

3.02 This Agreement may be renewed beyond the expiration by agreement of parties. The term of the renewal shall not be longer than the term of the original Agreement. A renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the Agreement shall remain the same as set forth herein, and may be amended only by written instrument signed by both City and Contractor and attached hereto as an amendment.

SECTION IV. COMPENSATION

4.01 The Contractor proposes to furnish all labor, materials and supplies in accordance with the conditions of this Agreement necessary to complete the work as defined in *Attachment A* for a total amount not to exceed the rates as set forth in Attachment B.

\$ _____.

4.02 Payment will be in conformance with *Attachment B* to this Agreement.

4.03 Contractor shall submit a properly itemized invoice for services performed and expenses incurred under this Agreement and shall cooperate with and provide any other necessary information to City. City shall pay Contractor within thirty days after receipt of such properly itemized claim forms.

SECTION V. GENERAL PROVISIONS

5.01 Independent Contractor. The parties agree that Contractor is an independent contractor as that term is commonly used and is not an employee of the Consolidated City of Indianapolis and of Marion County. As such, Contractor is solely responsible for all taxes and none shall be withheld from the sums paid to Contractor. Contractor acknowledges that it is not insured in any manner by the City for any loss of any kind whatsoever. The Contractor has no authority, express or implied, to bind or obligate the City in any way.

5.02 Subcontracting. The parties agree that Contractor shall not subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, Contractor shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Contractor shall take sole responsibility for the quality and quantity of any services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Contractor of any responsibility for performing under this Agreement.

5.03 Necessary Documentation. Contractor certifies that it will furnish the City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of the City of Indianapolis, the County of Marion, other units of local government, the State of Indiana, and the United States. Contractor further certifies that it is now in and will maintain its good standing with such governmental agencies and that it is now and will maintain its license, permit, registration, authorization, or certification, as applicable, in force during the term of this Agreement. Failure of the Contractor to comply with this paragraph shall constitute a material breach of this Agreement.

5.04 Confidentiality of City Information.

5.04.1 Contractor understands that the information provided to it or obtained from City during the performance of its services is confidential and may not, without prior written consent of the City, be disclosed to a person not in the City's employ except to employees or agents of Contractor who have a need to know in order to provide the services. Further, Contractor's Work Product generated during the performance of this Agreement is confidential to City. The failure to comply in all material respects with this section shall be considered a material breach of this Agreement. The obligations of this section shall survive the termination of this Agreement and shall be applicable to the full extent permissible under statutes governing access to public records. Confidential information shall not include information, that: (a) was known by Contractor at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Contractor; (c) is made known to Contractor by a third person who does not impose any obligation of confidence on Contractor with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena or court order whereupon Contractor shall provide notice to the City prior to such disclosure; or (e) information that is independently developed by Contractor without references to the confidential information.

5.04.2 Contractor shall not, under any circumstances, release information provided to it by, or on behalf of, the City that is required to be kept confidential by City pursuant to Indiana law except as contemplated by this section, clause (d).

5.04.3 Contractor acknowledges that City will not treat this Agreement as confidential information and will post the Agreement on the City website as required by Section 141-105 of the Revised Code of the Consolidated City of Indianapolis and Marion County. Use by the public of any document or the information contained therein, shall not be considered an act of City

5.05 Records; Audit. Contractor shall maintain books, records, documents and other evidence directly pertinent to performance of services under this Agreement. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under this Agreement for inspection by the City or any other authorized representative of the City of Indianapolis, Marion County, Indiana. Copies thereof, if requested, shall be furnished at no cost to the City.

5.06 Ownership of Documents and Materials.

5.06.1 All documents, including records, programs, data, film, tape, articles, memos, and other materials, created or developed under this Agreement, shall be considered "work for hire" and the Contractor transfers any ownership claim to the City of Indianapolis and all such matters will be the property of the City of Indianapolis. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the City, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss or damage to these materials developed for or supplied by the City and used to develop or assist in the services provided herein while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Agreement shall be available to the City. Notwithstanding the foregoing, Contractor shall be entitled to retain a set of its work papers in accordance with professional standards.

