

EXHIBIT

"A"

**CITY OF ROUND ROCK AGREEMENT FOR
PURCHASE OF SERVICES FOR
DELIVERY OF OFF ROAD DYED DIESEL FUEL
WITH
ALLIED SALES COMPANY, A DIVISION OF TEXAS ENTERPRISES**

THE STATE OF TEXAS

CITY OF ROUND ROCK

COUNTY OF WILLIAMSON

COUNTY OF TRAVIS

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§

KNOW ALL BY THESE PRESENTS:

That this Agreement for purchase of services for delivery of off road, dyed diesel fuel to fill City's on-site, above-ground fuel tanks, and for related goods and services, referred to herein as the "Agreement," is made and entered into on this the 4 day of the month of January, 2020, by and between the CITY OF ROUND ROCK, TEXAS, a home-rule municipality whose offices are located at 221 East Main Street, Round Rock, Texas 78664, referred to herein as the "City," and ALLIED SALES COMPANY a division of TEXAS ENTERPRISES, whose address is 5005 East 7th Street, Austin, Texas 78702, referred to herein as the "Vendor." This Agreement supersedes and replaces any previous agreements between the named parties, whether oral or written, and whether or not established by custom and practice.

RECITALS:

WHEREAS, City desires to purchase services for delivery of off road, dyed diesel fuel to fill City's on-site, above-ground fuel tanks, and to purchase associated goods and services, and City desires to purchase same from Vendor; and

WHEREAS, City has issued its Invitation for Bid under Solicitation Number 18-027REBID2 for the provision of said goods and services, and City has selected the bid submitted by Vendor; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City is obligated to buy specified goods and/or services and Vendor is obligated to sell same. The Agreement includes the following: (a) City's Invitation for Bid under Solicitation Number 18-027REBID2; (b) Vendor's Response to IFB; (c) contract award; and (d) any exhibits, addenda, and/or amendments thereto. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference in the following order:

- (1) This Agreement;
- (2) Purchaser's Response to IFB;
- (3) City's Invitation for Bid, exhibits, and attachments.

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods and services** mean the specified supplies, materials, commodities, or equipment, and the specified performance of services.

F. **Vendor** means Allied Sales Company, a division of Texas Enterprises, and any of either of those entity's successors or assigns.

2.01 EFFECTIVE DATE; TERM

A. This Agreement shall be effective upon the date on which it has been signed by both parties hereto, and shall remain in full force and effect unless and until it expires by operation of the term stated herein, or until terminated or extended as provided herein.

B. The term of this Agreement shall be for sixty (60) months from the effective date hereof.

C. City reserves the right to review the relationship at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.



City of Round Rock, Texas
Purchasing Division
221 East Main Street
Round Rock, Texas 78664-5299
www.roundrocktexas.gov

INVITATION FOR BID (IFB)

OFF-ROAD DYED DIESEL FUEL FILLING SERVICES

SOLICITATION NUMBER 18-027REBID2
(REBID #2)

OCTOBER 2018

Exhibit "A"

3.01 CONTRACT DOCUMENTS AND EXHIBITS

City selected Vendor to supply the goods and services as outlined in City's Invitation for Bid under Solicitation Number 18-027REBID2, and Response to IFB submitted by Vendor, all as specified in Exhibit "A" attached hereto and made a part hereof for all purposes. The intent of these documents is to formulate an Agreement listing the responsibilities of both parties as outlined in relevant documents and as offered by Vendor in its Response to the IFB.

The goods and services which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the total Agreement and they are fully a part of this Agreement as if repeated herein in full.

4.01 ITEMS AWARDED

A. All bid items on Exhibit "A" are awarded to Vendor.

B. Vendor specifically acknowledges and agrees that City is not obligated to use or purchase any estimated annual quantity of goods and services. Only if, as, and when needed by City, the bid costs listed on Exhibit "A" shall be the basis of any charges collected by Vendor.

5.01 COSTS

A. The bid costs listed on Attachment A – Bid Sheet of Exhibit "A," shall be the basis of any charges collected by Vendor.

B. In consideration for the items set forth in Exhibit "A," the City shall be authorized to pay the Vendor an amount not-to-exceed **Seventy Thousand and No/100 Dollars (\$70,000.00) per year** for a total not to exceed amount of **Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00)** for the term of this Agreement.

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Vendor;
- B. Purchase Order Number;
- C. Description and quantity of items received; and
- D. Delivery dates.

7.01 INTERLOCAL COOPERATIVE CONTRACTING / PURCHASING

Authority for local governments to contract with one another to perform certain governmental functions and services, including but not limited to purchasing functions, is granted under Government Code, Title 7, Chapter 791, Interlocal Cooperation Contracts,

Subchapter B and Subchapter C, and Local Government Code, Title 8, Chapter 271, Subchapter F, Section 271.101 and Section 271.102.

