

SALES PURCHASE AGREEMENT
Contract Extension 3

PURCHASER'S NAME: City of Broken Arrow, OK
PLEASE RETURN ACCEPTANCE BY FAX TO: 260-203-3820
CUSTOMER'S ADDRESS: 1700 West Detroit, Broken Arrow, OK 74012
CUSTOMER'S TELEPHONE NUMBER: 918-259-8361

THIS SALES PURCHASE AGREEMENT is made this 1st day of July, 2018, by and between Petroleum Traders Corporation ("Seller") and City of Broken Arrow ("Purchaser"). Subject to the terms and conditions contained in this Agreement Purchaser agrees to purchase, and Seller agrees to sell the following product at the price and in the quantities (to be pulled ratably throughout the delivery period) as set forth in this Agreement.

PRODUCT: 87E10 Gasoline & Ultra Low Sulfur Diesel

PRICE PER GALLON: Gas +0.0029 OPIS/Tulsa/Daily/Avg Diesel +0.0135 OPIS/Tulsa/Daily/Avg

U.S. GALLONS: Estimated 257,000 gallons Unleaded Gasoline 87 Octane w/ 10% Ethanol
Estimated 250,000 gallons Ultra Low Sulfur Diesel Fuel #2

DELIVERY PERIOD: July 1, 2018 – June 30, 2019 with (1) one year option to extend

RACK: No **DELIVERED:** Yes **F.O.B.:** Destination

NET OR GROSS GALLONS: Net **DELIVERY FEES:** Included

TAXES: Fed Lust & Oil Spill Included **SUPERFUND:** N/A **ENVIRONMENTAL FEES:** 0.0100 Petroleum Underground Tank Release Not in Price

Prices exclude all taxes and fees. However, please note that Purchaser is responsible for all applicable taxes and fees and purchaser will be billed for all taxes and fees as a separate line item. Seller will not be responsible for any taxes and fees associated with any changes or modification in Purchaser's tax status or tax rates. Purchaser acknowledges that taxes and fees are subject to change from time to time without notice and Purchaser shall be responsible for all taxes and fees including, without limitation, superfund fees, whether existing at the time of execution of this Agreement or subsequently imposed.

FREIGHT IF BILLED SEPARATELY: Purchaser will be billed at Seller's freight cost. Freight rates are based on full transport loads of 7500 gallons minimum for diesel fuel and 8500 gallons minimum for gasoline. Prices per gallon will be adjusted as appropriate in cases where transport loads are less than the minimum gallon loads identified in this paragraph. In these cases, Purchaser will be billed the adjusted freight rate per gallon times the number of gross gallons received.