5.06.2 Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that Contractor shall retain all of its rights in its proprietary information including, without limitation, its

methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by Contractor prior to, or acquired by Contractor during, the performance of this Agreement and the same shall not be deemed to be Work Product or Work For Hire and Contractor shall not be restricted in any way with respect thereto.

5.07 Insurance.

5.07.1 Contractor shall, as a condition precedent to this Agreement, purchase and thereafter maintain such insurance as will protect it and City from the claims set forth below which may arise out of or result from Contractor's operations under this Agreement, whether such operations be by Contractor or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone directly for whose acts any of them may be liable:

Coverage

Worker's Compensation & Disability	Statutory
Employer's Liability Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee
Commercial General Liability (Occurrence Basis) Bodily injury, personal injury, property damage, contractual liability, products/completed operations.	
General Aggregate (other than Products/Completed Operations)	\$500,000
Products/Completed Operations	\$500,000
Personal & Advertising Injury Limit	\$500,000
Each Occurrence Limit	\$500,000
Fire Damage (any one fire)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000
NOTE: <u>GENERAL AGGREGATE TO APPLY PER PROJECT</u>	
Comprehensive Auto Liability (Owned, hired & non-owned) Bodily injury & property damage (single limit)	\$500,000 each accident
Umbrella Excess Liability	\$1,000,000 occurrence &

5.07.2 With the prior approval of City, Contractor may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced. Contractor shall be responsible for all deductibles.

5.07.3 Certificates of Insurance, naming the City of Indianapolis as "additional insured" (except Workers Compensation), showing such coverage then in force (but not less than the amount shown) shall be filed with the City prior to the commencement of any work. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled or non-renewed until at least sixty (60) days after written notice has been given to the City.

5.07.4 Notwithstanding any other provision of this Agreement, Contractor shall provide all insurance coverage required by the documents provided by City.

5.08 Termination for Cause or Convenience.

5.08.1 If Contractor becomes insolvent, or if it refuses or fails to perform the work and services provided by this Agreement, or if it refuses to perform disputed work or services as directed pending resolution of such dispute, or if it fails to make payments to subcontractors or consultants employed by it, or if it otherwise violates or fails to perform any term, covenant or provision of this Agreement, then City may, without prejudice to any other right or remedy, terminate this Agreement in whole or in part, in writing, provided that Contractor shall be given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of City's intent to terminate, and (2) an opportunity for consultation with City prior to termination. In determining the amount of final payment to be made to Contractor upon such termination for default, if any, no amount shall be allowed for anticipated profit on unperformed services or other work; furthermore, an adjustment shall be made to the extent of any additional costs incurred or reasonably foreseen by City to be incurred by reason of Contractor's default.

5.08.2 This Agreement may be terminated in whole or in part in writing by City for City's convenience; provided that Contractor is given (1) not less than ten (10) calendar days written notice (delivered certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with City prior to termination. If City effects termination for convenience, Contractor's compensation shall be equitably adjusted.

5.08.3 Upon receipt of a termination action for default or for the City's convenience, Contractor shall (1) promptly discontinue all services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to City all data, drawings, specifications, reports, estimates, summaries, and such other information, materials or documents as may have been accumulated by Contractor in performing this Agreement, whether completed or in process.

5.08.4 If, after termination for Contractor's default, it is determined that Contractor was not in default, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment of the price provided for in this Agreement shall be made as provided in Paragraph 5.08.2 and the recovery of such price adjustment shall be Contractor's sole remedy and recovery.

5.09 Termination for Failure of Funding. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by City are at any time insufficient or not forthcoming through failure of any entity to appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance unless otherwise agreed to by the parties, this Agreement shall terminate and become null and void on the last day of the fiscal period for which appropriations were received. City agrees that it will

make its best efforts to obtain sufficient funds, including, but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full.

