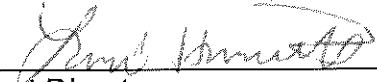


**MEMORANDUM  
PUBLIC WORKS DEPARTMENT**

DATE: December 9, 2024

TO: Tessa Baldwin, City Manager

FROM: Lorraine Hunnicutt,   
Public Works Assistant Director

SUBJECT: RFP24-05 Heating Fuel Delivery Service

~~~~~  
Bid readings were conducted on Friday, December 6, 2024 3:00 pm., present were Russell Ferguson, Ronald Hunnicutt, Sr., - Crowley, Gayle Ralston, Jr. – Vitus Terminals and Lorraine Hunnicutt, PW Admin. Asst.

There were two bidders:

Crowley:

|                                         | Price Per Gallon |
|-----------------------------------------|------------------|
| Heating Fuel Delivery Service Agreement | \$6.56           |
| Ultra Low Sulfur Diesel                 | \$6.79           |
| Gasoline                                | \$6.69           |

Vitus Terminals:

|                                         | Price Per Gallon |
|-----------------------------------------|------------------|
| Heating Fuel Delivery Service Agreement | \$6.52           |
| Ultra Low Sulfur Diesel                 | \$6.52           |
| Gasoline                                | \$6.52           |

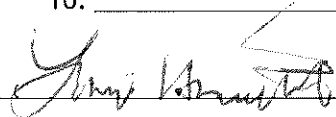
It is our recommendation to award the RFP24-05 to Vitus Terminals.

**CITY OF KOTZEBUE**  
**INVITATION TO BID/REQUEST FOR PROPOSAL/**  
**REQUIEST FOR QUOTE**  
**OPENING REPORT**

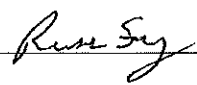
PROPOSAL NUMBER/TITLE: RFP 2024-05 Heatin Fuel Delivery Service

DATE/TIME OPENED: December 6, 2024 at 3:00 PM

|     | <u>CONTRACTOR</u> | <u>PROPOSAL AMOUNT</u> |
|-----|-------------------|------------------------|
| 1.  | C. Rowley HTC     | 6.56 \$                |
| 2.  | C. Rowley ULS     | 679                    |
| 3.  | C. Rowley GAS     | 6.69                   |
| 4.  | VITUS HTC         | 6.52 \$                |
| 5.  | VHUS ULS          | 6.52 \$                |
| 6.  | VITUS GAS         | 6.52 \$                |
| 7.  |                   |                        |
| 8.  |                   |                        |
| 9.  |                   |                        |
| 10. |                   |                        |

 \_\_\_\_\_  
City Clerk

12-6-24 \_\_\_\_\_  
Date

 \_\_\_\_\_  
Witness



December 6, 2024

City of Kotzebue  
Attn: City Clerk  
258-A Third Avenue  
Kotzebue, Alaska 99752  
Bid Due: 3:00PM December 6, 2024

**RE: Request for Proposal – RFP # 2024-05 Heating Fuel Delivery Service**

City Clerk,

In response to the City of Kotzebue RFP #2024 – 05 Fuel Bid, Crowley Fuels LLC (Crowley) respectfully submits the attached proposal for your review and consideration.

Crowley began serving the people and businesses of Alaska in 1953 – 71 years and counting – and has consistently provided unique solutions to Alaska’s logistics and marine transportation and fuel distribution challenges throughout Alaska’s communities. We are one of the unquestioned leaders in the Alaska fuel industry, providing transportation, distribution, and sales of petroleum products to more than 160+ communities across the state. We have seventeen terminals strategically positioned across Alaska serving retail, commercial, construction, transportation, and aviation industries. We prioritize sourcing quality fuel products and do strict testing when receiving and distributing those products to our customers. This prevents gelling in cold temperatures along with many other potential fuel contamination scenarios.

Crowley followed the requirements of the solicitation closely and is very familiar with the locations and fueling requirements for each property. Should Crowley be the successful bidder, a standard Fuel Supply Agreement is attached for your review and execution.

We value our relationship with the City of Kotzebue and understand the importance of safe and timely deliveries of fuel to your properties. We appreciate the opportunity to participate in the competitive bid process and look forward to serving the City of Kotzebue. If you should have questions or need any clarification to our submittal, please call Todd Tikiun, Senior Account Executive at (907) 545-0948 or via email at [Todd.Tikiun@crowley.com](mailto:Todd.Tikiun@crowley.com)

Respectfully,

A handwritten signature in black ink, appearing to read 'Todd Tikiun', written over a horizontal line.

Todd Tikiun  
Senior Sales Executive, Customer Experience  
Crowley Fuels LLC

This proposal, including attachments, is confidential, proprietary, and may be subject to attorney-client privilege. This proposal is intended only for the use of the City of Kotzebue. Any dissemination, distribution or copying of this proposal is strictly prohibited.

201 Arctic Slope Ave.  
Anchorage, AK 99518

907 777 5505  
[crowley.com/alaska](http://crowley.com/alaska)

**Exhibit A to Resolution 25-05 for January 7, 2025 RCCM**

CITY OF KOTZEBUE  
REQUEST FOR PROPOSAL – RFP #24-05  
HEATING FUEL DELIVERY SERVICE  
FROM JANUARY 1, 2025 THROUGH DECEMBER 31, 2025  
FOR CY24

The City of Kotzebue is soliciting bids for delivery of heating fuel to the City's tanks listed below along with Ultra Low Sulfur Diesel and Gasoline:

Annual fuel usage is approximately:

|                            |                |
|----------------------------|----------------|
| Heating oil HO - HS DFI MV | 85,000 gallons |
| ULSD ULS DFI MV            | 22,000 gallons |
| Gasoline UNL Reg 87        | 17,000 gallons |

A copy of the Request for Proposal is available on the City of Kotzebue website [www.cityofkotzebue.com](http://www.cityofkotzebue.com) or can be requested from Lorraine Hunnicutt, City of Kotzebue Public Works Department at 907-442-3401, extension 200. Sealed bids will be opened at Kotzebue City Hall 3:00 p.m. on Friday, December 6, 2024 bids not received by this date will be deemed non-responsive. Questions regarding requested products should be addressed to Lorraine Hunnicutt, 907-442-3401 ext. 200.

CITY OF KOTZEBUE  
 REQUEST FOR PROPOSAL - RFP # 2024-05  
 HEATING FUEL DELIVERY SERVICE  
 FROM JANUARY 1, 2025 THROUGH DECEMBER 31, 2025

The City of Kotzebue is soliciting bids for delivery of heating fuel to the City's tanks listed below:

| <u>Tank Location</u>            | <u>Tank Capacity</u> | <u>Fill Schedule*</u>      |
|---------------------------------|----------------------|----------------------------|
| City Hall                       | 1,000 gallons        | weekly                     |
| Devil's Lake                    | 2,000 gallons        | yearly                     |
| Fire Training Center, in-ground | 1,000 gallons        | biweekly                   |
| Fire Training Center, on stand  | 500 gallons          | weekly                     |
| Dog Pound                       | 55 gallons           | weekly                     |
| Kotzebue Regional Jail Kitchen  | 100 gallons          | biweekly                   |
| Kotzebue Regional Jail, tank A  | 1,000 gallons        | biweekly                   |
| Kotzebue Regional Jail, tank B  | 1,000 gallons        | biweekly                   |
| Arctic Spirits                  | 350 gallons          | biweekly                   |
| Kotzebue Police Department      | 1,000 gallons        | biweekly                   |
| Kotzebue Youth Center           | 1,000 gallons        | once a month               |
| Parks & Recreation Gym          | 500 gallons          | biweekly                   |
| Public Works Shop               | 2,000 gallons        | biweekly                   |
| Transit Building                | 500 gallons          | biweekly                   |
| Water Treatment Plant           | 5,000 gallons        | biweekly                   |
| Quonset Hut                     | 500 gallons          | weekly <u>Oct thru May</u> |
|                                 | 500 gallons          | weekly <u>Oct thru May</u> |
| Baler Building                  | 1,000 gallons        | biweekly                   |

\*Fill Schedule subject to change

Mobile Equipment Tank

|                         |        |
|-------------------------|--------|
| Ultra Low Sulfur Diesel | weekly |
| Gasoline                | weekly |

Annual fuel usage is approximately:

|                          |                |
|--------------------------|----------------|
| Heating oil HO-HS DFI MV | 85,000 gallons |
| ULSD ULS DFI MV          | 22,000 gallons |
| Gasoline UNL Reg 87      | 17,000 gallons |

Instructions to Bidders:

1. All bids shall be submitted in a sealed envelope, clearly marked #RFP 2024-05" and delivered to the City Clerk before December 6, 2024. Deliver to City Hall at 258-A Third Avenue, or mail to City of Kotzebue, P. O. Box 46, Kotzebue, AK, 99752. All bids will be opened at this time. Any bids not received by this date or time will be deemed non-responsive.
