

AGREEMENT

THIS AGREEMENT is made by and between the **CITY OF KNOXVILLE**, a municipal corporation organized and existing under the laws of the State of Tennessee ("**CITY**"), and **SPATCO ENERGY SOLUTIONS, LLC**, 2724 John Deere Drive, Knoxville, Tennessee 37917 ("**CONTRACTOR**").

RECITALS

WHEREAS, the City intends to install a new underground storage tank for gasoline and two dispensers with concrete pad and power at the Public Safety Complex located at 1630 Huron Street; and

WHEREAS, the City's Purchasing Agent extended a Request for Proposals for "Public Safety Complex Fuel Site" from responsive firms to provide services and equipment for the complete installation of one 20,000 gallon gasoline underground fuel storage tank, including two Reliance G6200 mechanical dispensers, Veeder Root and communication hub for the fuel island and a concrete pad with crash posts and power, from authorized and certified Syntech FuelMaster installers; and

WHEREAS, an evaluation committee evaluated submitted proposals and found that Contractor submitted the proposal that is most responsive and best conforms to the specifications and needs of the City; and

WHEREAS, the City now wishes to engage the services of Contractor to conduct this Project in a manner that is consistent with all applicable federal, state, and local laws, rules, and regulations.

NOW, THEREFORE, the City and Contractor, for the mutual considerations stated herein, agree as follows:

ARTICLE 1.
BASIC AGREEMENTS

1.1 *SCOPE OF SERVICES.* Contractor shall provide, in a satisfactory manner, all labor, technical expertise, personnel, supplies, services, and supervision necessary to install one 20,000 gallon gasoline underground fuel storage tank, including two Reliance G6200 mechanical dispenses, Veeder Root and communication hub for the fuel island and a concrete pad with crash posts and power, at the City's Public Safety Complex Fuel Site located at 1630 Huron Street, consistent with all applicable federal, state, and local laws, rules, and regulations, as more

specifically described in Exhibit 1 (“Services”).

- 1.2 CONTRACT DOCUMENTS. The executed Contract Documents shall consist of the following:
- A. This Agreement;
 - B. The City’s Request for Proposals issued for Public Safety Complex Fuel Site, and all addenda and exhibits thereto, a copy of which is on file in the City’s Purchasing Office and referred to herein as Exhibit 1, excluding references to the pre-fabricated mechanical building to house electrical panel.; and
 - C. Contractor’s Response to Request for Proposal or Quotation dated January 16, 2025 (“Contractor’s Response”), a copy of which is on file in the City’s Purchasing Office and referred to herein as Exhibit 2.

All of the foregoing Contract Documents are incorporated herein by reference and made a part of this Agreement as if they were set out verbatim. To the extent there is a conflict between the terms of any of the documents that constitute this Agreement, the terms that provide the greater benefit to the City and/or impose the greater obligation on Contractor shall control.

- 1.3 TERM. This Agreement shall become effective upon its execution by all parties shown on the signature page hereto and shall be effective until the Services are satisfactorily completed.
- 1.4 CONTRACT PRICE. For the satisfactory provision of the Services described in Section 1.1 of this Agreement and elsewhere in the Contract Documents identified in Section 1.2, the City will pay Contractor an amount not to exceed \$510,000.00.
- 1.9 CHANGES IN THE SERVICES. The City may, at any time and if the need arises, order changes within the scope of the Services required by this Agreement without invalidating this Agreement. If such changes increase or decrease the compensation due under this Agreement, or the time required for the performance of such Services, an equitable adjustment will be authorized by a change order or amendment. All change orders must be approved and signed by the City and Contractor.

ARTICLE 2. TERMINATION

The City may terminate this Agreement at any time, with or without cause, by written notice of termination to Contractor. If the City terminates this Agreement, and such termination is not a result of a default by Contractor, Contractor shall be entitled to receive as its sole and exclusive remedy the following amounts from the City, and the City shall have no further or other obligations to Contractor: the amount due to Contractor for work executed through the date of termination, not including any future fees, profits, or other compensation or payments that Contractor would have been entitled to receive if this Agreement had not been terminated.

The City may, by written notice of default to Contractor, terminate the whole or any part of this Agreement if Contractor fails to perform any provisions of this Agreement and does not cure such failure within a period of 10 days (or such longer period as the City's Purchasing Agent may authorize in writing) after receipt of said notice from the Purchasing Agent specifying such failure. If this Agreement is terminated in whole or in part for default, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to those terminated.

