

33C4

MEMORANDUM

TO: Judge Robert Hebert
County Judge

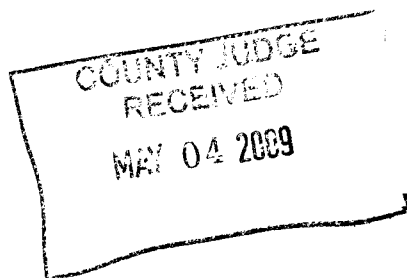
FROM: Debbie Kaminski
Assistant Purchasing Agent

SUBJECT: Please sign the attached contracts approved in Commissioners Court
on 04/28/09. Thank you.

DATE: April 29, 2009

RETURN TO: Purchasing Department
Rosenberg Annex
4520 Reading Road, Suite A
Rosenberg

AGENDA ITEM



| | |
|-------------|-------|
| Bid 09-061 | #33C1 |
| Bid 09-068 | 33C4 |
| Bid- 09-065 | 33C2 |
| Bid 09-074 | 33C6 |
| Bid 09-066 | 33C3 |

5-6-0A orig. ret. to Cheryl at Purchasing

Fort Bend County Specification Download Acknowledgment



**Invitation for Bid
Term Contract for Fuel Treatment Program
BID 09-068**

VENDORS MUST IMMEDIATELY RETURN THIS FORM BY FAX TO 281-341-8645

Vendor Responsibilities:

- Vendors are responsible to download and complete any addendums.
(Addendums will be posted on the Fort Bend County Website no later than 48 hours prior to Bid Opening)
- Vendors will submit responses in accordance with requirements stated on cover of document.
- Vendors may not submit responses via email or fax.

Certified Labs Div. of NCH Corp
Legal Name of Contracting Company

Shea Holder
Contact Person

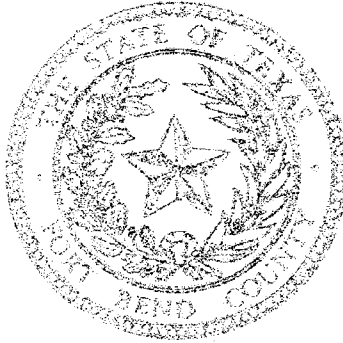
5311 Weyhill CT Fulshear, TX 77441
Complete Mailing Address

281-799-7031 Telephone Number 281-346-1535 Facsimile Number

sholder.3895@certifiedlabs.com
Email Address

[Signature] Signature 4-2-09 Date

**Fort Bend County, Texas
Invitation for Bid**



**Term Contract for Fuel Treatment Program
for Fort Bend County
BID 09-068**

SUBMIT BIDS TO:

Fort Bend County
Purchasing Department
Rosenberg Annex
4520 Reading Road, Suite A
Rosenberg, TX 77471

****NOTE:**

All correspondence must include the term
"Purchasing Department" in address to assist in
proper delivery

SUBMIT NO LATER THAN:

Thursday, April 16, 2009
1:30 PM (Central)

MARK ENVELOPE:

BID 09-068
Fuel Treatment

**ALL BIDS MUST BE RECEIVED IN COUNTY PURCHASING OFFICE
BEFORE RECEIVING DATE AND TIME SPECIFIED.
BIDS RECEIVED WILL THEN BE OPENED AND PUBLICLY READ.
BIDS RECEIVED AFTER THE SPECIFIED TIME WILL BE RETURNED
UNOPENED.**

Results will not be given by phone.
Results will be provided to bidders in writing
after Commissioners Court award.

