

CONTRACT OF SALE

THIS CONTRACT OF SALE (END USER) (the "Contract") made and entered into this 16th day of June, 2020 between Frost Oil Co. dba Bowers Oil, with a business address of 4518 W. 21st Street, Tulsa, OK 74107 (hereinafter called "Seller") and the City of Broken Arrow, Oklahoma, with a business address of 1700 West Detroit, Broken Arrow, Oklahoma 74012 (hereinafter called "Purchaser").

WITNESSETH:

For and in consideration of the mutual promises herein contained and pursuant to the terms herein, Seller agrees to sell and deliver to Purchaser, and Purchaser agrees to purchase and receive from and pay Seller for, petroleum products of the kinds and in the quantities and under the terms and conditions specifically set forth in the Commodity Schedule(s) annexed hereto and made a part hereof.

1. Duration. This Contract shall be for a term of one (1) year, commencing on the 1st day of July, 2020 and expiring on the 30th day of June, 2021 (the "Term"). This Contract shall be renewed upon the mutual consent of both parties for up to four additional periods of one (1) year each at each anniversary date. Notice of intent to renew may be submitted by either party no less than 60 days prior to the expiration date.

2. Products. (a) During the Term of this Agreement and any renewals thereof, Purchaser shall purchase from Seller all of Purchaser's requirements for bulk motor fuel products, with said bulk motor fuel products to be delivered by Seller to the delivery locations specified in the Invitation to Bid and Commodity Schedule attached hereto. The Commodity Schedule forming a part of this Contract and attached hereto was affixed at the signing hereof.

(b) By mutual consent this Contract may be amended from time to time by adding other or additional Schedules, substituting revised schedules or by deleting one or more items or provisions from any Commodity Schedule(s) attached hereto. Additional and revised schedules shall be so marked and initialed by authorized representatives of Seller and Purchaser and shall be affixed to and become a part of this Contract from and after the date appearing on such additional or revised schedule. Deletions shall be by notice given as provided herein and effective when accepted.

(c) At Seller's sole option, this Contract may be terminated without notice upon Purchaser's failure to pay any amount when and as due, and no forbearance, course of dealing, or prior payment shall affect these rights of termination.

3. Taxes/Fees. It is agreed that there shall be added to the Contract price specified herein, and Purchaser will assume and pay, any and all taxes, fees, duties, and/or any other charges that may now or hereafter be imposed by the federal, state, or local government or any other governmental authority, upon the products covered by this Contract, or in respect to the importation, exportation, production, manufacture, storage, inspection, sale, use, handling, distribution or transportation thereof or of this Contract. Should Purchaser claim exemption from any such tax, fees, duties, or charges, said Purchaser shall (i) furnish appropriate, properly executed exemption certificates, in accordance with applicable laws and regulations in effect at the time of sale; and (ii) shall pay all such taxes, fees, duties, and charges until such exemption is approved. Petroleum UST fees are not included in the Price for products and will be billed as a separate line item.

4. Price. The price of the product(s) covered by this Contract shall be as stated in the applicable Commodity Schedule(s). Purchaser shall pay for all goods delivered to Purchaser by Seller hereunder within thirty (30) days from the date of each delivery. Purchases made shall be payable at Seller's principal office unless otherwise specified by Seller.

5. Credit. If Seller, in its sole determination, extends credit to Purchaser, such extension of credit shall be made on such terms and conditions that Seller may require including, without limitation, the following:

(a) If payment is not made on or before the due date, a late payment charge in an amount established by Seller from time to time, not to exceed the maximum allowed by law, may be imposed for each month (and any part thereof) which elapses from due date to the date payment is received by Seller. Seller's right to collect a late payment charge does not operate as a waiver against Seller's right of termination of this Contract or of any other right that Seller may have at law or in equity.

(b) Seller reserves the right to withdraw such credit, or modify the terms and conditions of such credit, immediately at any time on giving to Purchaser notice thereof. If credit is withdrawn, all amounts then due and owing shall become payable immediately, and all future sales by Seller to Purchaser shall be for cash (or at Seller's option certified or cashier's check, money order or other means approved by Seller) payable prior to, or upon, delivery.

(c) Seller shall have the right, but not the obligation, to offset any indebtedness owed by Seller to Purchaser against any indebtedness owed by Purchaser to Seller, whether arising from the sale of goods or product(s) under this Contract, or from any other business transaction.