ARTICLE 3. NON-DISCRIMINATION AND ADA COMPLIANCE

Pursuant to Knoxville City Code Section 15-26, Contractor hereby agrees that it:

- A. Will not discriminate against any employee or applicant for employment because of race, color, religion, or national origin;
- B. Will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, or national origin;
- C. Will in all solicitations or advertisements for employees placed by or on behalf of Contractor state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, or national origin; and
- D. Will include these provisions in every subcontract or sublease let by or for Contractor.

Contractor additionally agrees not to discriminate against any employee or applicant for employment because of age, disability, familial status, or sex; to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to age, disability, familial status, or sex; to state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants shall receive consideration for employment without regard to age, disability, familial status, or sex; and to include these additional provisions in every subcontract or sublease let by for Contractor.

With regard to the Services performed under this Agreement, Contractor agrees that it will comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* ("ADA"). Contractor agrees that it will defend, indemnify, and hold the City harmless against any and all claims, demands, suits, or causes of action which arise out of any negligent and/or intentional act or omission by Contractor, its employees, agents, or representatives that violates the ADA. Contractor agrees that the City will not be responsible for any cost or expenses arising from Contractor's failure to comply with the ADA.

ARTICLE 4. ETHICAL STANDARDS

Contractor hereby takes notice of and warrants that it is not in violation of, or has not participated in, and shall not participate in the violation of any of the following ethical standards prescribed by the Knoxville City Code. For violation of the ethical standards prescribed by the

Knoxville City Code, the City has the following remedies: oral or written warnings or reprimands; cancellation of transactions; and suspension or debarment from being a contractor or subcontractor under City or City-funded contracts. The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this article shall be in accord with due process requirements, including a right to notice and hearing prior to imposition of any cancellation, suspension, or debarment from being a contractor or subcontractor under a City contract.

- A. Knoxville City Code Section 2-1048(a) – Conflict of Interest. It shall be unlawful for any employee of the City to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy, or other matter pertaining to any contract or subcontract and any solicitation or proposal therefor, where to the employee's knowledge there is a financial interest possessed by: (i) the employee or the employee's immediate family; (ii) a business other than a public agency in which the employee or a member of the employee's immediate family serves as an officer, director, trustee, partner, or employee; or (iii) any other person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.
- B. Knoxville City Code Section 2-1049(a) – Receipt of Benefits from City Contracts by Councilmembers, Employees, and Officers of the City. It shall be unlawful for any member of the City Council, officer, or employee of the City to have or hold any interest in the profits or emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any such contract for a job, work, or service for the City in which any member of the City Council, officer, or employee of the City has or holds any such interest is void.
- C. Knoxville City Code Section 2-1050(a)-(b) – Gratuities and Kickbacks Prohibited. It is unlawful for any person to offer, give, or agree to give to any person, while an employee of the City, or for any person, while an employee of the City, to solicit, demand, accept, or agree to accept from another person anything of a pecuniary value for or because of: (i) an official action taken, or to be taken, or which could be taken; (ii) a legal duty performed, or to be performed, or which could be performed; or (iii) a legal duty violated, or to be violated, or which could be violated by such person while an employee of the City. Anything of nominal value shall be presumed not to constitute a gratuity under this section. It is unlawful for any payment, gratuity, or benefit to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.
- D. Knoxville City Code Section 2-1051(a)-(b) – Covenant Relating to Contingent Fees. Every person, before being awarded a contract in excess of \$10,000.00 with the City, shall represent that no other person has been retained to solicit or secure the contract with the City upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose

of securing business. The intentional violation of the representation specified in this section is unlawful.

- E. Knoxville City Code Section 2-1052(a) – Contemporaneous Employment Prohibited. It shall be unlawful for any employee of the City to become or be, while such employee, an employee of any party contracting with the particular department or agency of the City in which the person is employed by the City.

ARTICLE 5. INSURANCE

Contractor shall at its sole expense obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. Contractor shall furnish the City of Knoxville with properly executed certificates of insurance which shall clearly evidence all insurance required by the City. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better. Such insurance shall be at a minimum the following:

- A. ***Commercial General Liability Insurance***, occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than \$2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

1. Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording shall be required.
 2. For any claims related to the Services, Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Contractor's insurance and shall not contribute with it.
 3. At the sole discretion of the City, dedicated limits of liability for these specific Services may be required.
- B. ***Automobile Liability Insurance***, including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or

be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Contractor.

