

STATE OF TEXAS

§
§
§

COUNTY OF HIDALGO

REQUIREMENTS AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into effective as of _____, by and between, _____, a _____ Corporation ("Seller") and **Hidalgo County** ("Buyer").

WHEREAS, Buyer has solicited proposals for the supply of its requirements of Hidalgo County **"Lubricants (Grease, Oil, Hydraulic Fluids) and Anti-Freeze Products"**- [commodity], as further described in Exhibit "A" which is attached hereto and incorporated herein by reference for all purposes (the "Products") for a period of **Six (6) months** with Hidalgo County's sole discretion to extend the contract for an additional **Six (6) months** and contingent upon cost to remain unchanged.

WHEREAS, Seller has submitted a proposal to supply Buyer's requirements; and

WHEREAS, Buyer has determined that Seller has submitted the lowest and best bid to meet Buyer's requirements for the Product.

NOW THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Buyer agrees to purchase from Seller, and Seller agrees to sell and deliver to Buyer, all of the Products that Buyer may require for use by Buyer in **"Lubricants (Grease, Oil, Hydraulic Fluids) and Anti-Freeze Products"** in an area of Hidalgo County projects for a period of **six (6) months** from the effective date of this Agreement, and it is agreed that the Products will meet the specifications set forth in Exhibit "A" hereto.

2. When Buyer determines that it needs a quantity of the Products to be delivered, it will, according to its Purchasing Policies, complete and submit to Seller a Purchase Order describing the type and quantity of the Products required. The Products are to be delivered by Buyer to the location in Hidalgo County specified by Buyer in its Purchase Order.

3. Buyer agrees to pay Seller for each Purchase Order based on the prices set out in Exhibit "B". Seller shall render invoices for each Purchase Order, and the invoices shall be paid by Buyer on or before the 30th day following receipt of the invoice.

4. General Provisions.

a. **Conflict with Applicable Law.** Nothing in this Agreement shall be construed so

as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

b. **No Waiver.** No waiver by Buyer of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

c. **Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by agreement in writing executed by Buyer and Seller, and not otherwise.

d. **Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

e. **Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Buyer:

Hidalgo County
Attention: County Judge
100 E. Cano, 2nd Floor
Edinburg, Texas 78539

If to Seller:

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

f. **Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary

or convenient to effectuate and carry out the terms of this Agreement.

g. **Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

h. **Assignment.** This Agreement shall not be assignable.

i. **Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

j. **Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

k. **Authority to Execute.** The execution and performance of this Agreement by Buyer and Seller have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Buyer and Seller in accordance with its terms.

l. **Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of Buyer under this Agreement, Buyer may terminate this Agreement upon ninety (90) days written notice to Seller. Buyer agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Buyer pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1996).

m. **Purchasing Ethics.** Seller represents and warrants it has not, during the process of being awarded this contract violated the following ethical standards of Buyer and, upon and after the execution of this Agreement, agrees to abide by the following ethical standards of Buyer:

(1) It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of Hidalgo County, or for any elected official, department head or employee or former elected official, department head or employee of Hidalgo County, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an officer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advise, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor pending before any department or agency of Hidalgo County.

(2) It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hidalgo County, or any person associated therewith, as an inducement for the award of a subcontract or order.

5. **Market Volatility and Unit Price Adjustments:**

Hidalgo County recognizes that during periods of national crisis and unstable economic conditions, unforeseen price increases might affect costs for goods and services contracted on an annual basis. The following procedure may be employed to mediate price volatility:

- a. **Requesting Price Adjustment:** Upon written request of the Vendor to the County Purchasing Agent, the County may review evidence of prevailing industry-wide market conditions that warrant an adjustment in bid prices contained in the contract.
- A Vendor must tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Such written request must be accompanied by a certified copy of the supplier's advisory or notification to the vendor of the price changes.
 - The Vendor must put the Purchasing Agent on the mailing lists for such publications so that the Purchasing Agent can monitor said changes. Such membership shall be at no cost to the County.
 - The County Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interest of the County.
 - No price escalation will be authorized in excess of the amount of the increase referred to in the supplier's notice.
 - The County may only grant a price increase if the evidence presented is deemed reliable. Should the County allow a price increase, the approved price change shall be honored for all orders received by the vendor or contractor after the effective date of such price change. Approved price changes are not applicable to orders already issued and in process at time of price change.
- b. **Price Reduction:** Vendor shall notify the County at the time when the Vendor's costs for items and/or supplies reduce due to stabilization in the market at which time prices for items on this contract shall be reduced accordingly. Failure by the Vendor to notify the County of a decrease in costs for items and/or supplies for which the Vendor was granted a price adjustment, may result in immediate termination of this contract and the County shall not be obligated to pay the Vendor the difference between the

contract price and the price adjustment.