2. No Email or fax transmissions will be allowed. Any bids received other than by sealed envelope prior to the deadline will be deemed non-responsive.

3. The successful bidder shall be required to sign the attached "Fuel Delivery Service Agreement", which includes provisions for insurance, within five (5) days after receiving the Notice of Award from the City. Failure to sign the agreement within five (5) days of receiving notice shall deem the bid null and void.
4. The City of Kotzebue reserves the right to reject any and all bids, to request clarification of a respondent's bid, to modify or alter any or all of the terms of the bid, and to waive any and all technicalities or informalities it deems appropriate.

Submission Requirements:

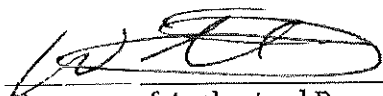
1. The City is requesting that the vendor submit a FIXED FEE rate sheet attached for fuel delivery services.
2. Vendor shall supply a draft contract with the option to be renegotiated annually with an option to renew for up to two consecutive twelve-month periods.
3. Vendor shall supply a short summary of any other cost savings plans they provide.
4. Vendor shall submit a fee schedule for any services not covered in the proposal price.

Disbursement of monies by the City of Kotzebue shall be subject to set-off pursuant to the provisions of section 3.16.110 of the Municipal Code for any accounts receivable of the general government and municipal utilities funds indebtedness due to the city from any such person, firm or corporation contracting with the City.

Sealed bids will be opened at Kotzebue City Hall, Friday, December 6, 2024 at 3:00 pm. Bids not received by this date will be deemed non-responsive.

CITY OF KOTZEBUE  
NON-COLLUSION CLAUSE

1. By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto, certifies as to its own organization, that in connection with this procurement:
  - a. The prices of this offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor.
  - b. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror, prior to opening in the case of an advertised procurement, or prior to award in the case of a negotiated, directly or indirectly, procurement to any other offeror or to any competitor.
  - c. No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not submit an offer for that purpose of restricting competition.
  
2. Each person signing this offer certifies that:
  - a. He is the person in the offeror's organization responsible within that organization, for the decision as to the prices being offered, herein, and that he has not participated, and will not participate in any action contrary to 1a through 1c above.
  - b. He is not the person in the offeror's organization responsible within that organization, for the decision as to the prices being offered, herein, but that he has been authorized, in writing, to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate in, any action contrary to 1c above and as their agent, does hereby so certify, and he has not participated, and will not participate in any action contrary to 1a through 1c above.

  
\_\_\_\_\_  
Signature of Authorized Representative

Walt L. Tague  
\_\_\_\_\_  
Printed Name of Authorized Representative

Crowley Fuels LLC  
\_\_\_\_\_  
Company Name

11/26/2024  
\_\_\_\_\_  
Date

Vice President, Sales & Supply  
\_\_\_\_\_  
Title

CITY OF KOTZEBUE  
 REQUEST FOR PROPOSAL - RFP #2024-05 HEATING FUEL DELIVERY SERVICE  
 FROM JANUARY 1, 2025 THROUGH DECEMBER 31, 2025

I am authorized by my company to bid on the Heating Fuel Delivery Service to the City of Kotzebue. I agree to the terms and conditions of the "Heating Fuel Delivery Service Agreement" and bid as follows:

| Item                                    | Price Per Gallon |
|-----------------------------------------|------------------|
| Heating Fuel Delivery Service Agreement | \$ <u>6.56*</u>  |
| Ultra Low Sulfur Diesel                 | \$ <u>6.79*</u>  |
| Gasoline                                | \$ <u>6.69*</u>  |

\*exclusive of tax

Crowley Fuels LLC  
 Company Name

201 Arctic Slope Ave  
 Company Address


Anchorage, AK 99507  
 Company Address

907-777-5569  
 Company Telephone

N/A  
 Company Fax

todd.tikiun@crowley.com  
 Company e-mail Address

11/26/2024  
 Date

  
 Signature of Authorized Representative

Walt L. Tague  
 Printed Name of Authorized Representative

Vice President, Sales & Supply  
 Title



**PART I**  
**FUEL SUPPLY AGREEMENT (COMMERCIAL)**

This FUEL SUPPLY AGREEMENT ("Agreement") is entered into as of the 26th day of November, 2024 by and between CROWLEY FUELS LLC, 201 Arctic Slope Avenue, Anchorage, Alaska 99518 ("Seller) and CITY OF KOTZEBUE, PO Box 46, Kotzebue, Alaska 99752 ("Buyer")(collectively, the "Parties" and individually, the "Party").

**The Parties agree as follows:**

1. **TERM:** The term of this Agreement shall be for a period of one (1) year.
  - a. Commencement Date: January 1, 2024
  - b. Expiration Date: December 31, 2024
  - c. Buyer and Seller may extend the term by mutual written agreement executed not less than thirty (30) days prior to the Expiration Date of this Agreement.
2. **PRODUCTS AND SERVICES:** Subject to the terms of this Agreement, Seller shall sell and deliver to Buyer, and Buyer shall purchase and accept from Seller, the following Product(s) and Service(s):
  - a. Heating Fuel
  - b. Ultra Low Sulfur Diesel
  - c. Regular Unleaded Gasoline  
(the "Products" or "Services").
3. **LOCATION(S):** Products or Services shall be provided in the following location(s):
  - a. Kotzebue, Alaska – various Buyer locations throughout the City  
(collectively, the "Location(s)").
4. **PRICE:** Buyer agrees to pay the following fixed price for the Product(s) delivered to Buyer's locations exclusive of all applicable taxes and fees:
  - a. Heating Fuel – Fixed Price shall be \$6.56 per gallon
  - b. Ultra Low Sulfur Diesel – Fixed Price shall be \$6.79 per gallon
  - c. Regular Unleaded Gasoline – Fixed Price shall be \$6.69 per gallon
5. **TAXES:** Buyer shall pay all taxes and fees associated with the Products and Services. Buyer is responsible for providing documentation of tax exemption if applicable.
6. **DELIVERY AND CALL OUT CHARGE.** Seller shall deliver the Product to tanks or other receptacles at a location specified by Buyer, or Buyer shall pick up the Product at a location specified by Seller (collectively, "Delivery"). Seller shall not be obligated to deliver, or allow pick up of, any Product outside of Seller's usual business hours or outside of Seller's standard procedures. If Buyer requests Delivery outside of Seller's usual business hours, Seller may agree, but is not required, to make such a Delivery; provided, however, that any such Delivery shall be subject to a call out charge.
7. **QUANTITIES.** In consideration of the discounted pricing offered by Seller, Buyer agrees to purchase all requirements for the Products and Services specified herein from Seller during the Term of this Agreement.