(d) In the event of insolvency of Purchaser, assignment for benefit of creditors, the institution of bankruptcy, insolvency, reorganization, receivership, debt adjustment, or liquidation proceedings, by or against Purchaser, or failure of Purchaser to perform any of the obligations of payment in accordance with the terms of payment established by Seller from time to time, Seller shall have the option without notice or demand upon Purchaser to declare an event of default under the Uniform Commercial Code, and upon any such default, Seller may declare all of Purchaser's indebtedness to Seller immediately due and payable. Thereafter Seller may proceed to enforce payment and may exercise any and all rights available to it.

6. Discontinuance or Substitution of Products. Seller reserves the right upon thirty (30) days' written notice to Purchaser to discontinue the sale of any product named herein due to the unavailability of any such product at Seller's primary source of supply. Should Seller do so, Seller shall not thereafter be obligated to make deliveries of such product. If Seller has available another, substantially similar product for sale to Purchaser in place of the discontinued one, Seller may substitute such substitute product for the one discontinued upon the consent of Purchaser, in which event this Agreement shall continue to the end of the Term.

7. Deliveries Delayed or Prevented. In the event the Seller's performance of this Contract is affected by strike, hurricane, tornado, fire, riot, war, act of terrorism or sabotage, Act of God, governmental regulations, or governmental requests or requisitions for national defense or other purposes, or failure or shortage of railway, pipe line, or vessel service normally available to Seller, or breakdown of, or injury to, or shortage in, facilities used for the production, refining, or transportation of the products described herein, or of the crude oil or other raw material from which they are made, or any other cause beyond the reasonable control of Seller, whether similar to or dissimilar from the enumerated causes, Seller may, at its, his, or their option suspend or terminate the performance of this Contract, in whole or in part, and no liability for damages shall attach against Seller on account thereof. Seller shall not be required to make up any deliveries omitted on account of any such causes.

8. Shipments. Claims regarding shortage in quantity shall be made at the time of delivery. Any claims regarding variance in quality of product(s) delivered by Seller shall be made no later than three (3) days after date of delivery. The parties hereto agree that, in the event of any claims asserted by the Purchaser hereunder, the Seller shall be given an opportunity to promptly inspect the product(s) or goods delivered and failure of the Purchaser to comply with these requirements shall operate as a waiver of any and all claims by the Purchaser.

9. Delivery/Title/Risk of Loss/Liability. (a) Delivery, passage of title, and risk of loss of the product(s) covered by this Contract shall be as follows: (i) Where delivery is made to Purchaser's business location in transportation furnished by Seller, delivery shall be complete on unloading of the tank wagon or transport truck. (ii) Title to product covered under the Contract shall pass to Purchaser upon delivery of product. (iii) Risk of loss of product shall pass to Purchaser upon delivery of product.

(b) Seller shall not be liable to Purchaser or to any other person for any damage to, or loss of property, or for injury to or death of persons, or for the violation by Purchaser, his agents or employees of any governmental statute, law, regulation, rule, or ordinance, arising from Purchaser's use, transportation, or storage of the products purchased under this Contract.

(c) Scheduling of deliveries shall be made as outlined in the Bid Specifications attached hereto.

10. Unloading Demurrage. No bulk deliveries will be made in transport vehicles or vessels unless Purchaser shall provide adequate facilities to receive such deliveries. Purchaser shall pay demurrage, car rental, charter hire, and all damages for the time any such vehicles or vessels are held more than one (1) hour after arrival at destination.

11. Waivers. No waiver by Seller of any breach of any of the covenants or conditions herein contained to be performed by Purchaser shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

12. Notices. All written notices required or permitted to be given by this Contract shall be deemed to be duly given if delivered personally or sent by certified mail or via reputable, national overnight courier (such as Federal Express) to Seller or to Purchaser, as the case may be, at the address set forth above or to such other address as may be furnished by either party to the other in writing in accordance with the provisions of this paragraph. The date of mailing shall be deemed the date of giving such notice, except for notice of change of address, which must be received to be effective.

