

AGREEMENT FOR PROVISION OF UNLEADED GASOLINE AND DIESEL FUELS
DURING CALENDAR YEARS 2017 THROUGH 2021

THIS AGREEMENT, made and entered into this 1st day of October 2022 in the City of Missoula, County of Missoula, State of Montana, by and between the City of Missoula, a municipal corporation organized under the laws of the State of Montana (hereinafter referred to as “City”) and Hi-Noon Petroleum (hereinafter referred to as “Vendor” and or “Hi-Noon”).

WITNESSETH

For and in consideration of the mutual promises and agreement set forth herein, the City and Vendor mutually stipulate and agree to the following provisions:

I. PURCHASE CONTRACT WITH CITY

The City hereby agrees to purchase diesel fuel and unleaded gasoline for City motor vehicles from Vendor pursuant to the terms and provisions of this Agreement, and Vendor agrees to provide diesel fuel and unleaded gasoline for City motor vehicles pursuant to the terms, conditions, and requirements identified pursuant to the provisions of this Agreement.

II. DELIVER, PRICING AND DOCUMENTATION REQUIREMENTS

Vendor hereby agrees to:

1. Sell unleaded and oxygenated (ethanol blend) gasoline to the City of Missoula at the Missoula, Montana, Hi-Noon daily advertised retail price less (3.5%) three and one half percent of the corresponding daily unleaded gasoline retail price during the period covered by this agreement plus applicable state gas tax during the period covered by this agreement. During the period of November 1st, of each year until the subsequent last calendar day of February each year which is the time period when the fuel in Missoula is required to be an oxygenated fuel, Hi-Noon Petroleum may not add a margin for the additional costs associated with blending or refining oxygenated fuel.
2. Sell diesel #2 fuel to the City of Missoula at the Missoula, Montana, Hi-Noon daily advertised retail diesel fuel price less (3.5%) three and one half percent of the corresponding daily retail price during the period covered by this agreement plus applicable state gas tax during the period covered by this agreement.
3. Sell diesel #1 fuel to the City of Missoula at the Missoula, Montana, Hi-Noon daily advertised retail diesel fuel price less (3.5%) three and one half percent of the corresponding daily retail price during the period covered by this agreement plus applicable state gas tax during the period covered by this agreement.

4. Fuel distribution outlets shall be provided to the City by the Vendor. The Vendor agrees to maintain fueling sites and to provide a safe, dependable source of fuel to the City of Missoula. The Vendor agrees to provide the City with approximately 150,000 gallons of unleaded gasoline, 90,000 gallons of diesel #2, and 1,500 gallons of diesel #1 per year.
5. Hi-Noon Petroleum will account for each fuel purchase and provide the City with a monthly billing accompanied by a copy of the retail prices corresponding to those purchases as documentation for conformity with this agreement.
6. Hi-Noon Petroleum agrees to provide the City Vehicle Maintenance facility with a computerized ASCI file of the daily fuel transactions. The vendor agrees to provide an accurate and timely ASCI file for each day of the week. The Monday ASCI file may contain fuel data for Saturday and Sunday of the previous week. Hi-Noon agrees not to send blank or duplicate ASCI files.
7. Hi-Noon agrees to provide each Department/Division with a monthly fuel invoice based on individual vehicle fuel quantities used and usage rates.
8. The City will pay off the monthly invoice totals. Diesel fuel quantities and the amount of taxes accumulated on diesel fuel will be accounted for by the Vendor. The Vendor will provide the City with credit reimbursement for all or any tax charged associated with the purchase of diesel fuel. Diesel fuel tax reimbursement credits shall be timely and correspond with the purchase billing period.
9. Vendor agrees that there will be no additional charges for Personal Identification Number (PIN) numbers. Hi-Noon Petroleum agrees to provide and maintain approximately 700 PIN numbers and 600-650 vehicle fueling cards. The City agrees to pay \$2.00 charge to replace lost or damaged fuel cards. The City agrees to pay \$22.50 for each replacement card that is shipped on a "next day" or "overnight basis". The total of all card charges shall not exceed Two Thousand dollars (\$2000.00) per year. The card charge will be invoiced with the monthly fuel billing.
10. The City will not be assessed any additional administrative, introductory, or maintenance charges. There will be no additional card charges, billing or card replacement fees charged to the City.
11. The Vendor agrees to provide an uninterrupted supply of fuels with twenty four hour a day access seven (24/7/365) days per week to one or more fueling sites. All sites will be adequately lighted with provisions made in the form of steps or ladders to access tall or high equipment. Fueling center sites shall comply with America Disabilities Act (ADA) regulations. Emergency provisions to supply fuel to the City will be made by the Vendor should one or all fueling sites become inoperative. Vendor agrees to provide glass cleaning materials, trash disposal facilities, restrooms, and compressed air with gauges and air chucks at the fueling sites. In addition to the eleven local fuel sites the

City will be permitted to fuel at other regional “Hi-Noon”, “Sinclair”, and “WRIGHT EXPRESS” facilities at a reduced rate.

9. The Vendor agrees to provide the City with clean, moisture free fuel. Diesel fuel shall be mixed to prevent jelling or freezing of fuel during winter conditions. Octane levels of fuel will not fall below industry or trade standards. Oxygenated fuel will be provided each year from November 1st to February 29th in compliance with State, Federal, and local Regulatory agencies.