**If Buyer fails to purchase the minimum quantities agreed upon, Seller may terminate or non-renew this Agreement by delivering written notice to Buyer.**

8. **PAYMENT TERMS.** Payment is due immediately at the time of Delivery unless Seller agrees otherwise in writing. Credit is subject to credit approval by Seller. Seller may from time-to-time review and adjust Buyer's credit and payment terms. Seller accepts ACH, wire transfers, checks and cash on its commercial accounts.

9. **STANDARD TERMS AND CONDITIONS.** This Agreement is subject to the terms attached in PART II STANDARD TERMS AND CONDITIONS (COMMERCIAL) which are specifically incorporated into this Agreement as though fully set forth herein. In the event of conflicting language between PART I, the main body of this Agreement, and PART II, the terms of PART I of this Agreement shall control.

10. **CONFIDENTIALITY.** This document, including attachments, is confidential and proprietary. This document is intended only for the use of the parties to the Agreement. Any dissemination, distribution or copying of this document for third parties is strictly prohibited.

11. **MISCELLANEOUS.** In the event either Party institutes a lawsuit for breach of or to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all of its costs, expenses and attorneys' fees related thereto. Each Party waives to the extent permitted by law any right it may have to a trial by jury in any proceeding arising out of or relating to this Agreement. This Agreement shall be governed by the laws of Alaska and shall have exclusive venue in Anchorage.

**By executing this Agreement, Buyer acknowledges having read this Agreement in its entirety and fully agrees to all terms and conditions set forth herein. This Agreement is effective on the date first shown above.**

**SELLER:**

**CROWLEY FUELS LLC**



By: Walt L. Tague

Its: Vice President, Sales and Supply

**BUYER:**

**CITY OF KOTZEBUE**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**PART II**  
**STANDARD TERMS AND CONDITIONS (COMMERCIAL)**

**1. Quality and Quantity**

- (a) Bulk quantity shall be determined by gauging the Product in the tanks to or from which delivery or pick up ("Delivery") is made, both immediately before and immediately after Delivery, and converting the gauges to volume. Alternately, certified meters may be used where such meters are available. All volume measurements shall be adjusted to 60 degrees F using the Volume Correction Factors prescribed under ASTM D 1250 in its latest version for the Product. If meters are used, built-in temperature compensators may be employed.
- (b) Any claims for shortage in quantity or defects in quality of the Product must be made by written notice to Seller within 30 days after Delivery; otherwise any such claim shall be deemed to have been waived.
- (c) The quality of the Product shall be usual production quality being sold by Seller or Seller's supplier at the time and place of Delivery. The quality of the Product shall be strictly maintained by Buyer and/or its dealer ("Buyer"), and shall not be adulterated, commingled, or blended with any other products or substances in any manner.
- (d) SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND OTHER WARRANTIES OF WHATEVER KIND ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION EXTRA EXPENSE, LOSS OF PROFITS, LOSS OF USE OF PRODUCT, DELAY OR DAMAGES CONSEQUENTIAL UPON LOSS OF USE WHETHER RESULTING FROM NEGLIGENCE OR BREACH OF THIS CONTRACT BY SELLER AND EVEN IF THE POSSIBILITY OF SUCH DAMAGES IS OR WAS FORESEEABLE BY SELLER.
- (e) Buyer represents that it is familiar with the Product and the characteristics thereof, and subject to section 1(d) herein, assumes all risks whatsoever resulting from Buyer's (or its customers) handling, storage, sales, transportation, use, misuse or disposal of the Product, whether used singly or in combination with other substances or in any process, including but not limited to, liability for environmental violations and employee or consumer health or safety, and Buyer shall indemnify, defend and hold harmless Seller from and against any and all liability occurring or arising therefrom. Buyer agrees that all Product shall be clearly identified, correctly labeled, and resold under their proper grades.
- (f) Disclaimer: Due to uncertainties in the long-term supply situation, Seller may not have sufficient supplies of one or more of the fuels covered by this Agreement to meet full requirements. In the case of partial or total interruption of supply, Seller may allocate deliveries on any basis which in Seller's sole and absolute discretion is fair and reasonable, allowing for such priorities as Seller deems appropriate.

**2. Purchase Price and Payment**

Buyer agrees to pay Seller the purchase price of the Product immediately upon Delivery, without deduction, setoffs or counterclaims of any kind. Any claims of Buyer against Seller with respect to the Product shall be considered separately from payment of the purchase price. In the event payment is not made on time, time being of the essence in this regard, Buyer shall pay Seller daily interest on the late payment at the rate of 1.5% per month or at the maximum rate permitted by law. Unless and until all payments due under this Agreement have been paid to Seller, Seller shall have no obligation to deliver to Buyer, or allow pick by Buyer of, additional Product, unless Buyer pays for said Product C.O.D. in cash or certified funds.

**3. Title and Risk of Loss**

Title to and risk of loss for the Product passes from Seller to Buyer at the time and place of Delivery.

**4. Delivery**

- (a) Delivery occurs when the Product passes from Seller's delivery line into the receiving connection of Buyer's tank or other receptacle (collectively, "Tanks"), Buyer picks up the Product, or the Product is otherwise placed in possession of Buyer or its representatives.
- (b) All Product shall be delivered to Buyer's ship-to or delivery location or picked up by Buyer at Seller's rack or refinery rack. Buyer shall exercise the highest degree of care to avoid any spillage of Product or any injury or harm to any third person or to property. At all times during Delivery or when services are being furnished, an employee or agent of Buyer shall be in charge, custody and control of any Tank of Buyer's being delivered to or serviced by Seller, and Seller shall at no time be considered a bailee of or as having care, custody or control of such Tanks. Buyer shall have qualified personnel or representatives on hand to accept and sign for Delivery.
- (c) It is Buyer's responsibility at all times to ensure that its Tanks have sufficient Product in them for any purpose for which the Buyer uses them or requires the Product, and Seller shall have no liability or responsibility for any claims, damages, or injury whatsoever arising out of or resulting from insufficient Product in any of Buyer's Tanks.

**5. Taxes, Tariffs and Fees**

All taxes, tariffs and fees, now or hereafter imposed by federal, state, local or foreign governments and regulatory authorities, in respect to or measured by the Product delivered hereunder or the manufacture, importation, storage, delivery, transfer, pipeline throughput, receipt, exchange, measurement or inspection thereof, shall be for the sole account of the Buyer. Buyer shall reimburse Seller upon receipt of invoice for any such taxes or fees legally required to be paid and paid by Seller in respect of the Product delivered by Seller to Buyer.

**6. Exceptions**

No delay or failure by either party to carry out or to observe any of the terms, provisions or conditions of this Agreement shall be deemed to be a breach of this Agreement if such failure or omission shall be excused by law or if the same shall be caused by or arise out of an event not in the control of Seller including but not limited to war, hostilities, acts of the public enemy or of belligerents, sabotage, blockage, revolution, insurrection, riot or disorder, arrest or restraint of princes, rulers or peoples, expropriation, requisition, confiscation or nationalization, embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act under some constitution, decree, law or otherwise, act of God, fire, frost or ice, earthquake,

storm, lightning, tide, tidal wave or perils of the sea, accidents of navigation or breakdown or injury of vessels, loss of tanker tonnage due to sinking by belligerents or to governmental taking, whether or not by formal requisition, accidents to or closing of harbors, docks, canals, channels or other assistances to or adjuncts of shipping or navigation, epidemic, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances, explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery or other facilities, unavailability of Product or materials or equipment, or any event, matter or thing wherever occurring and whether or not of the same class or kind as those above set forth.

#### **7. Breach**

Damages for breach of this Agreement shall include all provable damages, and all costs of suit and attorney fees incurred in any action or arbitration proceeding hereunder.

