



December 3, 2013

Robert M. Sperl

Here is a signed copy of the contract agreement.

Shawn Oseman  
Heritage FS  
18251 W. Commercaill  
Wilmington IL. 60481  
815-592-6928

## **AGREEMENT FOR PURCHASE AND DELIVERY OF GASOLINE AND DIESEL FUEL**

This Agreement for the Purchase and Delivery of Gasoline and Diesel Fuel (the "Agreement"), made this 22nd day of November, 2013, by and between the Wheaton Park District, an Illinois park district (the "Park District") with its principal place of business at 102 E. Wesley Street, Wheaton, Illinois, and Heritage FS, an Illinois corporation (the "Contractor"), with its principal place of business at 18251 W. Commercial Drive, Wilmington, Illinois, collectively referred to as the "Parties" or individually as "Party."

### **WITNESSETH**

That the Park District and Contractor, for the consideration hereinafter named, agree as follows:

#### **1. Scope of Work**

The Contractor shall provide all labor, equipment and materials required to complete the following work: the purchase and delivery of gasoline and diesel fuel (the "Work"), as indicated in the plans and specifications in the Project Manual for Purchase and Delivery of Fuel, dated October 24, 2013, attached to and incorporated as part of this Agreement as **Exhibit A** (the "Project Manual").

#### **2. Contract Documents**

The Contract Documents consist of this Agreement between the Park District and the Contractor, the Invitation to Bid, Instruction to Bidders, Supplementary Conditions, the Project Manual, Contractor's Bid Form dated November 7, 2013 and attached to and incorporated as part of this Agreement as **Exhibit B**, Contractor's Certification, attached to and incorporated as part of this Agreement as **Exhibit C**, Addenda No. 1 dated November 1, 2013, attached to and incorporated as part of this Agreement as **Exhibit D**, Addenda No. 2 dated November 5, 2013, attached to and incorporated as part of this Agreement as **Exhibit E**, and any modifications issued after the execution of this Agreement. All of the terms, conditions and specifications contained in the Project Manual are incorporated herein.

In the event of any inconsistency, ambiguity, conflict, discrepancy or error in the Contract Documents, and otherwise in interpreting the Contract Documents, the Parties shall give precedence to the Contract Documents in the following order of priority: a) Modifications; b) this Contract, including all general conditions, addenda, exhibits, certifications and attachments incorporated in this Contract; c) Supplementary Conditions; and d) Specifications.

#### **3. Term**

The term of this Agreement shall be for two (2) years, commencing December 1, 2013 and expiring November 30, 2015, unless terminated earlier pursuant to the terms of this Agreement.

**4. Performance of Work**

Contractor agrees to perform all Work in a good and workmanlike manner in accordance with the Contract Documents. Contractor shall not interfere in any way with and shall cooperate fully with other contractors used by Park District for any other work at the Project sites. The Contractor shall be responsible for the Work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection with the Work. The Contract assumes all risk for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under this Contract, or in any way whatsoever with the Work.

**5. Contract Sum**

The Park District agrees to pay Contractor the OPIS' published Chicago rate for fuel in accordance with the Project Manual and the following price adjustment factors in accordance with Contractor's Bid Form:

	Park Service Center	Arrowhead Golf Club
1. Unleaded Regular 87 Octane Gasoline	.0991	.0991
2. Biodiesel Fuel (20% - PSC)	.0991	Not Applicable
3. Ultra Low Sulfur Fuel (80% - PSC 100% - AGC)	.0991	.0991

**6. Payment**

Payment shall be made by the Park District to the Contractor upon the Park District's receipt of a monthly invoice itemizing the Work properly performed, as determined by the Park District, for the period covered by the invoice. Payments of all invoices, and any late payment penalties, shall be governed by the Local Government Prompt Payment Act (5 ILCS 505/1 *et seq.*). The Park District reserves the right to require waivers of lien before payment where the Park District deems it to be in its best interest to do so.

**7. Delivery and Title and Risk of Loss**

Contractor shall arrange for delivery of fuel through a carrier chosen by Contractor, the costs of which shall be F.O.B. Wheaton, Illinois.

Title to, and the risk of loss, injury or destruction from any casualty to the fuel, regardless of cause, will be the responsibility of the Contractor until the fuel has been received, inspected and accepted by the Park District.

#### **8. Cleaning Up**

The Contractor shall keep the project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement.

#### **9. Safety of Persons and Property**

- A. The Contractor shall take reasonable precautions for the health and safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
  - i. employees engaged in the Work and other persons who may be affected thereby; and
  - ii. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors.
- B. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- C. The Contractor shall promptly remedy damage and loss to Park District property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible.

#### **10. Termination**

- A. The Park District may, at any time, terminate the Agreement in whole or in part for the Park District's convenience and without cause. Termination by the Park District under this section shall be by a notice of termination delivered to the Contractor specifying the extent of the termination and the effective date. Upon receipt of a notice of termination, the Contractor shall immediately, in accordance with instructions from the Park District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the Work; (4) terminate all subcontracts and orders to the extent they relate to the Work terminated; (5) proceed to complete the performance of Work not terminated; and, (6) take actions that may be necessary or that the Park District may direct, for the protection and preservation of the terminated Work. The Contractor shall recover payment for approved and properly performed

Work completed prior to the effective date of termination and for proven, out-of-pocket costs with respect to materials ordered but not used by Contractor for the Work prior to receipt of the notice of termination. Contractor shall not be entitled to damages or lost profits resulting from termination for convenience under this Section.