Purchaser's initials _____

1. **PURCHASER'S CREDIT TERMS:** Net 10 days from date of delivery. All payments shall be made in United States dollars. An EFT Agreement must be completed in order to enable Seller to draft your account for payment.
2. **DELIVERY LIMITATIONS BASED ON CREDIT LIMIT.** During the Delivery Period of this Agreement, Purchaser may take or receive delivery of Product quantities when the amount anticipated to be invoiced for such delivery will not exceed the unused portion of Purchaser's credit limit ("Credit Limit") as determined by Seller in its sole discretion from time to time. The unused portion is Purchaser's Credit Limit less all amounts invoiced under this Agreement which amounts have not been paid and collected in immediately available funds.
3. **TERM.** Subject to the termination rights set forth in this Agreement, the Initial term of this Agreement shall be (1) year commencing on the date set forth above. Provided that no default of Purchaser exist and subject to the termination rights set forth herein, this Agreement may renew for additional terms of one (1) year from present or future expiration dates, upon written agreement by both parties.
4. **PURCHASER'S ADDITIONAL CREDIT TERMS.** If required by Seller, Purchaser agrees to wire transfer Seller a deposit in amount determined by Seller (the "Deposit"). The wire transfer must be completed within one (1) business day of the execution of this contract or as directed by the Seller. The Deposit shall be held as collateral for the performance of all obligations of the Purchaser hereunder, and will be returned to Purchaser upon the satisfaction of all obligations of the Purchaser or in the event of a default by Purchaser hereunder, applied to one or more invoices (exclusive of taxes) whereby such invoices selected for application of the deposit are at the discretion of the Seller. Seller has the right to use this Deposit to set off against any of the obligations of this Agreement in the event Purchaser defaults, files bankruptcy, becomes insolvent or fails to take delivery of any Product contracted for hereunder.
5. **DEFAULT AND REMEDIES.** For purposes of this Agreement, Purchaser's default includes (i) failure to timely pay any amount due pursuant to this Agreement; (ii) the making of any false or inaccurate representation in this Agreement; (iii) failure to take delivery or ratable delivery of any quantity of Product during the Delivery Period; and (iv) the failure to observe or comply with any provision or covenant in this Agreement. In the event of Purchaser's default, in addition to the remedies set forth herein this Agreement, Seller may seek all legal and equitable remedies including, without limitation, all rights provided by Article 2 of the Uniform Commercial Code. Seller may also seek its attorneys' fees, costs and expenses incurred in connection with Purchaser's default. In addition, in the event any invoice is not paid when due or Purchaser takes delivery in violation of Purchaser's Credit Limit, Seller, at its option, may suspend or condition further deliveries or may terminate this Agreement, without Notice or demand, and all unpaid balances shall become immediately due and payable. All amounts not paid when due hereunder shall bear interest at the rate of 1.5% per month and shall be payable with all costs of collection, including, without limitation, Seller's attorneys' fees. Upon the occurrence of any default, Seller may set off against the indebtedness any amounts owing by Seller to Purchaser whether or not those amounts are immediately payable. Seller shall have the right to require Purchaser to make available the Product, the right to take possession of the Product with or without demand and with or without process of law, and the right to sell and dispose of the Product.
6. **SELECTION OF PRODUCTS.** Determination of the suitability of any Product for the contemplated use is the sole responsibility of Purchaser and no liability shall be imposed upon Seller in connection therewith. Purchaser agrees to assume all risk and liability for, and indemnify and hold Seller harmless against, any and all loss, damage, or injury to persons or property, of Purchaser or others, arising out of the ownership, use, custody, control, or disposition of the Product by Purchaser, Purchaser's agents or employees, or by any third parties.
7. **RISK OF LOSS AND TITLE.** Risk of loss and title to the Product shall pass from the Seller to the Purchaser when the Product passes from: (i) the transport vehicle through the flange of the Storage Tanks (hereinafter defined) of the Purchaser on Product delivered by Seller; or (ii) the flange connection between the delivery line and/or loading arm and the receiving line/flange of the Purchaser's (or Purchaser's assign) transport vehicle on Product lifted at a rack.
8. **STORAGE TANKS -** The parties hereto agree that Purchaser is both owner and operator of all of the storage tanks, pipes, pumps and other related equipment (collectively the "Storage Tanks") in which Seller is to place the Product acquired by Purchaser pursuant to this Agreement. Seller has no ownership interest, right or responsibility whatsoever regarding any of such Storage Tanks. Purchaser hereby represents and warrants to Seller that all of the Storage Tanks of Purchaser which will be utilized in connection with the handling of the Product being acquired by Purchaser from Seller are in good condition, free of leaks and otherwise in compliance with all applicable rules and regulations applicable to such Storage Tanks. Purchaser must notify Seller prior to a delivery if the Storage Tank is prohibited from receiving Product for any reason, including if prohibited by applicable governmental authorities. Purchaser acknowledges that the leakage of Product from the Storage Tanks is a matter that is solely the responsibility of Purchaser. Purchaser agrees that should any leaks be detected, then Purchaser will take any and all action required to promptly repair such leak and, at its expense, perform any clean-up that may be required for compliance with requirements of all laws and regulations of the United States and of the state in which the Storage Tanks are located. Purchaser further agrees that it will promptly notify Seller in the event any such leaks are detected so that no further product will be deposited into such Storage Tanks until such leaks are properly repaired.
9. **DISCLAIMER OF WARRANTIES.** Seller warrants that the Product delivered to Purchaser will conform to the description on the first page of this Agreement. This is Seller's sole warranty. **SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH REGARD TO ANY ITEMS PURCHASED OR SERVICES SUPPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED AND SPECIFICALLY EXCLUDED.**
10. **LIMITATION OF LIABILITY. SELLER DISCLAIMS, AND PURCHASER HOLDS SELLER HARMLESS FROM, ANY LIABILITY FOR CONSEQUENTIAL OR OTHER INCIDENTAL DAMAGES. PURCHASER AGREES TO THE EXTENT PERMITTED BY LAW INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY CLAIMS OR LIABILITY ARISING FROM USE OF THE PRODUCT, WHETHER SINGULARLY OR IN COMBINATION WITH OTHER SUBSTANCES.** Seller shall not be liable for damages, whether arising from performance of Seller's obligations under this Agreement, tort (including negligence), or otherwise for loss of anticipated profits, loss by reasons of plant shutdown, non-operation or increased expense of operation, service interruption, claims of customers, cost of money, loss of use of capital or revenue, or for any special, incidental, or consequential loss or damage. Purchaser agrees to defend, to the extent permitted by law indemnify and hold harmless Seller from and against any and all liability, losses, damages, costs, claims, lawsuits, judgments, settlements and expenses, including, without limitation, and court costs arising from or related to this Agreement or Seller's performance under this agreement.
11. **DEFECTS.** Purchaser shall, within two days after delivery of the Product, notify Seller of any alleged defect in the Product, or the failure of the Product to conform to any specifications. If, following such Notice, Seller and Purchaser agree that there exists such a defect or failure to conform due to the