- C. **Workers' Compensation Insurance**, with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Contractor shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by Contractor's workers' compensation insurance coverage.
- D. **Professional Liability Insurance** (including errors and omissions) covering claims arising from real or alleged errors, omissions, or negligent acts committed in the performance of professional services under this Agreement with limits of no less than \$10,000,000 per claim and in the aggregate.
- E. **Contractors Pollution Liability** insurance with limits of not less than \$1,000,000 per occurrence covering the operations specified in the Agreement. If contained in the scope of services of the agreement, the policy shall contain no exclusions for lead-based paint, asbestos, mold, or microbial matter. If applicable to the agreement, coverage for non-owned disposal sites will be included. If the agreement includes the transport of hazardous material or waste, the commercial auto liability policy will include the MCS-90 endorsement and coverage for pollution conditions, CA 99 48 03 06 Pollution Liability – Broadened Coverage for Covered Autos – Business Auto, Motor Carrier and Truckers Coverage Forms endorsement is acceptable.
- F. **Other Insurance Requirements.** Contractor shall:
 - 1. Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the City Attorney of Knoxville, P.O. Box 1631, Knoxville, Tennessee 37901. Proof of policy provisions regarding notice of cancellation shall be required.
 - 2. Upon the City's request, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance. Copies of policies shall only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy shall only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to specific coverage wording or endorsement(s), proof of such policy wording or endorsement(s) shall be required.
 - 3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.

4. Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.
5. If Contractor cannot procure insurance through an insurer having an A.M. Best rating of A-VIII, Contractor may, in the alternative, place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered upon appeal to the City Law Director.
6. Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless subcontractor's employees are covered by Contractor's insurance) in the same manner as specified for Contractor. Contractor shall furnish subcontractors' certificates of insurance to the City without expense immediately upon request.

Large Deductibles; Self-Insured Retentions. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Knoxville prior to the commencement of services. Use of large deductibles and/or self-insured retentions shall require proof of financial ability as determined by the City.

Waiver of Subrogation Required. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Contractor for the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording shall be required.

Occurrence Basis Requirement. All general liability policies must be written on an occurrence basis unless the Risk Manager determines that a claims made basis is reasonable in the specific circumstance. Use of policies written on a claims made basis must be approved by the Risk Manager and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed. Professional Liability and Environmental Liability (Pollution Coverage) are most commonly written on a claims made basis and are generally acceptable in that form.

ARTICLE 6. HOLD HARMLESS AND INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless the City, its officers, employees, and agents from any and all liabilities which may accrue against the City, its officers, employees, and agents or any third party for any and all lawsuits, claims, demands, losses, or damages alleged to have arisen from an act or omission of Contractor in performance of this Agreement or from Contractor's failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused by the sole negligence of the City, its agents, or employees. The amount and type of

insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this section.

Contractor shall save, indemnify, and hold the City harmless from the cost of the defense of any claim, demand, suit, or cause of action made or brought against the City alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the City; and Contractor shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action upon written notice and demand for same by the City. Contractor shall have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City shall provide reasonable cooperation in the defense as Contractor may request. Contractor shall not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

Contractor shall save, indemnify, and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims, or demands against City alleging liability referenced above.

The indemnification and hold harmless provisions of this Agreement shall (i) govern this Agreement and all services performed pursuant to this Agreement notwithstanding any provision of any document to the contrary and (ii) survive termination of this Agreement.

ARTICLE 7. NOTICES

Any notice required or permitted under this Agreement shall be directed to the following representatives or such other address as either party may designate by written notice to the other:

The City:
Penny Owens
Purchasing Agent
P.O. Box 1631
Knoxville, TN 37901
(865) 215-2062
powens@knoxvilletn.gov

Contractor:
Mike Hoard
Spatco Energy Solutions LLC
2724 John Deere Drive
Knoxville, TN 37917
(865) 546-4921
mike.hoard@spatco.com

with copy to:

Nicholas Bradshaw
Director of Fleet Services
P.O. Box 1631
Knoxville, TN 37901
(865) 215-2529
nbradshaw@knoxvilletn.gov

Notices shall be in writing and will be effective when actually delivered in person, received via facsimile transmission, or private carrier with signature confirmation, or when received in the U.S.

Mail, certified with return receipt requested, postage pre-paid, and addressed to the party as stated above.