Other governmental entities within the State of Texas may be extended the opportunity to purchase off of the City of Round Rock's bid, with the consent and agreement of the successful vendor(s) and Round Rock. Such agreement shall be conclusively inferred for the vendor from lack of exception to this clause in the vendor's response. However, all parties hereby expressly agree that the City of Round Rock is not an agent of, partner to, or representative of those outside agencies or entities and that the City of Round Rock is not obligated or liable for any action or debts that may arise out of such independently-negotiated "piggyback" procurements.

8.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may effect such termination by giving Vendor a written notice of termination at the end of its then-current fiscal year.

9.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by City to Vendor will be made within thirty (30) days of the date City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date City receives a correct invoice for the goods or services, whichever is later. Vendor may charge interest on an overdue payment at the "rate in effect" on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Vendor, a contractor, subcontractor, or supplier about the goods delivered or the service performed that causes the payment to be late; or
- B. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- C. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- D. The invoice is not mailed to City in strict accordance with any instruction on the purchase order relating to the payment.

10.01 GRATUITIES AND BRIBES

City may, by written notice to Vendor, cancel this Agreement without incurring any liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

11.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor's charges.

12.01 ORDERS PLACED WITH ALTERNATE VENDORS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers.

13.01 INSURANCE

Vendor shall in all respects comply with the insurance requirements delineated in Part II, Item 2 of City's Invitation for Bid under Solicitation Number 18-027REBID2.

14.01 CITY'S REPRESENTATIVE

City hereby designates the following representative authorized to act on its behalf:

Chad McDowell
General Services Director
212 Commerce Cove
Round Rock, Texas 78664
(512) 341-3191
cmcdowell@roundrocktexas.gov

15.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

16.01 DEFAULT

If Vendor abandons or defaults hereunder and is a cause of City purchasing the specified goods elsewhere, Vendor agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to fully, timely and faithfully perform any material obligations hereunder;
- B. Becomes insolvent or seeks relief under the bankruptcy laws of the United States;
- C. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein.

17.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Vendor.

C. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Vendor, Vendor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Vendor shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

18.01 INDEMNIFICATION

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Vendor, or Vendor's agents, employees or subcontractors, in the performance of Vendor's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

PART I
GENERAL REQUIREMENTS

1. **PURPOSE:** The City of Round Rock, herein after "City", seeks an agreement with a qualified Firm or Corporation, hereafter referred to as "Bidder", to provide, deliver, and fill City's on-site, above ground fuel tanks with off-road, dyed diesel fuel as needed. An anticipated total contract award will be made by the City in an amount not to exceed \$70,000 per year.
2. **SOLICITATION PACKET** – This solicitation packet is comprised of the following:

Description	Index
Part I – General Requirements	Pages 2 – 4
Part II – Definitions, Standard Terms and Conditions and Insurance Requirements	Page 5
Part III – Supplemental Terms and Conditions	Pages 6 – 8
Part IV – Specifications	Pages 9 – 10
Attachment A – Bid Sheet	Page 11
Attachment B – Reference Sheet	Page 12
Attachment C – Subcontractor Information Form	Page 13

3. **AUTHORIZED PURCHASING CONTACT:** For questions or clarification of specifications, you may contact:

Yvonne Hopkins, CTCD
Purchaser
Purchasing Division
E-mail: yhopkins@roundrocktexas.gov

OR

Oscar Wise, CTCM
Purchaser
Purchasing Division
E-mail: owise@roundrocktexas.gov

The individuals listed above may be contacted by e-mail for clarification of the specifications only. No authority is intended or implied that specifications may be amended or alterations accepted prior to solicitation opening without written approval of the City of Round Rock through the Purchasing Department.

4. **SCHEDULE OF EVENTS:** It is the City's intention to follow the solicitation timeline below:

EVENT	DATE
Solicitation released	Friday, October 19, 2018
Deadline for submission of questions	Tuesday, October 30, 2018 by 5:00PM, CST
City responses to questions or addendums	Thursday, November 1, 2018 by 5:00PM, CST
Deadline for submission of responses	Thursday, November 8, 2018 @ 3:00PM, CST

All questions regarding the solicitation shall be submitted in writing by 5:00 PM, CST on the due date noted above. A copy of all questions submitted and the City's response to the questions shall be posted on the City's webpage in the form of an addendum at:

