

**GENERAL SERVICES CONTRACT # 6219060038
TO PROVIDE 100 LOW LEAD AVIATION FUEL
TO CHARLES B. WHEELER DOWNTOWN AIRPORT
AVIATION DEPARTMENT**

THIS CONTRACT is dated this ____ day of _____, 2019, between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("City"), and City Service Valcon, LLC a Montana Limited Liability Corporation ("Contractor"), whereby Contractor shall provide 100 Low Lead Aviation Fuel at Charles B. Wheeler Downtown Airport, Kansas City, Missouri to the City in accordance with the terms and conditions contained in this Contract.

**PART I
SPECIAL TERMS AND CONDITIONS**

Sec. 1. Work to be Performed. Contractor shall perform the work and supply the goods, equipment or services specified in **Attachment I - Scope of Work** and any addenda thereto attached hereto and incorporated into this Contract.

Sec. 2. Term of Contract. This Contract shall begin on November 1, 2019 and shall end no later than October 31, 2023. The Director of Aviation or his designee may renew this Contract upon the same terms and conditions for three additional one-year terms.

Sec. 3. Compensation. Contractor shall invoice City upon each delivery to Airport and City will pay invoice within thirty (30) days of receipt.

Sec. 4. Notices. All notices required by this Contract shall be in writing sent by regular U.S. mail, postage prepaid or commercial overnight courier to the Director if sent to the City and to the person and address listed on the Proposal if to the Contractor. All notices are effective on the date mailed or deposited with courier.

Sec. 5. Merger. This Contract consists of Part I, Special Terms and Conditions and any Attachments and any documents incorporated by reference; and Part II, Standard Terms and Conditions. This Contract, including any Attachments and incorporated documents, constitutes the entire agreement between City and Contractor with respect to this subject matter.

Sec. 6. Conflict Between Contract Parts. In the event of any conflict or ambiguity between the Special Contract Terms and Conditions of Part I and the Standard Terms and Conditions of Part II of this Contract, Part I will be controlling.

Sec. 7. Attachments to Part I. The following documents are Attachments to Part I of this Contract and are attached hereto and incorporated herein by this reference:

Attachment I - Scope of Work

Sec. 8. Responsibilities of City. City shall stock and provide all necessary consumable supplies for general office, rest room, break room, etc.

Sec. 9. Minority and Women's Business Enterprises. City is committed to ensuring that minority and women's business enterprises (M/WBE) participate to the maximum extent Gen. Service Contract Part I 102014 4 of 6 Contract Central possible in the performance of City contracts. Contractor agrees to comply with all requirements of City's M/WBE Program as enacted in City's Code Sections 3-421 through 3- 469 and as hereinafter amended. Contractor shall make its best faith efforts in carrying out this policy by implementing its contractor utilization plan, which is incorporated herein as part of the Bid Form. If Contractor fails to achieve the M/WBE goals stated in its contractor utilization plan, as amended, the City will sustain damages, the exact extent of which would be difficult or impossible to ascertain or estimate at the time of execution of this contract. Therefore, in order to liquidate those damages, the monetary difference between the amount of the M/WBE goals set forth in this contractor utilization plan, as amended, and the amount actually paid to qualified MBEs and WBEs for performing a commercially useful function will be deducted from the Contractor's payments as liquidated damages. In determining the amount actually paid to qualified MBEs and WBEs, no credit will be given for the portion of participation that was not approved by the Director of City's Human Relations Division, unless the Director determines that the Contractor acted in good faith. No deduction for liquidated damages will be made when, for reasons beyond the control of the Contractor, the M/WBE participation stated in the Contractor Utilization Plan, as amended and approved by the Director, is not met.