5.10 Indemnification. Contractor agrees to indemnify, defend, and hold harmless the City of Indianapolis and its officers, agents, officials and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission by Contractor or any of its officers, agents, employees or subcontractors, regardless of whether or not it is caused in part by the negligence of a party indemnified hereunder. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. The City shall not provide such indemnification to the Contractor, provided, however, that the Contractor shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omission of the City.

5.11 Notice. Any notice, invoice, order or other correspondence required to be sent under this Agreement shall be sent to:

To Contractor:

To City:

David Sherman, Director
Director of Public Works
200 E. Washington Street, Suite 2460
Indianapolis, IN 46204

5.12 Disputes. Contractor shall carry on all work required under this Agreement and maintain the schedule for services during all disputes or disagreements with City. No work shall be delayed or postponed pending resolution of any disputes or disagreements except as Contractor and City may otherwise agree in writing. Should the Contractor fail to continue to perform its responsibilities as regards all non-disputed work without delay, any additional costs incurred by the City or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the City for such costs. The City may withhold payments on disputed items pending resolution of the dispute.

5.13 Non-discrimination. Contractor and its subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, religion, color, sex, handicap, disability, national origin, ancestry, disabled veteran status, or Vietnam-era veteran status. Breach of this section shall be regarded as a material breach of this Agreement.

5.14 Conflict of Interest. Contractor certifies and warrants to City that neither it nor any of its agents, representatives or employees who will participate in the performance of any services required by this Agreement has or will have any conflict of interest, direct or indirect, with City.

5.15 Non-contingent Fees. Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty City shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

5.16 Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement – or to enjoy any of its benefits – because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as Force Majeure Event), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended except for payment obligations with respect to service already provided. If the period of nonperformance exceeds sixty (60) days from the receipt of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

5.17 Applicable Laws; Forum. The Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. This includes the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the City and the Contractor to determine whether the provisions of the Agreement require formal modification.

This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the Consolidated City of Indianapolis, County of Marion. Suit, if any, shall be brought in the State of Indiana, County of Marion.

5.18 Renewal. This contract may be renewed beyond the expiration date by mutual agreement of the parties. The term of the renewal may not be longer than the term of the original contract. A renewal shall be by written notice sent by either party and written acceptance by the other. All other terms and conditions of the contract shall remain the same as set forth herein, and may be amended only by written instrument signed by both the City and Contractor and attached as an amendment.

5.19 Waiver. The City's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of any of the City's rights or remedies.

5.20 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.

5.21 Attorneys' Fees. Contractor shall be liable to the City for reasonable attorneys' fees incurred by City in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Contractor, or from Contractor's failure to fulfill any provisions or responsibility provided herein.

5.22 Successors and Assigns. City and Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Contractor shall not assign, sublet or transfer its interest in this Agreement without the written consent of City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City.

5.23 Authority to Bind Contractor. Notwithstanding anything in this Agreement to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute agreements on behalf of the Contractor designated above, has filed proof of such authority with City and has obtained all necessary or applicable approval from the home office of the Contractor to make this Agreement fully binding upon the Contractor when his/her signature is affixed and accepted by the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates subscribed below.

DEPARTMENT OF

Director

Date _____

**APPROVED FOR AVAILABILITY
OF FUNDING []
APPROVED FOR EXECUTION []**

XXXXXXXXXXXXXX
Controller

Date _____

APPROVED AS TO LEGAL FORM:

XXXXXXXXXXXXXX
Assistant Corporation Counsel

"CONTRACTOR"

Printed Name

Signature

Title

Date

Address

City

State

Zip

Phone

RFP Attachment D

Exception Sheet Commercial Fuel Services

Please list and explain any exceptions to the specifications and terms of the Invitation to Bid. Please note that taking an exception may cause your bid to be deemed “non-responsive” if it is determined to be a material variance.

This image shows a full page of white paper with horizontal blue or grey ruling lines, typical of notebook paper. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings present.