#### **8. Indemnity**

Buyer shall indemnify, defend, and hold harmless Seller, its officers, employees, and agents from and against any claim and/or liability of any kind whatsoever for any injury to or death of any person, or any damage to or destruction of, loss of or delay in delivery of, any property of any person, or any property of Buyer, arising out of or resulting from (a) breach of this Agreement by Buyer, (b) Buyer's negligence or willful misconduct, (c) Buyer's handling, storage, sales, transportation, use, misuse or disposal of the product purchased hereunder, including but not limited to, liability for environmental violations and employee or consumer health or safety, and (d) the furnishing of services by Seller pursuant to this Agreement; provided, however, that the foregoing indemnification shall not apply to any such claim or liability resulting from the gross negligence or willful misconduct of Seller, its officers, agents or employees. Furthermore, Buyer waives any and all rights of subrogation it may have now or hereafter arising out of any claim, dispute or proceeding related to this Agreement. This clause shall survive the term of this Agreement.

#### **9. Pollution Prevention and Responsibility**

In the event a spill, escape or discharge of oil or other product occurs during Delivery and causes or threatens to cause pollution damage ("Spill"), Buyer and Seller shall promptly take whatever measures are necessary to prevent or mitigate such damage. Any and all costs or expenses incurred as a result of any measures so taken shall be at the expense of the spilling party. The spilling party shall be responsible to indemnify, defend and hold harmless the other party from any and all claims, costs, expenses, cleanup costs, fines, losses, penalties, damages or other liability incurred by the other party as a result of the Spill. This duty to indemnify, defend, and hold harmless shall be owed to Seller without regard to the negligence or fault of Seller, except to the extent the negligence or other fault of Seller is a proximate cause of the Spill, in which case Seller shall be responsible only for reasonable costs and expenses attributable to that portion of the Spill.

#### **10. Termination**

Seller may terminate this Agreement immediately for any of the following reasons: (a) Buyer's failure to comply with any material provision of the Agreement including, but not limited to, Buyer's failure to pay to Seller all sums due; (b) Buyer's bankruptcy or insolvency, Buyer's fraud or criminal conduct related to the operation of Buyer's business, or Buyer's conviction of any felony involving moral turpitude; (c) Buyer's willful adulteration, mislabeling, or misbranding of motor fuels; (d) Buyer's knowing failure to comply with any laws relevant to the operation of Buyer's business; (e) Seller decides to withdraw from marketing of the Product in the area; or (f) any other ground for which termination is otherwise allowed by law or which Seller, in its sole discretion, determines is reasonable under the circumstances.

#### **11. Miscellaneous**

- (a) **Construction:** No waiver by either party of any breach of any of the covenants or conditions herein contained to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition. This agreement cannot be modified in any way except in writing signed by the parties.
- (b) **Definitions:** As used in this Agreement, "gallon" shall mean a U.S. standard gallon of 231 cubic inches at 60 degrees Fahrenheit.
- (c) **Assignment:** Buyer may not assign this Agreement in whole or in part nor may it cause any or all of its obligations hereunder to be performed by others, without the prior written consent of Seller.
- (d) **Performance and Waivers:** Any waiver by either party of strict performance with regard to any of the terms, conditions or provisions of this Agreement must be in writing, executed by such party to be effective, and such waiver shall not be deemed a waiver of such party's rights to insist upon strict performance of all portions of this Agreement not waived, and strict performance thereafter of provisions presently waived.
- (e) **Governing Law:** This agreement shall be governed by the laws of the State of Alaska and shall have exclusive venue in Anchorage. The non-prevailing party agrees to pay the prevailing party's commercially reasonable legal fees.
- (f) **Change in Law:** Seller may, in the event of statutory or regulatory changes, administrative or judicial action, add a fee for the term of this Agreement to address the additional cost of doing business.
- (g) **Entire Agreement:** These terms and conditions, and any attachments hereto or referred to specifically herein constitute the entire agreement between the parties with respect to the subject matter hereof and all prior written and oral agreements with respect to the sale of the Product are superseded by and fully integrated into this Agreement. Seller's acceptance of the transaction represented by this Agreement is limited to the terms and conditions hereof. Any written confirmation of this Agreement, or of any oral understanding upon which the sales confirmation is based, containing proposals or terms additional to or different from those set forth herein are not binding on Seller unless Seller expressly agrees to any such proposal or term in writing. Buyer's performance of any of its obligations hereunder shall constitute acceptance by Buyer of this Agreement and all of its terms and conditions.
- (h) **Conflicting Language:** In the event of conflicting language between Part I Fuel Supply Agreement (Commercial) and Part II Standard Terms & Conditions (Commercial), the wording of Part I shall control.



5300 A Street  
Anchorage, AK 99518

December 5, 2024

City Clerk  
City of Kotzebue  
258-A Third Avenue  
Kotzebue, AK 99752

RE: Request For Proposal – RFP # 2024-05

City Clerk,

We are pleased to provide a response to the City of Kotzebue's fuel RFP for service in 2025. We have been looking forward to the opportunity to provide a proposal to the City of Kotzebue for this service for many years. We understand how critical the fuel supply is for the City of Kotzebue so we waited until we were 100% prepared to provide best in class service for the City before submitting a proposal. Storage tanks are topped off with more than enough product to support your requirement, preseason maintenance is complete, and our full staff is trained and ready to go.

Included in our proposal is the Fixed Fee Schedule, The City of Kotzebue Non-Collusion Clause and a draft fuel supply agreement. The extension option of the draft fuel supply agreement would allow additional savings for the City of Kotzebue. Often, the lowest fuel price of the year is available in the winter. Many Vitus customers in Western Alaska take that opportunity to lock in a lower price for summer shipments during the preceding winter months. The 2026 delivery option could take advantage of that.

We look forward to the opportunity to become the City of Kotzebue's fuel provider. If you have any questions or concerns about our proposal please don't hesitate to reach out. I can be reached via phone or email any time.

Warm Regards,

*Mike Poston*

Mike Poston  
Director of Sales  
907-538-2198  
Mike.poston@vitusmarine.com

Ph: (907) 278-6700 Fax: (907) 278-6701

CITY OF KOTZEBUE  
 REQUEST FOR PROPOSAL - RFP #2024-05 HEATING FUEL DELIVERY SERVICE  
 FROM JANUARY 1, 2025 THROUGH DECEMBER 31, 2025

I am authorized by my company to bid on the Heating Fuel Delivery Service to the City of Kotzebue. I agree to the terms and conditions of the "Heating Fuel Delivery Service Agreement" and bid as follows:

| Item |                                         | Price Per Gallon |
|------|-----------------------------------------|------------------|
| Item | Heating Fuel Delivery Service Agreement | \$ 6.52 _____    |
| Item | Ultra Low Sulfur Diesel                 | \$ 6.52 _____    |
| Item | Gasoline                                | \$6.52 _____     |

Vitus Terminals LLC

Company Name

5300 A Street

Company Address

Anchorage, AK 99518

Company Address

907-278-6700

Company Telephone

907-278-6701

Company Fax

mike.poston@vitusmarine.com

Company e-mail Address

12/05/2024

Date

Mike Poston

Signature of Authorized Representative

Mike Poston

Printed Name of Authorized Representative

Director of Sales

Title

prices listed are before any applicable tax and based on award of all items



CITY OF KOTZEBUE  
NON-COLLUSION CLAUSE

1. By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto, certifies as to its own organization, that in connection with this procurement:
  - a. The prices of this offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor.
  - b. Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror, prior to opening in the case of an advertised procurement, or prior to award in the case of a negotiated, directly or indirectly, procurement to any other offeror or to any competitor.
  - c. No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not submit an offer for that purpose of restricting competition.
  
2. Each person signing this offer certifies that:
  - a. He is the person in the offeror's organization responsible within that organization, for the decision as to the prices being offered, herein, and that he has not participated, and will not participate in any action contrary to 1a through 1c above.