<https://www.roundrocktexas.gov/businesses/solicitations/>

19.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, City's Charter and Ordinances, as amended, and all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. Vendor acknowledges and understands that City has adopted a Storm Water Management Program (SWMP) and an Illicit Discharge Ordinance, Sections 14-139 through 14-152 of the City's Code of Ordinances, to manage the quality of the discharges from its Municipal Separate Storm Sewer System (MS4) and to be in compliance with the requirements of the Texas Commission on Environmental Quality (TCEQ) and the Texas Pollutant Discharge Elimination System (TPDES). The Vendor agrees to perform all operations on City-owned facilities in compliance with the City's Illicit Discharge Ordinance to minimize the release of pollutants into the MS4. The Vendor agrees to comply with of the City's stormwater control measures, good housekeeping practices and any facility specific stormwater management operating procedures specific to a certain City facility. In addition, the Vendor agrees to comply with any applicable TCEQ Total Maximum Daily Load (TMDL) Requirements and/or I-Plan requirements.

C. In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this contract. The signatory executing this Agreement on behalf of Vendor verifies Vendor does not boycott Israel and will not boycott Israel at any term of this Agreement.

20.01 ASSIGNMENT AND DELEGATION

The parties hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

21.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- A. When delivered personally to recipient's address as stated in this Agreement; or
- B. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

Allied Sales Company, a division of Texas Enterprises
5005 East 7th Street
Austin, TX 78702

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

Stephan L. Sheets, City Attorney
AND TO: 309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

22.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

23.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

24.01 DISPUTE RESOLUTION

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

25.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision hereof or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any such void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined to be void.

26.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Vendor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Vendor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given, and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

[Signatures on the following page.]

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____


For City, Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Allied Sales Company, a division of Texas Enterprises

By:  _____
Printed Name: Jonathon Little
Title: Sales Consultant
Date Signed: 1/8/2019

Questions shall be submitted in writing to the "Authorized Purchasing Contacts". The City reserves the right to modify these dates. Notice of date change will be posted to the City's website:

<https://www.roundrocktexas.gov/businesses/solicitations/>

5. **SOLICITATION UPDATES:** Bidders shall be responsible for monitoring the City's website at <https://www.roundrocktexas.gov/businesses/solicitations/> for any updates pertaining to the solicitation described herein. Various updates may include addendums, cancellations, notifications, and any other pertinent information necessary for the submission of a correct and accurate response. The City will not be held responsible for any further communication beyond updating the website.

6. **RESPONSE DUE DATE:** Signed and sealed responses are due at or before 3:00PM on the due date noted in PART I, Section 4 – Schedule of Events. Mail or hand deliver sealed responses to:

**City of Round Rock
Attn: Yvonne Hopkins
Purchasing Department
221 E. Main Street
Round Rock, Texas 78664-5299**

- 6.1 Sealed responses shall be clearly marked on the outside of packaging with the Solicitation title, number, due date and "DO NOT OPEN".
- 6.2 Facsimile or electronically transmitted responses are not acceptable.
- 6.3 Responses cannot be altered or amended after opening.
- 6.4 No response can be withdrawn after opening without written approval from the City for an acceptable reason.
- 6.5 The City will not be bound by any oral statement or offer made contrary to the written specifications.

7. **BIDDER REQUIREMENTS:** The City of Round Rock makes no warranty that this checklist is a full comprehensive listing of every requirement specified in the solicitation. This list is only a tool to assist participating Bidders in compiling their final responses. Bidders are encouraged to carefully read the entire solicitation.

Bidder shall submit one (1) evident signed "Original" and two (2) copies of the IFB response and one (1) electronic copy of the IFB response on a flash drive. The bid response must include all addendums and requested attachments. The bid response and copies shall be provided at the Bidder's expense and shall become the property of the City.

This invitation for bid (IFB) does not commit the City to contract for any supply or service. Bidders are advised that the City will not pay for any administrative costs incurred in response preparation to this IFB; all costs associated with responding to this IFB will be solely at the interested parties' expense. Not responding to this IFB does not preclude participation in any future RFP/RFQ/IFB.

For your bid to be responsive, addendums and the attachments identified below shall be submitted with your proposal.

- i. **ADDENDUMS:** Addendums may be posted to this solicitation. Bidders are required to submit signed addendums with their sealed response. The Bidder shall be responsible for monitoring the City's website at <https://www.roundrocktexas.gov/businesses/solicitations/> for any updates pertaining to the solicitation.
- ii. **ATTACHMENT A – BID SHEET:** The bid response shall be submitted on the itemized, signed Bid Sheet provided in the solicitation packet. Failure to complete and sign the bid sheet will result in disqualification. Submission of responses on forms other than the City's Solicitation Document may result in disqualification of the response. Be advised that exceptions taken to any portion of the solicitation will disqualify acceptance of the bid.
- iii. **ATTACHMENT B – REFERENCE SHEET:** Provide the name, address, telephone number and **E-MAIL** of at least three (3) valid Municipal/Government agencies or firms of comparable size that have utilized services that are similar in type and capacity within the last two (2) years. City of Round Rock references are not applicable. References may be checked prior to award. If references cannot be confirmed or if any negative responses are received it may result in the disqualification of bid response.
- iv. **ATTACHMENT C – SUBCONTRACTOR INFORMATION FORM:** Provide a signed copy of the Subcontractor Information Form with your bid response.