ARTICLE 8.
MISCELLANEOUS PROVISIONS

- 8.1. INDEPENDENT CONTRACTOR. Contractor shall perform all obligations under this Agreement as an independent contractor; neither it nor its employees will be considered employees of the City, nor will it or its employees be entitled to any benefits, civil service status, insurance, pension, or workers' compensation as an employee of the City.
- 8.2. ASSIGNMENT. Contractor shall not assign or transfer any interest in this Agreement without obtaining the prior written approval of the City.
- 8.3. SUBCONTRACTS TO THE AGREEMENT. Contractor shall not enter into a subcontract for any of the services performed pursuant to this Agreement without obtaining the prior written approval of the City.
- 8.4. WRITTEN AMENDMENTS. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of this Agreement.
- 8.5. REQUIRED APPROVALS. Neither party is bound by this Agreement until it is approved by the appropriate officials shown on the signature page of this Agreement.
- 8.6. ARTICLE CAPTIONS. The captions appearing in this Agreement are for convenience only and are not a part of this Agreement; they do not in any way limit or amplify the provisions of this Agreement.
- 8.7. SEVERABILITY. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.
- 8.8. FEDERAL, STATE, AND LOCAL REQUIREMENTS. Contractor is responsible for full compliance with all applicable federal, state, and local laws, rules, and regulations.
- 8.9. BOYCOTT OF ISRAEL. Contractor certifies that it is not engaged in, and will not for the duration of this Agreement engage in, a boycott of Israel.
- 8.10. IRAN DIVESTMENT ACT. Pursuant to the Iran Divestment Act, Tenn. Code Ann. §12-12-106 requires the State of Tennessee Chief Procurement Officer to publish, using creditable information freely available to the public, a list of persons it determines engage in investment activities with Iran, as described in § 12-12-105. Inclusion on this list makes a person ineligible to contract with the State of Tennessee; if a person ceases its engagement in investment activities in Iran, it may be removed from the list. A list of entities ineligible to contract with the State of Tennessee Department of General Services or any political subdivision of the

State may be found here:

[https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/library/public-information-library/List of persons pursuant to Tenn. Code Ann 12-12-106 Iran Divestment Act updated with%20ONLY12.04.23.pdf](https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/library/public-information-library/List_of_persons_pursuant_to_Tenn._Code_Ann_12-12-106_Iran_Divestment_Act_updated_with%20ONLY12.04.23.pdf)

The Contractor hereby certifies that the above-named firm, under penalty of perjury to the best of its knowledge and belief, and any proposed suppliers are not on the list created pursuant to § 12-12-106.

- 8.11. NO BENEFIT FOR THIRD PARTIES. The services to be performed by Contractor pursuant to this agreement with the City are intended solely for the benefit of the City, and no benefit is conferred hereby, nor is any contractual relationship established herewith, upon or with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on Contractor's performance of its services hereunder, and no right to assert a claim against the City or Contractor, its officers, employees, agents or contractors shall accrue to Contractor or to any subcontractors, independently retained professional consultant, supplier, fabricator, manufacturer, lender, tenant, insurer, surety or any other third party as a result of this Agreement or the performance or non-performance of Contractor's services hereunder.
- 8.12. NON-RELIANCE OF PARTIES. The parties explicitly agree that they have **not** relied upon any earlier or outside representations other than what has been included in this Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.
- 8.13. FORCE MAJEURE. Neither party will be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times will be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than 90 days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.
- 8.14. EEO/AA. The City is an EE/AA/Title VI/Section 504/ADA/ADEA employer.
- 8.15. GOVERNING LAW AND VENUE. This Agreement shall be governed and construed in accordance with the laws of the State of Tennessee. Any action for breach of this Agreement or to enforce or nullify any provision of this agreement shall be instituted only in a court of appropriate jurisdiction in Knox County, Tennessee.

8.16. ENTIRE AGREEMENT. This Agreement forms the entire Agreement between the City and Contractor. Any prior representations, promises, agreements, oral or otherwise, between the parties, which are not embodied in this writing, shall be of no force or effect.

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the below-written date.

APPROVED AS TO FORM:

CITY OF KNOXVILLE

CHARLES W. SWANSON
LAW DIRECTOR

BY: _____
INDYA KINCANNON
MAYOR

DATE: _____

FUNDS CERTIFIED:

BOYCE H. EVANS
FINANCE DIRECTOR

SPATCO ENERGY SOLUTIONS,
LLC

BY: _____

NAME: _____

TITLE: _____

Required Exhibits:

- Exhibit 1: City's Request for Proposals issued for Public Safety Complex Fuel Site, and all addenda and exhibits thereto, copies of which are on file in the City's Purchasing Office; and
- Exhibit 2: Contractor's Response to Request for Proposal for Public Safety Complex Fuel Site dated January 16, 2025, a copy of which is on file in the City's Purchasing Office.

Required Attachment(s):

Certificate(s) of Insurance X