  - b. He is not the person in the offeror's organization responsible within that organization, for the decision as to the prices being offered, herein, but that he has been authorized, in writing, to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate in, any action contrary to 1c above and as their agent, does hereby so certify; and he has not participated, and will not participate in any action contrary to 1a through 1c above.

Mike Poston  
Signature of Authorized Representative

Mike Poston  
Printed Name of Authorized Representative

Vitus Terminals LLC  
Company Name

12/04/2024  
Date

Director of Sales  
Title

FUEL PURCHASE AGREEMENT  
(Shoreside – Multi-Year Requirements)

This Fuel Purchase Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Vitus Terminals LLC (“Seller”), an Alaska limited liability company, whose address is 5300 A Street, Anchorage, Alaska 99518, and \_\_\_\_\_ (“Buyer”), whose address is \_\_\_\_\_.

1. Term of Contract; Purchase and Sale. The term of this Agreement shall commence on \_\_\_\_\_ (the “Commencement Date”) and shall continue for a period of 1 year with 2 options to renew for additional 1 year periods. Subject to the terms and conditions of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, all of Buyer’s Product Requirements for each Agreement Year during the term of this Agreement.

2. Product and Product Requirements.

a. Definitions. As used herein,

(1) An “Agreement Year” is each period of January 1st of one calendar year through December 31st of the same calendar year during the term of this Agreement

(2) Each of the below-defined fuel types refers to fuel identified by Vitus’s supplier as meeting the ASTM specifications listed below for that fuel type:

| Fuel Type      | ASTM Specifications Per Vitus’s Supplier |
|----------------|------------------------------------------|
| “Unleaded”     | ASTM D4814.                              |
| “Heating Fuel” | ASTM D975, D396, D975, D1655 or D3699    |
| “ULSD 1”       | ASTM D975 or D1655                       |

(3) “Product” shall refer, collectively and severally, to all fuel types defined in the preceding subsection (a)(2).

(4) “Product Requirements” means all of Buyer’s requirements for Product during each Agreement Year during the term of this Agreement, and in any event not less than the minimum annual quantities specified in the following subsection (b).

b. First Agreement Year and Estimated Annual Quantities. Buyer’s Product Requirements for each Agreement Year shall be an estimate of:

| Type         | Quantity (in gallons) |
|--------------|-----------------------|
| Unleaded     | 17,000                |
| Heating Fuel | 85,000                |
| ULSD #1      | 22,000                |

c. Product Requirements Notice. On or before each anniversary of the Commencement Date, Buyer shall provide Seller with written notice of Buyer’s Product Requirements for the following Agreement Year (the “Product Requirements Notice”); provided, that Buyer’s Product Requirements shall not be less than the quantities specified in subsection (b) above. If Buyer fails to provide the Product Requirements Notice as and when provided for in the preceding sentence, Buyer’s Product Requirements for the following Agreement Year shall be deemed to be the same as Buyer’s last effective Product Requirements.

d. Quantity Adjustments. Buyer may increase or decrease its Product Requirements for a particular Product for

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Vitus Energy LLC \* 5300 A Street \* Anchorage, AK 99518  
Tel: 907 793-9700 \* Fax: 907 793-9701 \* Email: Sales \* Web: vitus-energy.com



the first Agreement Year by up to 20% in excess of the quantity specified in subsection (b) above, and may increase or decrease its Products Requirements for a particular Product for any subsequent Agreement Year by up to 20% in excess of the quantity specified in the Product Requirements Notice for that Agreement Year, by providing Seller with written notice of such adjustment prior to May 1 of the Agreement Year for which such adjustment is to be effective.

e. Unanticipated Requirements. If Buyer learns that its requirements for a particular Product for the first Agreement Year are more than 20% in excess of the quantity specified in subsection (b) above, or if Buyer learns that its requirements for a particular Product for a subsequent Agreement Year are more than 20% in excess of the quantity specified in a Product Requirements Notice, Buyer shall give prompt written notice (the "Excess Requirements Notice") to Seller of such excess requirements (the "Excess Requirements") to Seller, but Seller shall have no obligation to supply additional Product to meet the Excess Requirements. Within ten days after receiving the Excess Requirements Notice, Seller shall give written notice to Buyer as to whether Seller agrees to supply additional Product to meet some or all of the Excess Requirements. If Seller agrees to supply additional Product to meet some or all of the Excess Requirements, then such additional Product as Seller agrees to supply shall be included in Buyer's Product Requirements for such Agreement Year. If and to the extent Seller does not agree to supply additional Product necessary to meet the Excess Requirements, Seller shall have no obligation to supply such additional Product to Buyer, and Buyer shall have no obligation to purchase such additional Product from Seller.

f. Requirements Contract. Except as expressly otherwise provided in this Agreement, Buyer shall purchase from Seller all Product required by Buyer during the term of this Agreement, and Buyer may not cancel or reduce its Product Requirements without Seller's consent, which consent may be withheld for any or no reason at Seller's absolute discretion. Without limiting the preceding sentence, Seller may condition any consent to cancellation or reduction in Product Requirements upon payment of Seller's lost profits resulting from such cancellation or reduction. Seller's remedies for breach in the event it does not consent to cancellation or reduction by Buyer of its Product Requirements shall not be limited by this paragraph.

### 3. Delivery.

a. Definitions. As used herein,

(1) "Delivery Location" means the following location: locations identified on City of Kotzebue RFP #2024-05

(2) "Tank" means, for a given type of Product, a storage tank or tanks located in the Delivery Location and designated by Buyer to receive delivery of that Product.

(3) "Seller's Storage Facility" means the fuel storage facility located at: Kotzebue Alaska

b. Number and Means of Deliveries. Delivery shall be (check box):

in multiple deliveries between \_\_\_\_\_ (insert date) and \_\_\_\_\_ (insert date) of each Agreement Year, during Seller's regular business hours, to a Tank, and each delivery of Product shall be initiated by an order from Buyer specifying the quantity of Product for that delivery.

in multiple deliveries between \_\_\_\_\_ (insert date) and \_\_\_\_\_ (insert date) of each Agreement Year, during Seller's regular business hours, to a Tank on an automatic-fill ("Auto-Fill") basis.

The following special terms shall apply in regards to delivery: Fill schedule will be based on the City of Kotzebue RFP #2024-05 or other schedule mutually agreed between City of Kotzebue and Vitus Terminals LLC. \_\_\_\_\_

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Vitus Energy LLC \* 5300 A Street \* Anchorage, AK 99518  
Tel: 907 793-9700 \* Fax: 907 793-9701 \* Email: Sales \* Web: vitus-energy.com

MS 08 Fuel Purchase Agreement (Shoreside-Multiple years) Rev 7, 12.9.21

4. Price. The price per gallon of a particular Product delivered under this Agreement, exclusive of taxes and any other amounts provided for in the Standard Terms and Conditions attached hereto as Exhibit A, shall be (check box)

Fixed Price:

| <u>Type</u>  | <u>Price Per Gallon</u> |
|--------------|-------------------------|
| Unleaded     | \$6.62 _____            |
| Heating Fuel | \$6.62 _____            |
| ULSD # 1     | \$6.62 _____            |

Adjusted Base Price:

| <u>Type</u>  | <u>Price Per Gallon</u>                                    |
|--------------|------------------------------------------------------------|
| Unleaded     | Seller's Base Price for the Delivery Location, less \$.__. |
| Heating Fuel | Seller's Base Price for the Delivery Location, less \$.__. |
| ULSD # 1     | Seller's Base Price for the Delivery Location, less \$.__. |

Special terms regarding price: Fixed price above is applicable for the first year of the fuel supply agreement. Changes in Pricing for Option Years will be negotiated between City of Kotzebue and Vitus Terminals based on market changes in the cost of petroleum products.