- c. **Timeframe for Adjusted Price Increases:** Price increases are only valid for the quarter in which they are requested and approved. Prices shall return to the original contract price at the beginning of the following quarter unless a Vendor notifies the County in writing within ten (10) days of expiration of the quarter in which the price increase is in effect, that it desires to have the price increase continue or that the Vendor is requesting a different price increase for the following quarter. Such request must be supplemented with sufficient justification to demonstrate that the price increase remains necessary. The County Purchasing Department shall have sole discretion whether to grant the price increase extension. The County too, shall have discretion to unilaterally reduce, eliminate or extend a price adjustment to the Vendor at any time upon written notice from the County to the Vendor demonstrating justification for such reduction, elimination or extension of the price adjustment.

- d. **Allowable Review Periods:** Price adjustment reviews may only be requested by the Vendor on a quarterly basis. However, the County may at its own discretion, conduct temporary price adjustment reviews at any time. The County Purchasing Agent and/or the County Auditor reserve the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.

- e. **Dollar Limit to Price Changes:** The total increase in contract price shall not exceed twenty-five percent (25%) of the original contract price during the contract term.

EXECUTED effective as of the day and year first above written.

HIDALGO COUNTY

By: _____

Juan De Dios Salinas, III, County Judge

ATTEST:

Arturo Guajardo County Clerk

By: _____

Printed Name: _____

Title: _____

Approved by Commissioners' Court on _____
APPROVED AS TO FORM:

Atlas & Hall, L.L.P.

By: _____

TABULATION SHEET

1 Diesel Engine Lubricants

Made available in the following sizes: Pint, Quart, 1 Gallon, 5 Gallon, 55 Gallon, Bulk

1A **SAE15W-40** meeting the following specifications:
CI-4, CH-4, CF-4, Cummins CES 20078, EOM+, Volvo VDS2/VDS, Allison C-4, API SL-SJ, Minimum 10 TBN

Quart _____
Gallon _____
5 Gallon _____
55 Gallon _____
Bulk _____

1B **SAE 10W** meeting the following specifications:
CF, CD, SL, SJ, Allison C-4, Cat TO-2, Minimum 7.5 TBN

5 Gallon _____
55 Gallon _____

1C **SAE 30W** meeting the following specifications:
CF-2, CF, CD, SL, SJ, Allison C-4, Cat TO-2, Minimum 7.5 TBN

Quart _____
Gallon _____
5 Gallon _____
55 Gallon _____
Bulk _____

1D **SAE 40W** meeting the following specifications:
CF-2, CF, CD, SL, SJ, Minimum 7.5 TBN

Quart _____
Gallon _____
5 Gallon _____
55 Gallon _____
Bulk _____

TABULATION SHEET

1E. Rotella T (15 W-40 C J 4)

Quart _____

Gallon _____

5 Gallon _____

55 Gallon _____

2

Gasoline Engine Lubricants

Made available in the following sizes: Pint, Quart, 1 Gallon, 5 Gallon, 55 Gallon, Bulk meeting the following specifications: API, SL, SJ, SH, ILSAC-GF3 (Multigrades only) FORD WSS=M2C153H (5W-20 only) SAE 5W-30

2A

Quart _____

55 Gallon _____

Bulk _____

2B

SAE10W-30

Quart _____

Gallon _____

5 Gallon _____

55 Gallon _____

Bulk _____

2C

SAE5W-20

55 Gallon _____

Bulk _____

2D

SAE30

Quart _____

55 Gallon _____

Bulk _____

2E

SAE40

Quart _____

55 Gallon _____

Bulk _____

TABULATION SHEET

3 Automatic Transmission Lubricants
Made available in the following sizes: Quart, Gallon, 5 Gallon, 55 Gallon

3A Mercon/Dexron III ATF meeting specifications for:
Mercon/Dexron II & III & IIIE, Allison C-4, Cat TO-2

Quart _____
55 Gallon _____

3B Type F ATF meeting Ford M2C33-F specifications

Quart _____
55 Gallon _____

3C Mercon 5 - Transmission Fluid

12 / 1 Qt. _____
55 Gallon _____

4 Tractor Hydraulic Fluids
Made available in the following sizes: 5 Gallon, 55 Gallon
Meeting the following specifications: Case Hy-Tran/TCH, Cat TO-2, JD 303/J20C, Ford-new Holland M2C134 A/B/C/D Massey M1141, Vickers M-2950-S, I-286-S, Universal Tractor fluid serving transmissions, final drives, oil immersed brakes and hydraulic systems