13. Entirety of Contract. This Contract cancels and supersedes all prior written and unwritten agreements, attachments, schedules, appendices, amendments, promises, and understandings between the parties pertaining to the matters covered under this Contract, except any indebtedness owed to Seller by Purchaser, and is a final, complete and exclusive statement of the agreement between Seller and Purchaser. THERE ARE NO ORAL UNDERSTANDINGS, REPRESENTATIONS OR WARRANTIES AFFECTING IT. No amendment, deletion, modification, or alteration to this Contract shall have any effect unless and until made in writing and signed by an authorized representative of Seller and by Purchaser. EXECUTION OF THIS CONTRACT BY PURCHASER IS AN ACKNOWLEDGEMENT THAT NO REPRESENTATIONS NOT SET FORTH IN WRITING HEREIN HAVE BEEN MADE OR RELIED UPON BY PURCHASER.

14. Assignment. This Contract shall not be transferred or assigned by Seller or Purchaser in whole or in part, directly or indirectly, without the prior written consent of the other party hereto. No assignment or transfer shall affect the continuing primary liability of Purchaser (which liability, following assignment or transfer shall be joint and several with the assignee). No consent to any of the foregoing shall operate as a waiver in any subsequent instance. This Contract shall bind the executors, administrators, personal representatives, assigns, and successors of the respective parties.

15. Express Warranties. Seller warrants that the product(s) supplied hereunder will conform to the promises and affirmations of fact made in Seller's or Seller's suppliers' current technical literature and printed advertisements, if any, related specifically to such product(s); that it will convey good title to the product(s) supplied hereunder, free of all liens, and that the product(s) supplied hereunder meet such specifications as have

been expressly made a part of this Contract. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED. THE WARRANTY OF MERCHANTABILITY, IN OTHER RESPECTS THAN EXPRESSLY SET FORTH HEREIN, AND WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, IN OTHER RESPECTS THAN EXPRESSLY SET FORTH HEREIN, ARE EXPRESSLY EXCLUDED AND DISCLAIMED.

16. Hazardous materials. Purchaser recognizes that it is handling hazardous substances and agrees that in receiving, storing, handling and using product(s) purchased from Seller hereunder for its own use, Purchaser shall in all respects exercise the strictest care required by law and that it will comply with any and all applicable federal, State and local laws, ordinances and regulations pertaining to the storage and use of petroleum products, obligations, where applicable, imposed on the "owner" and "operator" of storage tank systems, prevention of spills, leaks, venting or other unintended discharge from product containers or storage tanks and the method of cleanup or disposal of product which has leaked, spilled, vented or otherwise unintentionally discharged from containers or storage tanks. Purchaser further understands, warrants, and agrees that it has sole responsibility for the storage, maintenance and use of all product(s) purchased from Seller hereunder and for corrective action and claims of third parties resulting from any failure to comply with the above and PURCHASER WILL DEFEND, INDEMNIFY AND HOLD SELLER, ITS SUCCESSORS AND ASSIGNS, HARMLESS AGAINST ALL LOSSES, CLAIMS, CAUSES OF ACTION, PENALTIES, FINES, LIABILITIES, ATTORNEYS' FEES AND INTEREST ARISING OUT OF PURCHASER'S FAILURE TO COMPLY WITH THIS PARAGRAPH, and such failure by Purchaser shall entitle Seller to cancel any mutual contract immediately as it applies to the product(s) affected by such failure or other products which require the same standard of care. *Indemnity shall be handled in accordance with OK law* (S) Frost Oil Co

17. Termination. (a) This Contract shall terminate upon expiration of the Term of this Contract.

(b) This Contract may be terminated by Seller, and no forbearance, course of dealing, or prior payment shall affect these rights of termination: (i) if Purchaser makes any material false or misleading statement or representation which induces Seller to enter into this Contract, or which is relevant to the relationship between the parties hereto; (ii) if Purchaser becomes insolvent or commits an act of bankruptcy or takes advantage of any law for the benefit of debtors or Purchaser's creditors, or if a receiver is appointed for Purchaser; (iii) upon Purchaser's failure to pay any amount when and as due; (iv) if Purchaser defaults in any of its obligations under this Contract; (v) upon assignment of the Contract by Purchaser contrary to the terms of this Contract; or (vi) for grounds described elsewhere in this Contract as causes for termination by Seller.

(c) Termination of this Contract by either party for any reason shall not relieve the parties of any obligation theretofore accrued under this Contract.