5. Payment. Unless Seller has entered into a separate credit agreement with Buyer, or has otherwise agreed in a signed writing, payment shall be made in advance, and Seller shall not be under any obligation to deliver Product if payment has not first been received by Seller in accordance with this Agreement. Payment shall be made without deduction, setoff, or counterclaim of any kind. In the event Buyer fails to pay as and when due any amount required to be paid under this Agreement, and in addition to any other remedies available to Seller by reason of Buyer's default, Seller may charge interest on all amounts due under this Agreement at the rate of 1.5% per month or the maximum rate of interest allowed under AS 45.45.010(b), whichever is less.

6. Standard Terms and Conditions. **BUYER HAS READ AND AGREES TO THE ATTACHED STANDARD TERMS AND CONDITIONS, WHICH STANDARD TERMS AND CONDITIONS ARE INCORPORATED IN AND MADE A PART OF THIS AGREEMENT.**

SELLER:  
Vitus Energy, LLC

BUYER:  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Vitus Energy LLC \* 5300 A Street \* Anchorage, AK 99518  
Tel: 907 793-9700 \* Fax: 907 793-9701 \* Email: Sales \* Web: vitus-energy.com

MS 08 Fuel Purchase Agreement (Shoreside-Multiple years) Rev 7, 12.9.21

**STANDARD TERMS AND CONDITIONS**  
**READ THIS CAREFULLY!**

1. Definitions.

a. As used in these Standard Terms and Conditions:

- i. "Agreement" means the agreement that incorporates and includes these Standard Terms and Conditions.
- ii. "Seller" means Vitus Energy LLC.
- iii. "Buyer" means the Customer or Buyer as identified or defined in this Agreement.
- iv. "Product" means all fuel or other petroleum products being purchased by Buyer under this Agreement.
- v. "Seller's Storage Facility" means the facility in which Vitus stores Product intended for sale to Buyer.
- vi. "Tank" means any storage tank(s) into which Product is to be delivered under this Agreement.
- vii. "Buyer's Storage Facility" means any facilities to which Product is to be delivered under this Agreement and all

improvements, Tank, pipes, valves, fixtures, and equipment that comprise such facilities.

b. Notwithstanding the foregoing, if a capitalized term is defined elsewhere in this Agreement, then such capitalized term shall have the meaning as elsewhere defined in this Agreement.

2. Term and Termination. This Agreement shall continue until such time as it is terminated as provided in the following sentence. Either party may terminate this Agreement, for any or no reason, by giving written notice to the other in accordance with paragraph 22 below.

3. Pricing.

a. As used in this Agreement, "Base Price" means Seller's base price for that Product, as of the date of delivery, for the community in which delivery is being made. Unless expressly otherwise provided in this Agreement, the price of a given Product shall be Seller's Base Price. If a particular delivery is commenced on one day and completed on another, the date of delivery shall be deemed to be the date the delivery was commenced. Any agreed discount will be deducted from the Base Price prior to invoicing. The Base Price is subject to change without notice. Vitus will upon request provide Buyer with the Base Price for a given Product, as of the time of the request, for any community to which such Product is being delivered under this Agreement.

b. If the price of a given Product under this Agreement is indexed against a price given by a reporting service or other price index, then:

i. Price shall be determined as of the day of delivery.

ii. If the reporting service or other price index becomes discontinued, a similar reporting service or comparable index will be adopted by agreement of the parties. If an agreement cannot be reached between Seller and Buyer within ten (10) days after termination of the affected price reporting service or other price index, the issue will be promptly submitted to binding arbitration before a single arbitrator for a ruling as soon as reasonably possible. The arbitration shall be governed by the Alaska Revised Uniform Arbitration Act, AS 09.43.300-.595. Venue for such arbitration shall be exclusively in Anchorage, Alaska

4. Payment and Taxes.

a. Unless credit terms have been established, payment for the Product is due in advance of delivery. There shall be added to the price of each Product, and Buyer shall pay, any and all taxes, now or hereafter imposed by any governmental authority or any tribal authority in respect to or measured by the Product delivered hereunder or by the manufacture, storage, delivery, receipt, exchange or inspection thereof. If Buyer claims an exemption, Buyer shall provide Seller with copies of the applicable tax certificates establishing such exemption.

b. Budget Billing Option. As used in this Agreement, "Budget Billing Option" means the arrangement provided for in this subsection (b), which arrangement is available only if elected by Buyer and agreed to by Seller in writing. Under the Budget Billing Option, Seller shall invoice Buyer for, and Buyer shall pay Seller, a level monthly amount (the "Budget Billing Amount") each month for each type of Product delivered to Buyer over the course of a calendar year (the "Budget Billing Year"), on and subject to the following terms:

i. The initial amount of each Budget Billing Amount shall be the product of Buyer's annual estimated annual needs for a given Product in gallons (the "Budget Billing Estimated Volume") divided by 10 and multiplied by a per gallon price set by Seller in its sole discretion for billing purposes only (the "Budget Billing Nominal Price"). The Budget Billing Nominal Price for a given Product may vary between Buyers.

ii. Seller shall set the start of the Budget Billing Year.

iii. Buyer shall be and remain liable for the actual price of all delivered Product regardless of the Budget Billing Nominal Price and regardless of the amount of the Budget Billing Amount.

iv. After each Budget Billing Year, the following shall occur (the "True-Up"): If the total actual price of all Product delivered during the Budget Billing Year exceeds the total amount paid by Buyer during the Budget Billing Year, Seller shall invoice Buyer for the difference, and Buyer shall pay Seller the same within thirty (30) days of such invoice; but if the total actual price of all Product delivered during the Budget Billing Year is less than total amount paid by Seller during the Budget Billing Year, then Seller shall pay Buyer, within sixty (60) days after the end of the Budget Billing Year, an amount equal to the difference.

v. Seller may increase the amount of the Budget Billing Nominal Price and, as a result, the amount of the Budget Billing Amount, from time to time whenever Seller believes in good faith that, without such increase, the total amount that will be invoiced to Buyer for a given Product over the course of the Budget Billing Year will be less than actual total price for such Product.

vi. Seller may increase the amount the Budget Billing Estimated Volume and, as a result, the amount of the Budget Billing Amount, from time to time whenever Seller in good faith believes that, without such increase, the total amount of Product that Seller anticipates it will deliver to Buyer over the course of the Budget Billing Year will exceed the Budget Billing Estimated Volume.

vii. Once elected by Buyer and agreed to by Seller, the Budget Billing Option will continue from year to year unless and until cancelled, so long as Buyer provides Seller with an updated Budget Billing Estimated Volume not less than one (1) month in advance of each new Budget Billing Year.

viii. Seller may cancel the Budget Billing Option without notice if Buyer fails to pay any invoice for the Budget Billing Amount. Without limiting the preceding sentence, either Buyer or Seller may cancel the Budget Billing Option for any or no reason by giving written notice to the other party. In the event the Budget Billing Option is cancelled, a True-Up shall be done as though the Budget Billing Year at the end of the day on the date of such cancellation.

#### 5. Delivery

a. If delivery is to a tank truck, then Buyer is subject to the truck vetting requirements of Seller and any third-party owner of Seller's Storage Facility, and Seller or any third-party owner of Seller's Storage Facility may reject a truck for any reason in its sole discretion. Without limiting the preceding sentence, Buyer represents and warrants that each tank truck into which the Product is to be delivered has sufficient unused capacity to accommodate the volume of Product to be delivered to the tank truck; that the tanks of the tank truck are structurally adequate to safely contain the Product when those tanks are filled to capacity; and that the tank truck and all of its tanks, pipes, valves and other parts are in good condition and comply with all applicable federal, state, and local laws and regulations.