B. Park District may terminate the Agreement, in whole or in part, for cause as follows:

(i) In the event Contractor breaches any of the provisions of this Agreement, Park District may terminate the Agreement immediately upon written notice to Contractor, if Contractor shall not have cured such breach within forty eight (48) business hours after Park District shall have first notified Contractor of such breach in writing or, if by its nature the breach is not capable of being cured within said forty-eight (48) business hours, Contractor shall not have commenced such cure within said forty-eight (48) business hours and diligently pursued same to completion; provided, however, that if Contractor shall have repeatedly breached the same or other provisions previously, Park District may terminate the Agreement immediately without affording Contractor an opportunity to cure the breach, upon written notice to Contractor, and further provided that failure to maintain required insurance coverage shall be cause for immediate termination of the Agreement, or the immediate suspension of the Agreement until such insurance has been obtained and satisfactory proof thereof provided to Park District, in either case upon written notice to Contractor without opportunity to cure.

(ii) In the event Contractor shall have: (a) filed a voluntary petition in bankruptcy or made an assignment for the benefit of creditors; or (b) consented to the appointment of a receiver or trustee for all or a part of its property; or (c) an involuntary petition in bankruptcy shall have been filed in regard to Contractor and the same shall not have been dismissed within thirty (30) days of such filing, then in said event the Agreement shall automatically terminate.

Upon termination of this Agreement for any reason, the rights and obligations of the Parties shall cease automatically except for the rights and obligations of the Parties accruing but unsatisfied prior to termination.

## **11. Insurance**

Contractor will procure and maintain during the Term the insurance coverages provided in **Exhibit E**, attached to and incorporated by this reference in this Agreement, or such other insurance coverages as shall be required by the Park District's insurer or the risk management agency of which the Park District is a member.

## **12. Indemnification**

Contractor shall indemnify and hold harmless the Park District and its officers, officials,

employees, volunteers and agents in accordance with **Exhibit E**.

**13. Compliance with Laws and Permits**

Contractor shall comply with all applicable local, state and federal codes, laws, ordinances, rules and regulations, including but not limited to those laws specified in the Contractor's Compliance and Certifications Attachment. Contractor shall be licensed and bonded to perform the Work hereunder and shall, at its sole cost and obligation, be responsible for obtaining all permits required to perform its duties under this Agreement. Any breach by Contractor of the foregoing laws, regulations and rules shall constitute a breach by Contractor of this Agreement.

**14. Choice of Law and Venue**

This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of DuPage County, Illinois, but only after exhausting all possible administrative remedies. In any suit or action arising under this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs of litigation. Contractor, its successors or assigns shall maintain no suit or action against the Park District on any claim based upon or arising out of this Agreement or out of anything done in connection with this Agreement unless such action shall be commenced within one year of the termination of this Agreement. Contractor acknowledges that each provision of this Agreement is important and material to the business and success of the Park District, and agrees that any breach of any provision of this Agreement is a material breach of the Agreement and may be cause for immediate termination of this Agreement. In the event of a breach, Contractor shall also pay to the Park District all damages (including, but not limited to, compensatory, incidental, consequential, and punitive), which arise from the breach, together with interest, costs, and the Park District's reasonable attorneys' fees.

**15. No Third Party Beneficiary**

This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of the Park District and/or Contractor, and/or any of their respective officials, officers and/or employees.

**16. No Waiver**

Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement.

Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

**17. Independent Contractor**

Contractor acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Agreement; that it, as well as any persons or agents as it may employ, are not employees of the Park District; and that neither this Agreement, nor the administration thereof, shall operate to render or deem either Party hereto the agent or employee of the other.

**18. Non-Assignment**

This Agreement is non-assignable in whole or in part by the Contractor, and any assignment shall be void without prior written consent of the Park District.

**19. Notices**

All notices required or permitted to be given under this Agreement shall be deemed given when such notice is hand delivered; or when such notice is sent by facsimile transmission provided such transmission together with fax machine generated confirmation of such transmission is also sent on the transmission date to the other Party by United States mail, with postage therewith prepaid; or when such notice is deposited in the United States mail, with postage thereon prepaid, addressed to the other party at the following addressees:

If to Park District:           Wheaton Park District  
  102 E. Wesley Street  
  Wheaton, IL 60187  
  (Fax) 630-665-5880  
  Attention: Executive Director

If to Contractor:           Heritage FS  
  18251 W. Commercial Drive  
  Wilmington, IL 60481  
  (Fax) 815-476-2119  
  Attention: Shawn Oseman

**20. Entire Agreement; No Amendment**

This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the agency of either Party that is not contained in this written Agreement shall be valid or binding. No modification of this Agreement shall be effective unless in writing dated a date subsequent to the date of this Agreement and signed by an authorized representative of each Party.

**21. Headings**

The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.


**22. Severability**

The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.

IN WITNESS WHERE OF the Parties hereto have set their respective hands and seals the day and year first above written.

**WHEATON PARK DISTRICT**

By:

  
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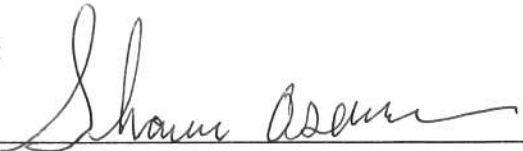
Attest:

By:

  
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**CONTRACTOR**

By:

  
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Attest:

By:

  
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