Purchaser's initials _____

fault of Seller, then, at Seller's option, (i) the defective Product shall be returned, at Purchaser's expense, to Seller, properly safeguarded against normal transit hazards as Seller may require, for replacement by Seller, or (ii) Purchaser and Seller shall negotiate an agreed amount to be deducted from the Agreement price, the payment of which shall operate as a full release of Seller. Purchaser's failure to notify Seller of any such claimed defect or failure to conform within the two-day period shall constitute Purchaser's complete waiver of any such claim with respect to defects or nonconformance, and Purchaser's release and covenant not to sue Seller with respect to such claim.

12. INTENTIONALLY LEFT BLANK.

13. FAILURE TO TAKE DELIVERY. Notwithstanding anything contained herein to the contrary, in the event Purchaser fails to take delivery of any portion of the Product, that is contracted for fixed pricing, during the Delivery Period, including non-delivery as a result of Seller's termination of this Agreement for Purchaser's default, Purchaser agrees and shall pay as liquidated damages, any and all of Seller's fees, costs and losses associated with Purchaser's account including but not limited to fees, costs and losses associated with terminating positions and/or agreements utilized in establishing Purchaser's fixed prices hereunder, plus \$0.20 per gallon multiplied by the remaining gallons to be purchased under this Agreement. Purchaser agrees that such liquidated damages constitutes a reasonable and fair and justifiable compensation due to Seller.

14. BANKRUPTCY LIQUIDATION AND CLOSEOUT. The parties acknowledge that this Agreement is a forward Agreement as defined in the Bankruptcy Code [11 U.S.C.A. Sec 101(25)]. If one party (the "defaulting party") shall: (i) voluntarily file a petition in bankruptcy, reorganization, or receivership; (ii) be forced by its creditors into bankruptcy, reorganization, or receivership; (iii) become insolvent; (iv) fail to pay its debts as they become due; or (v) fail to give adequate assurance or security of its ability to perform its obligations hereunder within forty-eight (48) hours after receipt of a request therefore, the liquidating party shall have the immediate right to liquidate and close out this Agreement and all other forward Agreements (as defined by the Bankruptcy Code) between the parties (regardless of whether the liquidating party is the delivering party or the receiving party thereunder). Upon liquidation, the party not filing or forced into Bankruptcy shall be reimbursed for losses as follows: Seller shall be reimbursed for any cost or loss incurred as set forth in Section 13 above; Purchaser shall be reimbursed for the difference between the NYMEX value on the date of termination and the NYMEX value when entering into this Agreement, multiplied by the remaining gallons; provided the NYMEX value on the date of termination exceeds the NYMEX value when this Agreement was entered into. The defaulting party shall pay the other party by wire transfer in immediately available funds within twenty-four (24) hours after receiving the results of the calculation. The liquidation and close-out of this Agreement and all other forward Agreements is in addition to any other rights and remedies which the other party may have.