b. If delivery is to a storage tank, then:

i. Buyer represents and warrants that Buyer owns or is lawfully in possession and control of the Tank and Buyer's Storage Facility of which it is part and the real property where the Tank and Storage Facility are located. Buyer authorizes Seller and its employees, agents, and contractors to come onto that real property, whether Buyer is present or not, for the purpose of making delivery. Buyer shall take all steps necessary to ensure the safety of persons making the delivery while they are on the property. If Seller believes in its sole discretion that conditions on the property pose any risk to persons making the delivery, the delivery equipment, or the environment, then Seller may refuse to proceed with delivery until such conditions have been remedied.

ii. Buyer represents and warrants that Buyer's Storage Facility is in good condition and complies with all applicable federal, state, and local laws and regulations. Without limiting the preceding sentence, Buyer represents and warrants that the Tank has sufficient unused capacity to accommodate the volume of Product to be delivered; that the Tank is structurally adequate to safely contain the Product, and the Tank base or stand is structurally adequate to safely support the Tank, when the Tank is filled to capacity; that the Tank is structurally adequate to safely contain the Product.

c. If this Agreement calls for "Auto-Fill" delivery or a "Keep Full" Service Level, then:

i. Seller will inspect the Product level in the Tank from time to time as often as Seller believes in good faith is necessary. If the Tank is found to have available storage capacity, Seller shall have the right to deliver Product in any quantity up to that available capacity. Seller shall not have any obligation to deliver unless Seller actually believes that the amount of fuel in the Tank is insufficient to last until the next anticipated delivery, and in such case, Seller shall deliver such amount of fuel as Seller in good faith believes will result in there being a sufficient quantity of fuel Product in the Tank to last until the next anticipated delivery.

d. **Buyer Ultimately Responsible for Fuel Levels. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THESE STANDARD TERMS AND CONDITIONS), AND EVEN IF THIS AGREEMENT CALLS FOR "AUTO-FILL" DELIVERY OR A "KEEP FULL" SERVICE LEVEL, BUYER IS SOLELY RESPONSIBLE FOR INSURING THAT BUYER HAS SUFFICIENT PRODUCT IN THE TANK TO MEET BUYER'S NEEDS.** If at any time Buyer determines there is insufficient Product in the Tank, Buyer shall inform Seller, and Seller shall make a delivery as soon as practicable during regular business hours.

e. Seller may require that Buyer or Buyer's designee be present at delivery, and any designee will be deemed to have full authority to act for Buyer with respect to the delivery. Seller may require that Buyer or Buyer's designee sign a meter ticket, receipt, or other proof of delivery of Product, but Buyer is obligated to pay for all delivered Product whether or not Seller requires or obtains such a signature. Buyer acknowledges and agrees that Seller may contract with one or more subcontractors to deliver Product under this Agreement.

6. Title and Risk of Loss. Ownership, title, and risk of loss to Product shall pass to Buyer upon delivery. Without limiting the preceding sentence, Seller is not responsible for theft of Product after it is delivered to Buyer. For waterborne deliveries, delivery is completed when the Product passes the permanent shore pipeline flange or header.

7. Warranties. Seller warrants that the Product shall have been identified by Seller's supplier as conforming to the following ASTM specifications:

|                   |                                     |
|-------------------|-------------------------------------|
| For Unleaded:     | ASTM D4814                          |
| For ULSD 1 and 2: | ASTM D975 or D1655                  |
| For Heating Fuel: | ASTM D396 or D975 or D1655 or D3699 |
| For Propane:      | ASTM D1835                          |
| For Jet A:        | ASTM D1655                          |
| For Av 100:       | ASTM D910                           |



Except that with respect to the ASTM D975 specification for ULSD 1 and 2 and the ASTM D396 or D975 specification for Heating Fuel, Buyer acknowledges that the viscosity of the Product delivered may be less than 1.3

**SELLER MAKES NO FUTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND OTHER WARRANTIES OF WHATEVER KIND ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED EXCEPT AS MAY BE REQUIRED BY LAW.** Buyer's sole and exclusive remedy in the event of any breach of warranty shall be as provided for in the following paragraph.

8. Notice of, and Exclusive Remedy for, Claims Relating to Product or Delivery. **ANY CLAIM BY BUYER AGAINST SELLER FOR FAILURE TO DELIVER (INCLUDING WITHOUT LIMITATION FAILURE TO DELIVER CORRECT PRODUCT), SHORTAGE IN QUANTITY, BREACH OF WARRANTY, DEFECTS IN QUALITY, OR ANY OTHER CLAIM RELATING TO THE PRODUCT OR THE DELIVERY THEREOF IS CONCLUSIVELY WAIVED UNLESS NOTICE OF SUCH CLAIM IS GIVEN TO SELLER WITHIN TWENTY (20) DAYS OF THE DATE OF DELIVERY OR, IN THE CASE OF A FAILURE TO MAKE DELIVERY OR SHORTAGE IN QUANTITY, WITHIN TWENTY (20) DAYS OF THE DATE ON WHICH DELIVERY WAS HAVE BEEN MADE. BUYER'S EXCLUSIVE REMEDY IN THE EVENT OF ANY SUCH CLAIM SHALL BE, AT SELLER'S OPTION, REPLACEMENT OR OTHER CURE OF THE DEFECTIVE PRODUCT OR PERFORMANCE, OR RETURN OF SO MUCH OF THE PURCHASE PRICE AS HAS ACTUALLY BEEN PAID BY BUYER AND REMOVAL OF ANY DEFECTIVE PRODUCT.**

9. Storage Contingency. This Agreement is contingent upon the continuing availability to Seller, on terms acceptable to Seller, of tank storage space at Seller's Storage Facility. If at any time prior such tank storage space is insufficient to store the Product to be delivered under this Agreement after meeting all of Seller's other fuel storage needs in the geographic location to which delivery is to be made under this Agreement, then Seller shall give prompt notice to Buyer specifying the amount of such insufficiency by Product type, and: (a) Seller's obligation to supply particular Product to Buyer, and Buyer's obligation to purchase that Product from Seller, shall be reduced to the extent of such insufficiency, or, at Buyer's option, (b) Buyer may terminate this Agreement, and in the event of such termination Seller shall refund Buyer an amount equal to the number of gallons of the particular Product paid for by Seller but not delivered prior to the date of Seller's notice times the price specified for such Product in this Agreement, and upon such payment neither party shall have any further obligation under this Agreement.

10. Pollution. Buyer shall comply with all federal, state, and local laws and regulations relating to oil spills and water, air, and land pollution. Buyer shall be responsible for all liability and damages, if any, that may result from any spill, leak, venting, or other escape or accidental discharge of Product in connection with the delivery of any Product purchased under this Agreement, and even if caused by Seller's negligence; PROVIDED, however, that Buyer shall not be responsible for damages resulting from any escape or accidental discharge caused solely by Seller's reckless misconduct.

11. Security Interest.

a. As security for full and timely performance and payment by Buyer of all indebtedness, liabilities and obligations of Buyer to Seller, whether now existing or later arising, including without limitation payment of all amounts owed by Buyer to Seller for in connection with the purchase of Product under this Agreement, Buyer grants Seller a security interest in the following property of Buyer (collectively, "Collateral"):

All Product and all other petroleum products in which Buyer has or hereafter acquires an interest, wherever located, and however commingled; and all cash and non-cash proceeds (including without limitation accounts receivable) of the foregoing, and all products of the foregoing.

Provided, that if Buyer is purchasing Product from Seller for personal, family, or household purposes, then the Collateral is limited to the Product purchased from Seller, wherever located and however commingled, and all proceeds and products of the same.

b. Buyer has been provided with, has read, and agrees to Seller's Credit Terms and Conditions.