- v. **ATTACHMENT D – TANK TYPES AND LOCATIONS:** Posted in the Solicitation Documents for IFB No. 18-027REBID2 Off-Road Dyed Diesel Fuel Filling Services in an Word format on the City of Round Rock website.
8. **BEST VALUE EVALUATION AND CRITERIA:** The City reserves the right to reject any or all responses, or to accept any response deemed most advantageous, or to waive any irregularities or informalities in the response received that best serves the interest and at the sole discretion of the City. All solicitations received may be evaluated based on the best value for the City.
9. **CONFIDENTIALITY OF CONTENT:** As stated in Section 16 of City of Round Rock Purchasing Definitions, Standard Terms and Conditions, all documents submitted in response to a solicitation shall be subject to the Texas Public Information Act. Following an award, responses are subject to release as public information unless the response or specific parts of the response can be shown to be exempt from the Texas Public Information Act. Pricing is not considered to be confidential under any circumstances.
- 9.1 Information in a bid response that is legally protected as a trade secret or otherwise confidential must be clearly indicated with stamped, bold red letters stating "CONFIDENTIAL" on that section of the document. The City will not be responsible for any public disclosure of confidential information if it is not clearly marked as such.
- 9.2 If a request is made under the Texas Public Information Act to inspect information designated as confidential, the Bidder shall, upon request from the City, furnish sufficient written reasons and information as to why the information should be protected from disclosure. The matter will then be presented to the Attorney General of Texas for final determination.
10. **CERTIFICATE OF INTERESTED PARTIES:** Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 "Certificate of Interested Parties" that is signed for a contract award requiring council authorization. The "Certificate of Interested Parties" form must be completed on the Texas Ethics Commission website, printed, signed and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution. Link to Texas Ethics Commission Webpage:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

PART II
**DEFINITIONS, STANDARD TERMS AND CONDITIONS
AND INSURANCE REQUIREMENTS**

1. **DEFINITIONS, STANDARD TERMS AND CONDITIONS:** By submitting a response to this solicitation, the Bidder agrees that the City's Definitions, Standard Terms and Conditions, in effect at the time of release of the solicitation, shall govern unless specifically provided otherwise in a separate agreement or on the face of a purchase order. Said Definitions, Terms and Conditions are subject to change without notice. It is the sole responsibility of Bidders to stay apprised of changes. The City's Definitions and Standard Terms and Conditions can be viewed and downloaded from the City's website at:
<https://www.roundrocktexas.gov/departments/purchasing/>

2. **INSURANCE:** The Bidder shall meet or exceed all insurance requirements set forth in Standard Insurance Requirements. The City's Standard Insurance Requirements document can be viewed and downloaded from the City's website at:
<https://www.roundrocktexas.gov/departments/purchasing/>

PART III
SUPPLEMENTAL TERMS AND CONDITIONS

1. **AGREEMENT TERM:** The terms of the awarded agreement shall include but not be limited to the following:
 - 1.1 The term of the Agreement shall begin from date of award and shall remain in full force for sixty (60) months.
 - 1.2 Upon expiration of the contract term, the awarded contractor agrees to hold over under the terms and conditions of this agreement for such a period as is reasonably necessary to re-solicit and/or complete the project up to 90 days.
2. **BIDDER QUALIFICATIONS:** The City has established the following minimum qualifications. Bidders who do not meet the minimum qualifications will not be considered for award.

The successful bidder shall:

- 2.1 Be a firm, corporation, or partnership whose standard business activities:
 - 2.1.1 Provide off-road, dyed diesel fuel commercially.
 - 2.1.2 Perform the service of pumping fuel into customer-specified tanks.
 - 2.1.3 Maintain an adequate organization, appropriate facilities, equipment, financial capability, and personnel to ensure prompt and efficient service to the City.
 - 2.2 Provide all labor, supplies, and materials required to satisfactorily perform the services as specified in Section 2.1. The bidder shall own or acquire all construction aids, appliances, and equipment the Bidder deems necessary at no cost to the City. The bidder shall maintain sole responsibility for the maintenance and repair of City's affected vehicles, equipment, tools and all associated costs. The City shall not be responsible for any of the Bidder's tools, equipment, or materials lost or damaged during the performance of the services specified herein.
 - 2.3 Have a commercial business location which shall be located within 120 miles of Round Rock, Texas.
 - 2.4 Have a legal residence or home office in the United States.
 - 2.5 Provide products and services in complete compliance with all Federal, State, and Local regulations to include compliance with all regulations set forth by the Texas Commission on Environmental Quality (TCEQ).
3. **SUBCONTRACTORS:** If Subcontractors will be used, the Bidder is required to complete and submit with their bid response Attachment C - Subcontractor Information Form. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions.