18. Compliance with Laws. Both parties expressly agree that it is the intention of neither party to violate statutory or common law and that if any section, sentence, paragraph, clause or combination of same is in violation of any law, such sentences, paragraphs, clauses or combination of same shall be inoperative and the remainder of this Contract shall remain binding upon the parties hereto.

19. Attorney's Fees. It is hereby agreed to and understood by the parties to this Contract that if Seller obtains a judgment against Purchaser for breach of any provision hereof, Seller's contract damages include all attorney's fees and other litigation costs and expenses incurred by Seller in obtaining such judgment.

20. Damages. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER UNDER TORT, STRICT LIABILITY, OR WARRANTY OR WHETHER ARISING OUT OF, OR FLOWING FROM, OR IN ANY MANNER RELATED TO THE MATTERS COVERED UNDER THIS CONTRACT.

21. Jointly Drafted. This Contract shall be deemed to have been drafted by all parties hereto and, in the event of dispute, each party waives the defense of *contra proferentem*.

22. No Third Party Beneficiary. This Contract is personal to the Purchaser and is intended for the sole use and benefit of Seller and Purchaser. Nothing contained herein shall be deemed, interpreted, or construed to create, or express any intent to create, third party beneficiary rights in favor of any person or entity, except for any indemnified party (or other person entitled to be indemnified pursuant to this Contract), and Seller and Purchaser specifically state and agree that no such intent exists.

23. Commencement. This Contract shall not be binding upon Seller until signed on its behalf by an authorized representative of Seller. Commencement of performance hereunder prior to signing as above stipulated in no case shall be construed as a waiver by Seller of this requirement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

SELLER: Frost Oil Co. dba Bowers Oil

By: _____

Title: _____

Witness: _____

PURCHASER: City of Broken Arrow, Oklahoma

By: _____

Title: _____

Witness: _____

APPROVED AS TO FORM:

Deputy City Attorney

ATTEST:

(Seal) CITY CLERK



COMMODITY SCHEDULE

PURCHASER: City of Broken Arrow, OK

DATE: June 16, 2020

DELIVERY POINT: Broken Arrow, OK
Various Destinations

PRODUCTS: E10 Unleaded Gasoline, ULSD-Dyed

This Commodity Schedule is attached to, and made a part of, a Contract of Sale between Purchaser and Seller dated June 16, 2020 (the "Contract"). Unless otherwise indicated, the capitalized terms used in this Commodity Schedule shall have the same meaning used in the Contract.

1. Quantity. 100% of Purchaser's annual requirements, estimated at 180,000 gallons of gasoline and 265,000 gallons of diesel annually, delivered to the storage location(s) of Purchaser in Broken Arrow, OK as outlined in the Bid Specifications attached hereto (the "Premises").

2. Delivery/Title/Risk of Loss. Delivery, title, and risk of loss shall be made or pass as set forth in the Contract.

3. Inspection. Purchaser shall have the right, at its expense, to have an inspection made at delivery point, provided such inspection shall not delay shipment. Should Purchaser fail to make inspection, it shall accept Seller's inspection and measurement.

4. Price. The price to be paid by Purchaser per gallon for products shall be as follows:

Transport Gasoline:	OPIS Rack Average at Tulsa, OK - \$.0024
Transport Diesel:	OPIS Rack Average at Tulsa, OK - \$.0060
Transport Winterized Diesel:	OPIS Rack Average at Tulsa, OK +\$.0090
Bobtail Deliveries	Add \$.20 to transport pricing

Prices above include all delivery charges; any applicable fees/taxes are not included. In the event that fuel products are not available at Tulsa, OK, Seller shall have the right to obtain said products at either Ft. Smith, AR or Rogers, AR and base the price charged to Purchaser on similar rack pricing at the applicable terminal and freight from said terminal.

ACCEPTED:

ACCEPTED:

SELLER:

PURCHASER:

Frost Oil Company Bowers Oil

City of Broken Arrow, Oklahoma

By [Signature]

By [Signature]

Title: Fuel Sales Mgr.

Title: _____

Date 5/21/2020

Date _____

ATTEST:

(Seal) CITY CLERK

Approved AS TO FORM:

[Signature]
DEPUTY CITY ATTORNEY