12. Default. Buyer shall be in default if Buyer fails to perform, keep, or observe any other term, provision, condition or covenant contained in this Agreement that is required to be performed, kept or observed by Buyer, including without limitation Buyer's failure to purchase from Seller all Product that Buyer is required to purchase from Seller under this Agreement, if such failure continues for ten (10) days after the giving of written notice thereof. In the event of default, Seller may pursue any and all other rights or remedies provided in this Agreement or by law.

13. Limitation of Liability; Indemnity. Without limiting paragraph 8 of these Standard Terms and Conditions:

a. **SELLER'S LIABILITY FOR ANY FAILURE TO DELIVER (INCLUDING WITHOUT LIMITATION FAILURE TO DELIVER CORRECT PRODUCT), SHORTAGE IN QUANTITY, BREACH OF WARRANTY, DEFECTS IN QUALITY, OR ANY OTHER CLAIM RELATING TO THE PRODUCT OR THE DELIVERY THEREOF SHALL NOT EXCEED THE DIFFERENCE BETWEEN THE COST OF COVER (WHETHER OR NOT BUYER ACTUALLY COVERS) AND THE PRICE OF SUCH PRODUCT UNDER THIS AGREEMENT. AS USED IN THE PRECEDING SENTENCE, THE "COST OF COVER" IS THE ACTUAL PRICE PAID BY BUYER BY MAKING IN GOOD FAITH AND WITHOUT UNREASONABLE DELAY A REASONABLE PURCHASE OF PRODUCT FROM A THIRD-PARTY SUPPLIER LOCATED IN ALASKA, FOR DELIVERY BY BARGE OR TRUCK IN SUBSTITUTION FOR THE PRODUCT PURCHASED FROM SELLER, BUT NOT INCLUDING BUYER'S OVERHEAD OR ADMINISTRATIVE COSTS. UNDER NO CIRCUMSTANCE SHALL SELLER BE LIABLE FOR THE COST TO HAVE PRODUCT TRANSPORTED BY AIR.**

b. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND IN CONNECTION WITH ANY CLAIM, INCLUDING WITHOUT LIMITATION LOST PROFITS OR LOSS OF INCOME EARNING CAPACITY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

c. WITHOUT LIMITING THE PRECEDING SUBPARAGRAPH (b), UNDER NO CIRCUMSTANCE SHALL SELLER BE LIABLE FOR ANY INJURY OR DAMAGE TO PERSONS OR PROPERTY, INCLUDING WITHOUT LIMITATION ANY INJURY OR DAMAGE RESULTING FROM LACK OF HEAT, THAT RESULTS FROM SELLER'S BREACH OF THIS AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, OR ANY OTHER ACT OR OMISSION OF SELLER. TO THE FULLEXT EXTENT PERMITTED BY LAW, BUYER AGREES TO INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM ANY AND ALL CLAIMS AND LIABILITY FOR SUCH INJURY OR DAMAGE.

d. WITHOUT LIMITING THE FOREGOING SUBPARAGRAPHS (b) AND (c), AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, SELLER'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT, PRODUCT, OR SELLER'S ACTS OR OMISSIONS IN CONNECTION WITH THIS AGREEMENT OR PRODUCT, INCLUDING WITHOUT LIMITATION ALL CLAIMS FOR BREACH OF THIS AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL PRICE OF THE PARTICULAR PRODUCT WHICH IS THE SUBJECT OF THE CLAIMS OR THE PARTICULAR DELIVERY(IES) OR OTHER ACTS OR OMISSIONS OF SELLER TO WHICH THE CLAIMS RELATE, LESS ALL AMOUNTS OWING FROM BUYER TO SELLER UNDER THIS AGREEMENT.

14. Indemnity. Buyer hereby agrees to defend, indemnify and hold harmless Seller and Seller's members, managers, officers, employees, trustees, agents, attorneys, insurers, sureties, parent and subsidiary and affiliated entities, successors and assigns, past, present, and future, from and against any and all liabilities, damages, losses, costs and expenses (including attorneys' fees and other expenses of litigation), arising in whole or in part from, or related in any way to (a) any act or omission of Buyer, or any person acting on behalf of Buyer or under Buyer's direction or control, in connection with this Agreement, including without limitation in connection with the delivery or receipt of Product; or (b) unless prohibited by law, any delivery or receipt of Product using a Prokee issued by Seller to Buyer.

15. Measurement. Quantity shall be measured in units of volume identified by Seller unless otherwise required by law. Measurement may be by gauging the Product in the Tank to which delivery is to be made both immediately before and immediately after delivery, or by means of delivery meters, at Seller's option. If measurement of quantity delivered is to be by gauging the Product in the Tank, then Buyer shall give Seller reasonable notice before such measurements are taken, and Seller shall have the right to be present at such measurements. If measurement of quantity delivered is by means of delivery meters, built-in temperature compensators may be employed. Volume measurements shall be taken in accordance with the API Manual of Petroleum Measurement Standards and converted to net gallons at 60° F in accordance with the appropriate Table 6 of ASTM D-1250 in its latest version for the applicable Product. Gross Standard Volume is defined in the January 1982 Annex to Chapter 1 of the API Manual of Petroleum Standards. For purposes of this Agreement, a "gallon" is a U.S. standard gallon of 231 cubic inches at 60° F.

16. Hazardous Nature of Product. Buyer represents and warrants that it is knowledgeable and aware that the Product delivered hereunder is hazardous material and that Buyer is sophisticated and knowledgeable with respect to (i) the hazards and risks associated with such Product, and (ii) the handling, receipt, transportation, storage and use of such Product. If Buyer is purchasing such Product for resale or hereafter resells such Product, Buyer shall transmit to Buyer's customers any health and safety warnings and notices received from Seller promptly after such are furnished to Buyer by Seller, but Seller shall not have any obligation to provide such warnings or notices.

17. Force Majeure. The Seller shall not be liable for failure to perform this contract in whole or in part if such failure is due to strikes, work stoppages or slowdowns, local labor shortages, accidents, fire, storms, flood, late break-up or early freeze-up, riots, war, failure of equipment, delays in transportation, shortages in cars, shortages of fuel, power or materials, laws, regulations or requirements of any government or government agency, acts of God, or other contingencies beyond the reasonable control of the Seller. Without limiting the preceding sentence, the time for Seller to make delivery hereunder shall be extended during any period in which delivery shall be delayed or prevented by reason of any of the foregoing causes. If any delivery hereunder shall be so delayed or prevented for more than thirty (30) days beyond the stated delivery period, Seller may, but is not required to, cancel the delivery or terminate this Agreement without liability to the Buyer.

18. Waiver. The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit the party's rights thereafter to enforce any provision or exercise any right, unless such waiver is evidenced in writing and executed by the party.

19. No Third-Party Beneficiaries. This Agreement is not entered into for the benefit of any entity other than the specific parties hereto.

20. Construing of Agreement. The terms of this Agreement shall be construed according to the fair intent of the parties and not for or against either party.

21. Law and Venue; Waiver of Jury Trial. This Agreement is governed by the laws of the State of Alaska. In any dispute arising out of or relating to this Agreement or any of the transactions contemplated herein, jurisdiction and venue shall lie exclusively in the courts at Anchorage, Alaska. **BUYER IRREVOCABLY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT**

**OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.** The prevailing party in any action shall be entitled to an award of its attorney fees and costs.

22. **Notice.** All notices required or permitted to be given under this Agreement shall be in writing and (i) delivered personally to the designated officer of the party to whom directed; or (ii) sent by registered or certified United States mail, postage prepaid, return receipt requested; or (iii) sent by email to receiving party's email address stated in this Agreement.

23. **Integration and Modification.** This Agreement, including these Standard Terms and Conditions and any other exhibits to, or attachments referenced in, this Agreement, constitutes the entire sole understanding of the parties with respect to the subject matter herein and supersedes any prior oral or written representations or agreements concerning the same. Buyer warrants that it is not relying on any representations other than those contained in this Agreement. No modification of this Agreement shall be binding unless such modification is in writing and executed by both parties subsequent to the date hereof.