III. PAYMENT FOR SERVICES

The parties hereto mutually agree that the per gallon cost for acceptable performance of all purchases of unleaded oxygenated gasoline, diesel #1 fuel and diesel #2 fuel pursuant to this agreement shall be the Missoula, Montana, Hi-Noon daily advertised retail price less (3.5%) three and one half percent of the corresponding daily retail price during the period covered by this agreement plus applicable state gas tax during the period covered by this agreement.

No invoice shall include federal excise tax, as the City is exempt therefrom and will furnish certificates of exemptions as needed. Furthermore, Hi-Noon shall be required comply with necessary federal procedures to allow City of Missoula to maintain federal fuel tax exemption for its purchases.

The City shall make a good faith effort to pay properly presented, correct, and accurate Vendor invoices within 20 days of receipt of invoice, but City shall have a full thirty day period as allowed by Montana State law within which to make payment.

IV. MODIFICATION AND WAIVER

This Agreement may not be modified, altered, or changed except pursuant to a written agreement signed by the parties hereto. A waiver of any term or condition of this Agreement or of any breach of this Agreement shall not be deemed a waiver of any other term or condition of this Agreement or any part hereof or of any later breach of the Agreement. Any waiver must be in writing each time a waiver occurs.

V. LICENSE TO DO BUSINESS

Contractors, subcontractors, sub-grantees, and other firms doing business with the City of Missoula or any agency connected with the City of Missoula must obtain or have a valid City of Missoula business license and must comply with applicable business regulation ordinances. No payments shall be made by the City pursuant to this agreement until a valid City business license has been obtained. Vendor shall continue to retain a valid

City business license during the term of this Agreement or the City has the right to withhold payments until such time as a valid City business license is acquired by Vendor.

VI. AFFIRMATIVE ACTION POLICY

Contractors, subcontractors, sub-grantees, and other firms doing business with the City of Missoula or any agency connected with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action plan and Title 49, MCA, or forfeit the right to continue such business dealings. See Attachment A.

VII. NON-DISCRIMINATION

Vendor agrees that any and all hiring by them related to this Agreement shall be on the basis of merit and qualifications and there shall be no discrimination on the basis of race, color, creed, religion, political ideas, gender, age, marital status, physical or mental handicap, national origin or ancestry, by persons performing this contract. Qualifications mean such abilities as are genuinely related to competent performance of the particular occupational task.

VIII. WORKERS COMPENSATION

Vendor hereby certifies that Vendor is covered by a Workers' Compensation insurance program with the State of Montana, a private insurance carrier, or an approved self-insurance plan in accordance with Montana State law and that the City has no liability for Vendor's workers' compensation insurance or claims.

IX. LIABILITY INSURANCE

Vendor hereby certifies that it has and shall maintain during the time period of this Agreement, liability insurance in the minimum amount of \$750,000.00 per claimant and \$1,500,000.00 per occurrence that includes liability for accidents occurring during delivery or at the delivery site that are attributable to the Vendor or its agents' conduct.

X. PREVIOUS AGREEMENTS

This Agreement constitutes the entire understanding of the parties and is intended as a final expression of their agreement and a complete statement of the terms thereof. There are no promises, terms, conditions, or obligations, other than contained herein. This Agreement shall supersede all previous communications, representations, or agreements, either oral or written, between the parties.

XI. ARBITRATION

This Agreement is subject to the provisions of the Montana Uniform Arbitration Act, Section 27-5-111, MCA Et. Seq.

XII. TERMINATION PRIOR TO COMPLETION OF CONTRACT

The Vendor and the City shall both have the ability to terminate this agreement for cause or for non-compliance with any of the terms, conditions, and requirements contained herein. Such termination shall come only after first giving a verbal demand for compliance followed by a written demand. Termination shall be allowed on the tenth City business day following receipt by either party of the other part's written demand.

XIII. TERM OF AGREEMENT

This Agreement shall be in force and effect from October 1, 2022 through December 31, 2027 unless terminated in writing by mutual agreement of the City and Vendor.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year in this certificate first hereinabove written.

CITY OF MISSOULA

Hi-Noon Petroleum
Dirk Cooper,
President

Mayor Jordan Hess

ATTEST:

Martha L. Rehbein
City Clerk

APPROVED AS TO FORM:

Jim Nugent
City Attorney

STATE OF MONTANA)

)ss
County of Missoula)

On this _____ day of _____, 20____, before me, the undersigned, a Notary Public for the State of Montana, personally appeared William R. Nooney, Vice President of the Hi Noon Petroleum Company, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set by hand and affixed my Notarial Seal, the day and year first above written.

Notary Public for the State of Montana
Residing at Missoula, Montana
My Commission Expires _____

ATTACHMENT A

NON-DISCRIMINATION. All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status or sexual orientation, gender identity or expression, except where these criteria are reasonable bona fide occupational qualifications.

AFFIRMATIVE ACTION POLICY. Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Affirmative Action Plan, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Affirmative Action Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an affirmative action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, where practical, shall utilize minority owned enterprises and shall ensure that subcontractors and vendors comply with this policy. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of affirmative action for the City of Missoula, its employees, program participants, trainees and applicants.