5 Gallon _____
55 Gallon _____

5 Differential/ Final Drive Gear Lubricants
Made available in the following sizes: 35# Pail, 120 Lb Keg, 400 Lb Drum

35# Pail _____
400 Lb Drum _____

5A SAE 80W-90 Gear lubricant meeting the following specifications:
GL-5, GL-4, Mack GO-J, MIL-L-2105D, MIL-PRF-2105E

35# Pail _____
120 Lb Keg _____
400 Lb Drum _____

TABULATION SHEET

**5B SAE 85W-140 Gear lubricant meeting the following specifications:
GL-5, GL-4, Mack GO-J, MIL-L-2105D, MIL-PRF-2105E**

35# Pail _____

120 Lb Keg _____

400 Lb
Drum _____

**5C SAE 75W-90 Synthetic Gear lubricant meeting the following specifications:
GL-5, MT-1, Mack GO-J**

35# Pail _____

120 Lb Keg _____

400 Lb
Drum _____

**5D SAE 50W Synthetic Transmission lubricant meeting the following specifications:
MT-1 performance for Eaton, Mack, Meritor, Navistar**

35# Pail _____

120 Lb Keg _____

400 Lb
Drum _____

**5E. SAE50W Synthetic Transmission lubricant meeting the following specifications:
MT-1 performance for Eaton, Mack, Meritor, Navistar**

35# Pail _____

120 Lb Keg _____

400 Lb
Drum _____

**5F CAT-T0-4 SAE 30 Drive Train oil for Final Drives meeting the following specifications:
Allison, C4, C3, Cat TO-4, TO-2, SAE 30W**

400 Lb
Drum _____

TABULATION SHEET

**5G CAT TO-4 SAE 50 Drive Train oil for Final Drives meeting the following specifications:
Allison, C4, C3, Cat TO-4, TO-2, SAE 50W**

**400 Lb
Drum**

**6 Hydraulic Lubricants in various viscosities made available in the following sizes: 5 Gallon, 55 Gallon
Meeting the following specifications: Denison HF-0, Vickers M-2950-S, I-286-S, TOST min 2000 hrs.**

6A ISO 32

5 Gallon

55 Gallon

6B ISO 46

5 Gallon

55 Gallon

6C ISO 68

5 Gallon

55 Gallon

6D ISO 100

5 Gallon

55 Gallon

**7 BRAKE and POWER Steering Fluids made available in the following sizes: Pint, Quarts, Gallon
Meeting the following specifications: DOT3 for Brake Fluid/ Ford, GM, Chrysler for Power Steering**

7A Brake Fluid

Pint

Quart

Gallon

7B Power Steering Fluid

Pint

Quart

Gallon

TABULATION SHEET

8 **Aeroshell Fluid 4 Fluid make available in the following sizes 1 Gallon, 55 Gallon**

5 Gallon _____

55 Gallon _____

9 **Chassis Grease made available in the following sizes: Case of 10 tubes, 35# Pail, 120# Keg, 55 Gallon Drums**

9A **Lithium Complex High Temp Grease meeting specifications:
NLGI-2, ASTM D4950 GC-LB, Suitable for wheel bearings, chassis, PTO, U-Joints, On & Off Road Applications**

Case 10 _____

35# Pail _____

120 # Keg _____

55 Gallon _____

9B **Lithium Complex High Temp Grease w/ 3% moly meeting specifications:
NLGI-2, ASTM D4950 GC-LB, Suitable for wheel bearings, chassis, PTO, U-Joints, On & Off Road Applications**

Case 10 _____

120 # Keg _____

10 **Antifreeze made available in the following sizes: 1 Gallon, 55 Gallon**

10A **Ethylene Glycol Antifreeze meeting specifications for:
ASTM D3306 for automotive/ ASTM D 4985 for Heavy Duty Diesel**

1 Gallon _____

10B **Extended Life Antifreeze/ Coolant meeting specifications for:
CAT EC-1, TMC RP 329, TMC RP 338, Matching Caterpillar Extended Life Coolant, Detroit Diesel**

1 Gallon _____

55 Gallon _____

11 **Shop Chemicals and Products made available in various sizes**

11A **Aerosol Brake Cleaner**

TABULATION SHEET

11B Aerosol Engine Degreaser

11C Aerosol Starting Fluid

11D Aerosol Penetrating Oil

11E Oil Absorbent

11F Gasoline Fuel Additive

11G Diesel Fuel Additive

11H Engine Oil Additive

11I Aerosol Lubricant

13. Easy Slide RB-9512 Dryfilm Lubricant : Sizes 12.8 oz. can

12.8 oz. can