15. ACCEPTANCE. Acceptance of delivery of the Product shall constitute irrefutable evidence of Purchaser's agreement to the terms and conditions contained in this Agreement.

16. AUTHORITY OF SELLER'S AGENTS. No agent, employee, or representative of Seller has any authority to bind Seller to any affirmation, representation, or warranty concerning the Product unless an affirmation, representation, or warranty made by an agent, employee, or representative is specifically included in writing in these terms and conditions.

17. NOTICE. Any notice, designation, consent, delivery, approval, offer, acceptance, statement, request, or other communication required or allowed under this Agreement ("Notice" or in the verb form "Notify") shall be in writing. Any action required under this Agreement that is a term within the definition of "Notice" also shall be in writing. All notices required in this Agreement shall be deemed effective if made in writing and delivered to the recipient's address listed on the first page of this Agreement by any of the following means: (i) hand delivery, (ii) registered or certified mail, postage prepaid, with return receipt requested, (iii) first class or express mail, postage prepaid, or (iv) overnight courier service. Notice made in accordance with this paragraph shall be deemed delivered upon receipt if delivered by hand, on the third business day after mailing if mailed by first class, registered, or certified mail, or on the next business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier. Refusal by a party to accept a Notice shall not affect the giving of the Notice.

18. PURCHASER'S ACKNOWLEDGEMENT OF FUEL PRICE RISK AND WAIVER OF CLAIM AGAINST SELLER. Purchaser acknowledges, and assumes the risk, that fuel market prices may fluctuate during the term of this Agreement, possibly causing Purchaser to purchase Product pursuant to this Agreement at prices significantly higher than prevailing current fuel market prices. Purchaser further acknowledges and accepts that Seller is not providing any investment advice or recommendations or projections regarding future petroleum prices; Purchaser waives any potential claim against Seller pertaining to Purchaser's election to enter into this Agreement.

19. INTERPRETATION, MODIFICATION AND ADDITIONAL TERMS. Seller and Purchaser as a final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement intend the terms and conditions contained in this Agreement. Acceptance or acquiescence in a course of performance rendered shall not be relevant to determine the meaning of these terms and conditions, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. These terms and conditions can be modified or rescinded only by a writing signed by duly authorized agents of both Seller and Purchaser. Notwithstanding any provisions therein to the contrary, any terms and conditions in Purchaser's purchase order, acknowledgement form, confirmation, or other document issued by Purchaser which conflict with these terms and conditions or increase Seller's obligations hereunder, are rejected and shall not be binding upon Seller unless specifically identified and accepted in writing by a duly authorized agent of Seller.

20. DELEGATIONS AND ASSIGNMENT. No delegation of any obligation owed by Purchaser, or of the performance of any obligation by Purchaser, shall be made without the written consent of Seller. Purchaser may not assign Purchaser's rights under this Agreement without Seller's written consent. Any delegation or assignment without Seller's written consent is void.

21. WAIVER. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

22. TAXES AND FEES. Purchaser shall pay any and all federal, state, or local taxes, fees or charges assessed by third parties or governmental authorities relating to the sale, manufacture, delivery, or use of the Product. Purchaser shall be responsible for all taxes, fees and/or charges whether existing at the time of execution of this Agreement or subsequently imposed. In instances where Purchaser asserts exempt status from certain taxes, Seller is under no obligation to verify such status and Purchaser must provide all documentation and certificates requested by Seller and further, Purchaser shall indemnify Seller pursuant to paragraph 8 in the event that it is determined that Purchaser is or was not exempt from such taxes.

23. BIODIESEL. Historically the United States government provides for a federal biodiesel blender's credit and when available to Seller, allows Seller to offer Seller's most competitive pricing. If Biodiesel products are a part of this agreement then Seller utilized a biodiesel blender's credit in calculating the price for the biodiesel contracted for hereunder this Agreement. Seller will continue to honor the pricing utilizing the federal biodiesel blender's



Purchaser's Initials _____

credit as long as the credit is available to Seller; provided, however, in the event the credit is no longer available to Seller, for any reason, prices for biodiesel sold hereunder for which the credit were not available to Seller, will increase by the amount of the credit that is not available.