THIS CONTRACT CONTAINS AN INDEMNIFICATION PROVISION

Business Entity Type:

- ☐ Missouri Corporation
☐ Foreign Corporation
☐ Fictitious Name Registration
☐ Sole Proprietor
☐ Limited Liability Company
☐ Partnership
☐ Joint Adventure (Joint Venture)
☐ Other (Specify): _____

CONTRACTOR

I hereby certify that I have authority to execute
this document on behalf of Contractor

Contractor: City Service Valcon, LLC

By: _____

Title: _____

Date: _____

(Affix Corporate Seal)

KANSAS CITY, MISSOURI

By: _____

Director of Aviation

Date: _____

Approved as to form:

Assistant City Attorney (Date)

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Director of Finance

Attachment I - Scope of Work

City reserves the right and will have the option, by the Director of Aviation or his designee, to add, delete or modify any items of work identified in **Attachment I -Scope of Work** of this Contract.

DELIVERY OF 100 LOW LEAD AVIATION FUEL

1. To provide 100 Low Lead Aviation Fuel to a Self-Serve Facility at the Charles B. Wheeler Downtown Kansas City Airport (“Airport”) on an as needed basis pursuant to a Four-Year contract, with three one-year renewal options. All deliveries shall be made within 48 hours (not including holidays) from the time order is placed to:

Charles B. Wheeler Downtown Kansas City Airport
900 Richards Road
Kansas City, MO 64116

The 100 Low Lead Aviation Fuel is stored in one above-ground Fireguard tank and requires fuel to be pumped into the tank. Maximum capacity of the tank is 12,000 gallons.

2. The Missouri Department of Natural Resources requires the use of a vapor recovery system when transferring fuel at the Airport.
3. Price Adjustments - A provision is hereby made that price adjustments (increases and decreases) from the net prices quoted at the date of the RFP Closing are acceptable to the Airport on the contract that shall be derived from this Request For Proposal. As Contractor’s costs increase or decrease from its source of supply, the Airport’s price will increase or decrease by the same amount. Contractor’s origin increases are not allowable. Contractor agrees to furnish verification of its cost of fuel purchased by furnishing the Airport a copy of its draw from the pipeline and price verification from its suppliers with every order placed by the entity. This verification must be supplied with the invoice submitted for payment.
4. The fuel shall comply with ASTM, 100 Low Lead Aviation Gasoline standards.
5. All fuel shall be free from excessive amounts of solid or liquid foreign materials.
6. The Airport reserves the right to remove samples for laboratory testing. If the fuel is found to have been contaminated after it has left Contractor’s custody, the Airport shall pay for such test. If the fuel is found to have been contaminated while in Contractor’s custody, the Contractor shall pay for such test.

7. If sample does not meet ASTM, 100 Low Lead Aviation Gasoline standards, the Airport reserves the right to purchase fuel elsewhere and Contractor will be held liable for costs incurred above the contract pricing.
8. Contractor shall remove contaminated fuel from the tanks and pay for any equipment damages caused by contaminated fuel product.
9. Contractor shall provide product liability insurance of at least Fifty Million Dollars (\$50,000,000).
10. Contractor shall quote the delivered cost of 100LL Avgas to Airport's tank predicated on a full tank truck load as of the date of Contractor's response to this request for a proposal.
11. Contractor will provide initial and recurrent aviation fuel training in quality assurance for Airport personnel involved in supervising, accepting, or otherwise handling fuel for up to ten (10) Airport employees.
12. Contractor will provide aviation fuel training in fire safety to Airport personnel involved in supervising, accepting, or otherwise handling fuel that is deemed acceptable to the Administrator, Federal Aviation Administration as a comprehensive training program offering preparation in technical areas beyond the seven (7) subject areas listed in 14 CFR Part 139.321.
13. Contactor will provide, at Contractor's cost, a lighted wall/building mounted sign with its brand or network logo, and the words "Avgas Self-Serve".
14. Contractor should have a company website to provide the current retail fuel prices and location for all of its dealers nationwide. In addition, the Contractor shall on the 1st day of this Contract email the Airport notice of its current fuel prices and any modification to fuel prices thereafter for the term of this Contract.
15. Contractor shall identify the primary terminal from which fuel will normally be shipped.
16. Only one grade of aviation fuel shall be loaded or transported in transport truck at any one time when used to deliver fuel to the Airport and split loads will not be accepted. To the extent possible, Contractor shall deliver fuel to Airport in trucks dedicated solely to transporting the grade of fuel being delivered.
17. All transport truck compartments shall be sealed at the loading facility and all compartment seals shall be verified intact by Airport personnel upon arrival and before fuel is accepted.
18. Contractor shall provide a certificate of analysis with each fuel delivery.