The Contractor shall:

- 3.1 Require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.
 - 3.2 Require that all Subcontractors obtain and maintain, throughout the term of their agreement, primary insurance in the type and amounts specified for the Contractor, with the City being named as an additional insured.
 - 3.3 Require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
 - 3.4 Submit a list of all subcontractors for approval by the City prior to use of any subcontractors throughout the term of the contract.
4. **SAFETY:** The City reserves the right to remove any employee from City property for violation of federal, state, and local health, safety and environmental laws, ordinances, rules and regulations. The Bidder shall:
 - 4.1 Ensure that all employees comply with all Occupational Safety and Health Administration (OSHA), State and City safety and occupational health standards and other applicable federal, state, and local health, safety, and environmental laws ordinances, rules and regulations in the performance of these services.

- 4.2 Be held responsible for the safety of their employees and unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site. In case of conflict, the most stringent safety requirement shall govern.
 - 4.3 Indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines penalties and liability of every kind arising from the breach of the Successful Bidders' obligations under this paragraph.
5. **WORKFORCE:** Successful Bidder shall:
- 5.1 Ensure Bidder's employees perform the services in a timely, professional, and efficient manner.
 - 5.2 Ensure Bidder's employees, while working on City property, wear a company uniform that clearly identifies them as the Bidder's employee.
 - 5.3 Employ all personnel for work in accordance with the requirements set forth by the United States Department of Labor. The City reserves the right to verify citizenship or right to work in the United States.
6. **PRICING:** Pricing indicated in the Attachment A – Bid Sheet shall be inclusive of all recovery fees, surcharges, labor, equipment, costs, and fees necessary to provide and deliver goods and services specified herein.
- 6.1 Bidders shall use Flint Hills Resources/OPIS rack rate to bid "cents over rack price" on the Attachment A – Bid Sheet. Rack prices change each day at 5:00pm and new rack prices post each new day at 6:00am.
 - 6.2 The City is an authorized end user of off-road, dyed diesel. The City is authorized to purchase tax free dyed diesel. Bidder's pricing must reflect this.
 - 6.3 The "cents over rack price" bid value shall remain fixed throughout the 60-month term of the contract.
 - 6.4 Fuel pricing shall be based on the bidder's cents over rack price for the day of delivery.
7. **PERFORMANCE REVIEW:** The City reserves the right to review the awarded bidder's performance anytime during the contract term.
8. **ACCEPTANCE/INSPECTION:** Acceptance inspection should not take more than five (5) working days. The awarded bidder will be notified within the time frame if the services delivered are not in full compliance with the specifications. In the event the services are not performed to the satisfaction of the City; the contractor shall agree to re-perform services to specification at no additional cost to the City. If any agreement or purchase order is cancelled for non-acceptance, the needed services may be purchased elsewhere and the contractor may be charged the associated cost to bring the work into compliance.
9. **ORDER QUANTITY:** The quantities referenced on the solicitation are estimates only. No guarantee of any minimum or maximum purchase is made or implied. The City will only order the services/goods needed to satisfy requirements within budgetary constraints, which may be more or less than indicated.
10. **PERMITS:** The Successful Bidder shall verify and obtain all necessary permits, licenses, and/or certificates required by federal, state and local laws, ordinances, rules or regulations for the completion of the services as specified if required for the project.
11. **AWARD:** The City reserves the right to enter into an Agreement or a Purchase Order with a single award, split award, primary and secondary award, non-award, or use any combination that best serves the interest and at the sole discretion of the City. Award announcement will be made upon City Council approval of staff recommendation and executed agreement. Award announcement will appear on the City's website at:
<https://www.roundrocktexas.gov/businesses/solicitations/>
12. **POST AWARD MEETING:** The City and awarded contractor may have a post award meeting to discuss, but not be limited to the following:
- 12.1 The method to provide a smooth and orderly transition of services performed from the current contractor
 - 12.2 A preliminary inspection and testing of fuel already contained within the tanks to ensure no contamination is currently present

- 12.3 Provide City contact(s) information for implementation of agreement
- 12.4 Identify specific milestones, goals and strategies to meet objectives