24. **APPLICABLE LAW AND VENUE.** This Agreement and the relationship between the parties shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, by the laws of the State of Oklahoma. The parties stipulate and agree that exclusive jurisdiction and venue for any cause of action arising between the parties shall be in the Oklahoma or Federal courts having subject matter jurisdiction and located in Tulsa County, Oklahoma.
25. **RESPONSIBILITY TO WARN AND REPORT.** Purchaser assumes all responsibility for warning Purchaser's personnel and any third parties on the premises of all hazards to persons and property. Purchaser also assumes the responsibility to warn and protect Purchaser's employees and others exposed to hazards posed by Purchaser's storage and use of the Product. It is the responsibility of Purchaser to comply with all relevant reporting obligations under the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001-11049 (EPCRA, also known as Title 111 of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title 111)) resulting from the presence of the chemicals supplied under this Agreement.
26. **FORCE MAJEURE.** If, by reason of acts of God, floods, storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, state or local law, order, rule, or regulation, Seller is prevented from complying with any obligation, covenant, or condition in this Agreement, then, while so prevented, the condition shall be suspended or the obligation or covenant shall be extended, the Seller shall be relieved of the obligation to comply with such obligation or covenant, and the Seller shall not be liable for damages for failure to so comply.
27. **INSURANCE.** The City of Broken Arrow is self-insured.
28. **MISCELLANEOUS.**
- a. **Binding Agreement.** This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, heirs, successors, and assigns.
 - b. **Invalid Provision/Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of it. This Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.
 - c. **Amendments.** No amendments, modifications, alterations, or additions to this Agreement shall be binding unless made in writing and signed by the parties.
 - d. **Attorneys' Fees.** In the event of any litigation regarding the construction, enforcement, or validity of this Agreement, in addition to any other relief, the prevailing party shall be entitled to recover its reasonable costs incurred, including attorneys' fees.
 - e. **Rule of Construction.** The judicial rule of construction requiring or allowing a document to be construed to the detriment or against the interests of the document's maker or drafter shall not apply to this Agreement.
 - f. **Headings.** The section headings in this Agreement are included solely for convenience, and shall in no event affect or be used in connection with the interpretation of this Agreement.
 - g. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but together the counterparts shall constitute one and the same document.
 - h. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties, all prior negotiations and agreements, whether written or oral, having been merged into this Agreement.
 - i. **Time of Essence.** Time is of the essence in this Agreement. The parties shall have the right to treat all time deadlines contained in this Agreement as material and to terminate this Agreement or exercise such other remedies as may be provided in this Agreement in the event such time deadlines are not met.
 - j. **Computation of Time.** In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday.
 - k. **Authority to Sign.** Each person signing this Agreement in a representative capacity on behalf of a party warrants and represents to each other party that (i) he has the actual authority and power to so sign, and to bind his principal to the provisions of this Agreement, and (ii) all entity action necessary for the making of this Agreement has been duly taken. Purchaser represents and warrants that Purchaser has complied with all rules, regulations and laws relating to the authority of Purchaser to execute and perform the obligations under this Agreement.
 - l. **Execution by Facsimile.** Except as otherwise set forth herein this Agreement, the parties agree that they may transmit this Agreement for execution by electronic facsimile transmission. The parties intend that facsimile signatures on this Agreement shall be binding on them.



Purchaser's initials _____

Sales Purchase Agreement - Revised 12/21/2017

The parties have executed this Agreement as of _____

SELLER: PETROLEUM TRADERS CORPORATION

Gayle Newton
Gayle Newton, Contract Sales Manager

PURCHASER:

Company Name

By: _____
(Signature)

(Printed name and title)

SIGNER IS AUTHORIZED TO BIND PURCHASER TO THIS AGREEMENT

APPROVED AS TO FORM:

[Signature]
ASSISTANT CITY ATTORNEY



Purchaser's Initials _____