- Should the specific gravity not match the bill of lading or fuel is cloudy on arrival, the Airport can refuse to accept delivery and the Contractor shall assume all responsibility for shipment.
19. Contractor shall off load fuel from transport trucks using only the Airport stationary pumping and filtration system to avoid possible contamination from the transport truck pumping system.
 20. Regardless of who is responsible to provide the transportation to deliver fuel to Airport, the quantity of aviation fuel loaded into transport trucks at the point of loading shall constitute the basis of volumetric measurement of the quantity delivered. Said volumetric measurement shall be corrected in volume for temperature to 60 degrees Fahrenheit basis in accordance with Standard Abridged Volume Correction Table for Petroleum Oils, ASTM Designation D-1250, Table 7, or at Contractor's option, in accordance with a meter equipped with a temperature compensator, which corrected volume shall be the basis upon which payment will be made.
 21. In the event Contractor should experience exhaustion, reduction, unavailability, or delays in delivery of aviation fuel at one or more of its sources of supply, the quantity of fuel to be delivered to Airport hereunder shall only be reduced to the extent necessary for Contractor to equitably allocate its available aviation fuel to all affected dealers, including Airport.
 22. Contractor shall unbundle fuel cost, freight cost, and taxes and list each separately on all fuel invoices so exact cost of each is transparent and easily determined.
 23. Contractor shall equalize freight costs regardless from where fuel is shipped.
 24. Contractor shall process all fuel sales transacted by credit card on a daily basis and remit all revenue minus approved fees to Airport's designated account within 48 hours of transaction at the Self-Serve Facility. In addition, Contractor will provide Airport with a report in a form and manner acceptable to the Airport of transactions processed and funds remitted.
 25. Contractor shall provide, maintain and update the Airport with contact information to include name, title, telephone, email and address for the support and maintenance of the contract throughout the supply period, and method to place fuel orders 24/7.

**PART II
GENERAL SERVICES CONTRACT
STANDARD TERMS AND
CONDITIONS**

Sec. 1. General Indemnification.

A. For purposes of this Section 1 only, the following terms shall have the meanings listed:

a. **Claims** mean all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

b. **Contractor's Agents** means Contractor's officers, employees, subcontractors, successors, assigns, invitees, and other agents.

c. **City** means City, its Agencies, its agents, officials, officers and employees.

B. Contractor's obligations under this Section with respect to indemnification for acts or omissions, including negligence, of City, shall be limited to the coverage and limits of insurance that Contractor is required to procure and maintain under this Contract. Contractor affirms that it has had the opportunity to recover all costs of the insurance requirements imposed by this Contract in its contract price.

C. Contractor shall defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Contractor or Contractor's Agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Contractor

is not obligated under this Section to indemnify City for the sole negligence of City.

Sec. 2. Insurance.

A. Contractor shall procure and maintain in effect throughout the term of this Contract insurance policies with coverage not less than the types and amounts specified in this Section. Contractor must have:

1. Commercial General Liability Insurance Policy: with limits of \$1,000,000 per occurrence and \$1,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

a. Severability of Interests Coverage applying to Additional Insureds

b. Contractual Liability

c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$1,000,000.

d. No Contractual Liability Limitation Endorsement

e. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.

2. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:

\$500,000 disease-policy limit

\$100,000 disease-each employee

3. Commercial Automobile Liability Insurance Policy: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an "any auto" basis and on an "occurrence" basis. This insurance policy will be written on a Commercial Business Auto form, or acceptable

equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by Contractor.

B. All insurance policies required in this Section shall provide that the policy will not be canceled until after the Insurer provides the City ten (10) days written notice of cancellation in the event that the cancellation is for Contractor's nonpayment of premiums and thirty (30) days written notice of cancellation to City for all other reasons of cancellation.

C. The Commercial General and Automobile Liability Insurance Policies specified above shall provide that City and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. Contractor shall provide to City at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.

D. All insurance policies must be provided by Insurance Companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to provide insurance in Missouri.

E. Regardless of any approval by City, Contractor shall maintain the required insurance coverage in force at all times during the term of this Contract. Contractor's failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City pursuant to Section 1 of this Contract. In the event Contractor fails to maintain the required insurance coverage in effect, City may order Contractor to

immediately stop work and declare Contractor in default.

Sec. 3. Bonds.

A. If the Scope of Work requires Contractor to furnish a Payment Bond and Performance Bond or Performance and Maintenance Bond (collectively hereinafter the Bonds), Contractor shall furnish such Bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract. These Bonds shall remain in effect at least until one (1) year after the date when final payment of the Contract becomes due.

B. All Bonds shall be in the form prescribed by the City, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A certified copy of such agent's authority to act must accompany all Bonds signed by an agent.

C. The Surety must:

1. Be licensed by the State of Missouri to issue bonds in the State of Missouri; and
2. Retain an A.M. Best rating of "B+, Class V" for Bonds in excess of \$200,000.

D. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirement of this Section, Contractor shall within twenty (20) days thereafter substitute

another Bond and surety, both of which must be acceptable to City.

Sec. 4. Independent Contractor.

Contractor is an independent contractor and is not City's agent. Contractor has no authority to take any action or execute any documents on behalf of City.

Sec. 5. Term of Contract.

This Contract shall not be a legally binding document until the latest date that all of the following occur: (1) the Bid Form/Contract is signed by all parties; (2) the Bid Form/Contract is approved as to form by the City Law Department; (3) availability of any City funds is certified by the City's Director of Finance; and (4) if required, the effective date of any ordinance passed by the City Council or resolution passed by the Park Board. This Contract shall end one year later unless a different term of contract is specified in the Scope of Work. The Director is authorized to enter into an amendment to extend the term of this Contract and time of performance for this Contract.

Sec. 6. Payment.

It shall be a condition precedent to payment of any invoice from Contractor that Contractor is in compliance with, and not in breach or default of, all provisions of this Contract. If damages are sustained by City as a result of breach or default by Contractor, City may withhold payment(s) to Contractor for the purpose of set off until such time as the exact amount of damages due City from Contractor may be determined.

Contractor agrees that the City will not process Contractor's request for payment unless the City determines Contractor's request for payment is in proper form, correctly computed, and

properly payable under the provisions of this Contract.

Contractor shall be paid monthly unless a different payment schedule is specified in the Scope of Work.

Sec. 7. Governing Law.

This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The City and Contractor: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 8. Compliance with Laws.

Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Contract.

Sec. 9. City's Right to Terminate for Convenience.

A. City may, at any time upon ten (10) days notice to Contractor specifying the effective date of termination, terminate this Contract, in whole or in part.

B. If City terminates this Contract; City shall only be liable for payment for services rendered before the effective date of termination. Contractor shall prepare an accounting of the services performed and direct costs incurred by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of the effective date of termination. All work or materials prepared or obtained by Contractor pursuant to this Contract shall become City's property.

C. Contractor agrees it has no right to terminate this Contract for convenience.

Sec. 10. Default and Remedies.

If Contractor shall be in default or breach of any provision of this Contract, City may terminate this contract, suspend City's performance, withhold payment or invoke any other legal or equitable remedy after giving Contractor seven (7) days written notice and opportunity to cure such default or breach.