13. POINT OF CONTACT / DESIGNATED REPRESENTATIVE:

- 13.1 **Awarded contractor's point of contact:** In order to maintain consistent standards of quality work performed across the City, the awarded contractor shall provide a designated and identified point of contact upon award of the contract to include contact information. The City's designated representative shall be notified by the awarded contractor immediately should the point of contact change.
- 13.2 **The City's designated representative is:**
Marshall Reynolds
Fleet Operations Manager
General Services
Phone: (512) 218-5571
E-mail: mreynolds@roundrocktexas.gov

14. INTERLOCAL PURCHASING AGREEMENTS:

- 14.1 The City has entered into Interlocal Agreements with other Governmental agencies pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The awarded contractor agrees to offer the same price and terms and conditions to other eligible agencies that have an interlocal agreement with the City.
- 14.2 The City does not accept any responsibility or liability for the purchases by other government agencies through an interlocal cooperative agreement.

**PART IV
SPECIFICATIONS**

1. **PURPOSE:** The City seeks bidders to provide, deliver, and fill City's on-site above ground fuel tanks with off-road, dyed diesel fuel, as needed.
2. **TANK LOCATIONS & ADDITIONAL INFORMATION** – The City tanks are located at the following locations:

TANK LOCATIONS *				
Item	Address	Number of Tanks	Size of Tanks	Type of Tank
A	<u>Old Settlers Park</u> 3300 Palm Valley Boulevard Round Rock, Texas 78665	One (1)	1,000 – Gallons	Double Wall
B	<u>Deepwood Recycling Center</u> 310 Deepwood Drive Round Rock, Texas 78680	One (1)	1,000 – Gallons	Fuel trailer

- 2.1 The City reserves the right to add, adjust, or remove locations as needed.
- 2.2 See ATTACHMENT D – Tank Types and Locations for pictures and locations of the City's tanks.
- 2.3 The City estimates a use of approximately 20,000 – 30,000 gallons of dyed diesel per year.

3. **AWARDED CONTRACTOR RESPONSIBILITIES:**

The awarded Contractor shall:

- 3.1 Maintain sufficient diesel fuel volumes to accommodate City's tank refill requests within 48 hours of request. The City's request may be verbal or in writing. Orders placed by noon on the current day shall be delivered by the end of the next business day;
- 3.2 Deliver between 500 and 1,000 gallons of fuel in one visit to required location(s);
- 3.3 Supply all hoses, pumps, and equipment necessary to conduct tank refills;
- 3.4 Stand-by/emergency generators may occasionally require fuel fill; fuel will be ordered as needed;
- 3.5 Invoice City with accompanying indexed pricing documentation and manifest for each fill;
- 3.6 Maintain regulatory compliance with all applicable agencies;
- 3.7 Provide documentation identifying index and rate for specified day;
- 3.8 Show cost in a cost-per-gallon format;
- 3.9 Make an estimated 30 visits per year.
- 3.10 Prior to the first fill the Contractor shall provide a preliminary inspection and testing of fuel already contained within the tanks to ensure no contamination is currently present.
- 3.11 Remove and clean tanks if improper or contaminated fuel is dispensed by the Contractor. The removal and cleaning of the tanks shall be the responsibility of the awarded Contractor.

4. **DIESEL FUEL SPECIFICATIONS:**

Fuel shall:

- 4.1 Be clear, #2 Ultra Low Sulfur Diesel;
- 4.2 Be free of contaminants;
- 4.3 Conform to ASTM-D975 for the State of Texas;
- 4.4 Provide a minimum shelf life of sixty (60) days.

5. CITY RESPONSIBILITIES:

City shall:

- 5.1** Notify awarded contractor of needed fill 48 hours in advance;
- 5.2** Allow access to tanks, as needed;
- 5.3** Order a minimum of 500 gallons per refill order; (Note: An average order is \approx 750 gallons.)

ATTACHMENT A – BID SHEET

1. **ATTACHMENT A – BID SHEET** is posted in Solicitation Documents for IFB No. 18-027REBID2 Off-Road Dyed Diesel Fuel Filling Services in an Excel format on the City of Round Rock website at:
<https://www.roundrocktexas.gov/departments/purchasing/purchasing-active-solicitations/>
- 1.1 In order to be considered responsive Attachment A – Bid Sheet must be completed and signed by an authorized representative and returned by the deadline for submission of response indicated in Part I Section 4 – Schedule of Events.
- 1.2 The Bidder, by submitting and signing Attachment A – Bid Sheet, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.
- 1.3 In order to do business with the City of Round Rock you must be registered with the City's Contractor Database. To register, go to: <https://roundrock.munisselfservice.com/Contractors/default.aspx>.
- 1.4 By the signature affixed on Attachment A-Bid Sheet, the Bidder hereby certifies that neither the Bidder nor the entity represented by the Bidder, or anyone acting for such entity has violated the antitrust laws of this State, codified in Section 15.01 et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly, the response made to any competitor or any other person engaged in such line of business."
- 1.5 The Bidder agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and the amounts shown on bid sheet.

