



**CITY OF KOTZEBUE
RESOLUTION NO. 24-03**

“A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KOTZEBUE APPROVING *NUNC PRO TUNC* A CONTRACT FOR CY2024 WITH CROWLEY FUELS, LLC”

WHEREAS, the City of Kotzebue duly issued in the Fall of 2023 RFP No. 2023-02 for fuel delivery services for Calendar Year 2024;

WHEREAS, as has been the case for the last several years, only one (1) response was received to the RFP, to wit: from Crowley Fuels, LLC, which was opened at 2:00pm on November 3, 2023;

WHEREAS, Crowley Fuels, LLC, proposed the following prices for Calendar Year 2024: heating fuel at \$6.62 per gallon; ultra-low sulfur diesel at \$6.79 per gallon; and gasoline at \$6.6470 per gallon;

WHEREAS, Crowley Fuels, LLC, has been a good, timely provider of fuel deliveries to the City of Kotzebue in the past years; and,

WHEREAS, the Public Works Director has recommended awarding a contract to Crowley Fuels, LLC, for Calendar Year 2023.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Kotzebue, authorizes *nunc pro tunc* the Mayor pursuant to KMC 2.08.020(A) to execute a contract with Crowley Fuels, LLC, on the terms and conditions as set forth in this Resolution and the documents attached hereto as Exhibit “A” and incorporated by reference herein.

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PASSED AND APPROVED by a duly constituted quorum of the City Council of the City of Kotzebue, Alaska, this 18th day of January, 2024.

CITY OF KOTZEBUE

Saima Chase, Mayor

[SEAL]

ATTEST:

Rosie Hensley, City Clerk

Attachment: Exhibit "A" – RFP 2023-02 documents [10 pages]

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

PROPOSAL NUMBER/TITLE: RFP 2023-02
Crowley

DATE/TIME OPENED: Nov 3, 2023 AT 2:00 A.M./P.M.

	<u>CONTRACTOR</u>	<u>PROPOSAL AMOUNT</u>
01	<u>Heating fuel</u>	<u>\$16.62</u>
02	<u>U Hrn low Sulfur Diesel</u>	<u>\$16.79</u>
03	<u>Gasoline</u>	<u>\$6.6470</u>
04		
05		
06		
07		
08		
09		
10		

[Signature]
City Clerk

11-3-2023
Date

[Signature]
Witness



November 3, 2023

City of Kotzebue
Attn: City Clerk
258-A Third Avenue
Kotzebue, Alaska 99752
Bid Due: 2:00PM November 3, 2023

RE: Request for Proposal – RFP # 2023-02 Heating Fuel Delivery Service

City Clerk,

In response to the City of Kotzebue RFP #2023 – 02 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 – 70 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.

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

Respectfully,

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

CITY OF KOTZEBUE
 REQUEST FOR PROPOSAL - RFP # 2023-02
 HEATING FUEL DELIVERY SERVICE
 FROM JANUARY 1, 2024 THROUGH DECEMBER 31, 2024

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
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
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
Landfill Incinerator Building	500 gallons	on call
*Fill Schedule subject to change		
<u>Mobile Equipment Tank</u>		
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:

- All bids shall be submitted in a sealed envelope, clearly marked "#RFP 2023-02" and delivered to the City Clerk before November 3, 2023. 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.
- 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 with 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, November 3, 2023 at 2:00pm. 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

David A. Regan

Printed Name of Authorized Representative

Crowley Fuels LLC

Company Name

10/31/2023

Date

Vice President, Sales and Supply

Title

CITY OF KOTZEBUE
 REQUEST FOR PROPOSAL - RFP #2023-02 HEATING FUEL DELIVERY SERVICE
 FROM JANUARY 1, 2024 THROUGH DECEMBER 31, 2024

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>6.62</u>
Ultra Low Sulfur Diesel	\$ <u>6.79</u>
Gasoline	\$ <u>6.6470</u>

Crowley Fuels LLC
 Company Name
201 Arctic Slope Ave
 Company Address
Anchorage, AK 99518
 Company Address
907-777-5569
 Company Telephone
907-777-5558
 Company Fax
Todd.Tikiun@crowley.com
 Company e-mail Address

10/31/2023
 Date

 Signature of Authorized Representative
David A. Regan
 Printed Name of Authorized Representative
Vice President, Sales and Supply
 Title

PART I
FUEL SUPPLY AGREEMENT (COMMERCIAL)

This FUEL SUPPLY AGREEMENT ("Agreement") is entered into as of the 3rd day of November, 2023 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 \$6.62 per gallon
 - b. Ultra Low Sulfur Diesel – Fixed Price shall be \$6.79 per gallon
 - c. Regular Unleaded Gasoline – Fixed Price shall be \$6.6470 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

BUYER:

CITY OF KOTZEBUE



By: David A. Regan

Its: Vice President, Sales and Supply



By: Samma Chase

Its: Mayor

PART II
STANDARD TERMS AND CONDITIONS (COMMERCIAL)

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.