If City shall be in default or breach of any provision of this Contract, Contractor may terminate this contract or suspend Contractor's performance after giving City fifteen (15) days written notice and opportunity to cure such default or breach.

Sec. 11. Waiver or Modification.

A. Except as specifically provided in this Contract, no provision of this Contract may be waived, modified or amended except in writing signed by City.

B. If the City shall waive any provision of this Contract, it shall not operate as the City's waiver of the Contractor's subsequent breach or noncompliance with the provision. City shall be entitled to invoke any contractual or legal remedy available to City despite any of the City's previous waiver(s) of the Contractor's breach or noncompliance with the Contract provisions.

Sec. 12. Headings; Construction of Contract.

The headings of each section of this Contract are for reference only. Unless the context of this Contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other

gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 13. Severability of Provisions.

Except as specifically provided in this Contract, all of the provisions of this Contract shall be severable. If any provision of this Contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Contract shall be valid unless the court finds that the valid provisions of this Contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 14. Records.

A. For purposes of this section:

1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, and the City Manager, the City department administering this Contract and their delegates and agents.

2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.

B. Contractor shall maintain and retain all Records for a term of five (5) years

that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all Records upon ten (10) days written notice from the City.

Sec. 15. Affirmative Action. Contractor shall establish and maintain for the term of this Contract an Affirmative Action Program in accordance with the provisions of Chapter 38 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry or national origin, sex, disability, age, or sexual orientation, in a manner prohibited by Chapter 38 of City's Code. City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 16. Minority and Women's Business Enterprises. City is committed to ensuring that minority and women's business enterprises (MBEs/WBEs) participate to the maximum extent possible in City contracts. If this Contract contained DBE or MBE and/or WBE goals, Contractor certifies that it shall implement its Contractor Utilization Plan, which is incorporated herein as part of the Bid Form/Contract.

Contractor shall comply with all of the requirements imposed by the City's HRD Forms and Instructions for Non-Construction Bids and its Contractor Utilization Plan. Contractor's compliance with this Section is a material part of this Contract.

Sec. 17. Tax Compliance. If the Contract Price exceeds \$111,000.00, Contractor shall provide proof of compliance with the City's Business License and Earnings and Profits Tax ordinances (City taxes) from the City's Commissioner of Revenue. Contractor's proof of compliance with City taxes is a precondition to the City making the first payment under this Contract and any contract renewal.

Sec. 18. City's Buy American Policy. It is the policy of the City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

Sec. 19. Assignability or Subcontracting. Contractor shall not subcontract, assign or transfer any part or all of Contractor's obligations or interests in this Contract without City's prior written approval. If Contractor shall subcontract, assign, or transfer any part of Contractor's obligations or interests under this Contract without the City's prior written approval, it shall constitute a material breach of this Contract.

Sec. 20. Conflicts of Interest. Contractor certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Contract, and that no officer or employee of City, or member of such officer's or employee's

immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Contractor in this Contract.

Sec. 21. Rules of Contract Construction. City and Contractor agree that this Contract shall be construed without regard to any presumption or other rule requiring construction of the Contract against the party causing the contract to be drafted.

Sec. 22. Reports. Contractor shall provide City detailed reports of actual Contract usage by contract category each quarter and annually at no cost to the City.

Sec. 23. Notices. All notices required by this Contract shall be in writing sent by facsimile, regular U.S. mail, postage prepaid or commercial overnight courier to the person and address listed on the Bid Form/Contract if to the Contractor and to the City person and address listed on the Acceptance of Bid portion of the Bid Form/Contract. All notices are effective on the date facsimiled, mailed or deposited with courier.

Sec. 24. Extension of Contract Term. City shall have a unilateral right to extend the term of this Contract beyond the expiration of the initial contract term and all contract renewal terms until the City has executed a new contract.