Attachment A – Bid Sheet
IFB No. 18-027REBID2 (REBID #2)
Off Road Dyed Diesel Fuel Filling Services

Name of Business:	<u>Allied Sales / Texas Enterprises</u>
Physical Address of Headquarters (HQ):	<u>5005 E. 7th Street, Austin TX, 78702</u>
Physical Address of Serving Branch: (if different address from HQ)	<u>1512 Central Commerce Cir. Pflugerville, TX 78660</u>

The Respondent represents by their signature below that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation documents contained in IFB No. 18-027REBID2 Off-Road Dyed Diesel Fuel Filling Services. The Respondent acknowledges that he/she has received and read the entire solicitation packet, attachments, and all documents incorporated by reference, and agrees to be bound by the terms therein.

An anticipated total Contract award will be made by the City in an amount not to exceed \$70,000 per year. This is an estimate only, the City reserves the right to order more or less.

Special Instructions: Be advised that exceptions taken to any portion of the solicitation will disqualify acceptance of the bid.


Cost entered in the bid sheet shall reflect any and all administrative fees, overhead, surcharges, delivery fees, etc. All fees must be rolled into the cost over rack fee.

The lowest cost for "cents over rack price" will be awarded this Contract.

ITEM NO.	DESCRIPTION	CENTS OVER RACK PRICE
1	Off Road Dyed Diesel: Cents over Rack Rate (Rack rate based on Flint Hills Resource/OPIS Rack Rate)	.32¢

Signature required on this Bid Sheet

COMPANY NAME: Allied Sales / Texas Enterprises

SIGNATURE OF AUTHORIZED REPRESENTATIVE: 

PRINTED NAME: Jonathan Little

PHONE NUMBER: 979-255-9616

EMAIL ADDRESS: Jon.Little@alliedsalesco.com

ATTACHMENT B - REFERENCE SHEET

PLEASE COMPLETE AND RETURN THIS FORM WITH THE SOLICITATION RESPONSE

SOLICITATION NUMBER: 18-027REBID2 - Diesel Fuel Filling Services

BIDDER'S NAME: Jonathan Little DATE: 11/15/18

Provide the name, address, telephone number and E-MAIL of at least three (3) valid Municipal, Government agencies or firms of comparable size that have utilized services that are similar in type and capacity within the last two (2) years. City of Round Rock references are not applicable. References may be checked prior to award. If references cannot be confirmed or if any negative responses are received it may result in the disqualification of bid response.

1. Company's Name Embark Energy
Name of Contact _____
Title of Contact _____
E-Mail Address igbal.ali@gmail.com
Present Address 5828 Balcones Drive Suite 101
City, State, Zip Code Austin TX
Telephone Number () Fax Number: ()

2. Company's Name Mansfield Oil Co.
Name of Contact _____
Title of Contact _____
E-Mail Address _____
Present Address _____
City, State, Zip Code _____
Telephone Number (678) 450-2000 Fax Number: ()

3. Company's Name George Hughes Co.
Name of Contact _____
Title of Contact _____
E-Mail Address _____
Present Address 115 Holmes Rd.
City, State, Zip Code Liberity Hill, TX 78642
Telephone Number () Fax Number: ()

FAILURE TO PROVIDE THE REQUIRED INFORMATION WITH THE SOLICITATION RESPONSE MAY AUTOMATICALLY DISQUALIFY THE RESPONSE FROM CONSIDERATION FOR AWARD.

IFB No. 18-027REBID2 Off Road Dyed Diesel Fuel Filling Services
ATTACHMENT D – City of Round Rock Tanks

Deep Wood Tank



IFB No. 18-027REBID2 Off Road Dyed Diesel Fuel Filling Services
ATTACHMENT D – City of Round Rock Tanks

Deep Wood Tank Location



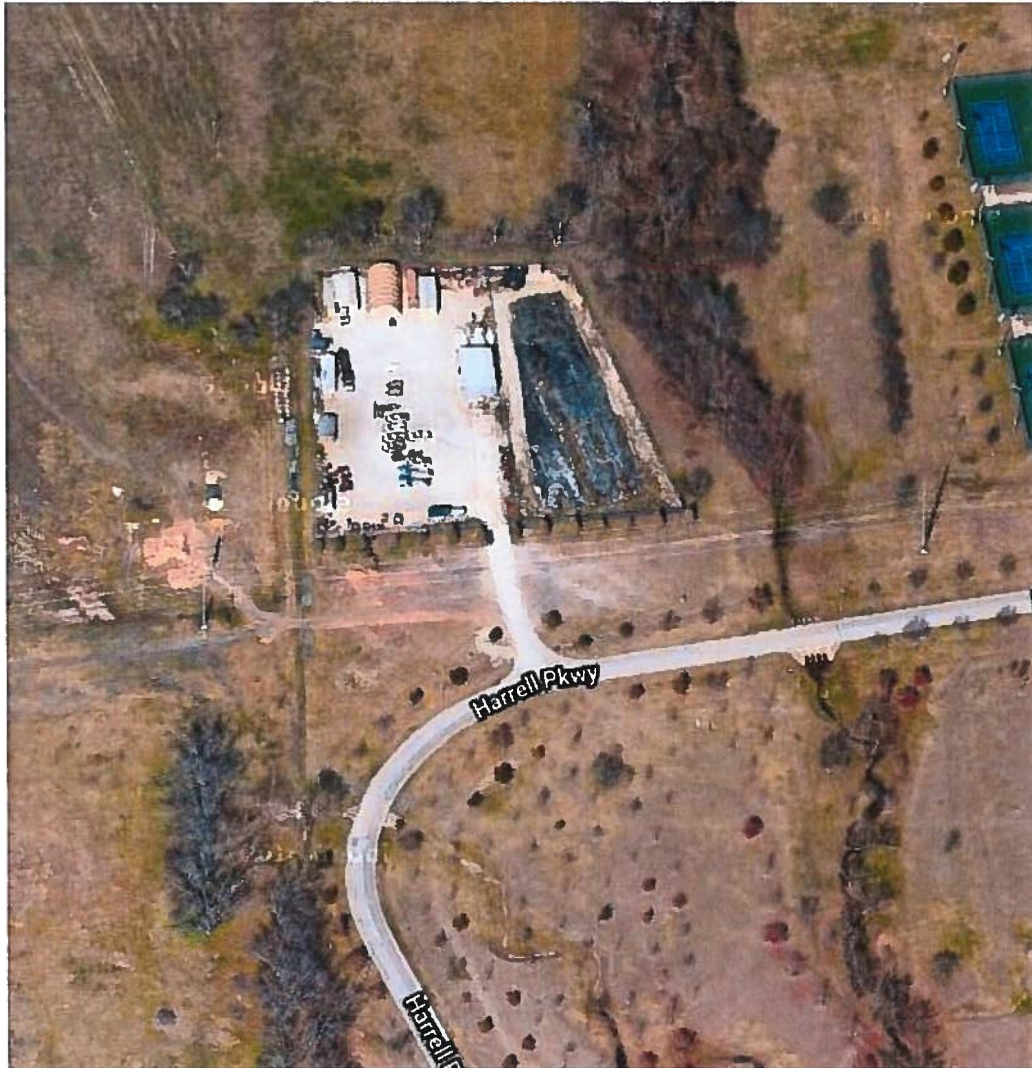
IFB No. 18-027REBID2 Off Road Dyed Diesel Fuel Filling Services
ATTACHMENT D – City of Round Rock Tanks

Old Settlers Park Tank



IFB No. 18-027REBID2 Off Road Dyed Diesel Fuel Filling Services
ATTACHMENT D – City of Round Rock Tanks

Old Settlers Park Location





**CITY OF ROUND ROCK
INVITATION FOR BID
18-027REBID2 – Off Road Dyed Diesel Fuel Filling Services**

IFB No. 18-027REBID2

Addendum No. 1

Date: November 8, 2018

Addendum No. 1, dated Thursday, November 8, 2018, is being issued to extend the bid opening date for IFB No. 18-027REBID2 – Off Road Dyed Diesel Fuel Filling Services, as outlined below:

BID OPENING DATE CHANGED FROM: Thursday November 8, 2018 @ 3:00PM

BID OPENING DATE CHANGED TO: Thursday November 15, 2018 @ 3:00PM

Approved by: _____

Yvonne Hopkins, CTPM
Purchaser

Date: _____

11/8/18

By the signatures affixed below this addendum is hereby incorporated into and made a part of the above referenced solicitation.

ACKNOWLEDGED

Allied Sales
Vendor

Authorized Signature

Date

11/15/18

RETURN ONE SIGNED COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE WITH YOUR SEALED PROPOSAL. FAILURE TO DO SO MAY AUTOMATICALLY DISQUALIFY YOUR RESPONSE FROM CONSIDERATION FOR AWARD.