Fort Bend County is always conscious
and extremely appreciative of your effort
in the preparation of this bid. Requests for
information must be in writing and directed
to:
Debbie Kaminski, CPPB
Assistant County Purchasing Agent
[kaminsk@co.fort-bend.tx.us](mailto:kaminskd@co.fort-bend.tx.us) or
Fax:281-341-8645

Prepared: 03/28/09
Issued: 04/01/09

Vendor Information

Certified Labs Div. of NCH corp
Legal Name

Federal ID Number (Company or Corporation) or Social Security Number (Individual)

281-799-7031
Telephone Number

281-346-1535
Facsimile Number

5311 Weyhill CT
Complete Mailing Address (for Correspondence)

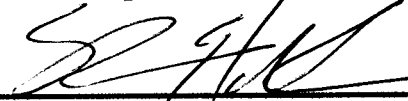
Fulshear, TX 77441
City, State and Zip Code

Certified Labs PO Box 971269
Complete Remittance Address (if different from above)

Dallas, TX 75397-1269
City, State and Zip Code

Shea Holder Sales Representative
Authorized Representative and Title (printed)

sholder.389s@certifiedlabs.com
Authorized Representative's Email Address


Signature of Authorized Representative

Initials of Bidder: SH

1.0 GENERAL REQUIREMENTS:

- 1.1 Read this entire document carefully. Follow all instructions. You are responsible for fulfilling all requirements and specifications. Be sure you understand them.
- 1.2 General Requirements apply to all advertised bids; however, these may be superseded, whole or in part, by the scope, special requirements, specifications, special specifications or other data contained herein.
- 1.3 Governing Law: Bidder is advised that these requirements shall be fully governed by the laws of the State of Texas and that Fort Bend County may request and rely on advice, decisions and opinions of the Attorney General of Texas and the County Attorney concerning any portion of these requirements.
- 1.4 Bid Form Completion: Fill out, sign, and return to the Fort Bend County Purchasing Department ONE (1) complete bid form. An authorized representative of the bidder must sign the Contract Sheet. The contract will be binding only when signed by the County Judge, Fort Bend County and a purchase order authorizing the item(s) desired has been issued. The use of liquid paper is not acceptable and may result in the disqualification of bid. If an error is made, vendor must draw a line through error and initial each change.
- 1.5 Bid Returns: Bidders must return all completed bids to the Fort Bend County Purchasing Department at 4520 Reading Road, Suite A, Rosenberg, Texas no later than 1:30 P.M. on the date specified. Late bids will not be accepted. Bids must be submitted in a sealed envelope, addressed as follows: Fort Bend County Purchasing Agent, Rosenberg Annex, 4520 Reading Road, Suite A, Rosenberg, Texas 77471.
- 1.6 Governing Forms: In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, Fort Bend County's interpretation shall govern.
- 1.7 Addendums: When specifications are revised, the Fort Bend County Purchasing Department will issue an addendum addressing the nature of the change. Bidders must sign and include it in the returned bid package.

Initials of Bidder: SH

- 1.8 **Hold Harmless Agreement:** Contractor shall indemnify and hold Fort Bend County harmless from all claims for personal injury, death and/or property damage arising from any cause whatsoever, resulting directly or indirectly from contractor's performance. Contractor shall procure and maintain, with respect to the subject matter of this bid, appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover contractor's liability as may arise directly or indirectly from work performed under terms of this bid. Certification of such coverage must be provided to the County upon request.
- 1.9 **Waiver of Subrogation:** Bidder and bidder's insurance carrier waive any and all rights whatsoever with regard to subrogation against Fort Bend County as an indirect party to any suit arising out of personal or property damages resulting from bidder's performance under this agreement.
- 1.10 **Severability:** If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.
- 1.11 **Bonds:** If this bid requires submission of bid guarantee and performance bond, there will be a separate page explaining those requirements. Bids submitted without the required bid bond or cashier's checks are not acceptable.
- 1.12 **Taxes:** Fort Bend County is exempt from all federal excise, state and local taxes unless otherwise stated in this document. Fort Bend County claims exemption from all sales and/or use taxes under Chapter 20, Title 122a, Vernon's Texas Civil Statutes, as amended. Texas Limited Sales Tax Exemption Certificates will be furnished upon written request to the Fort Bend County Purchasing Department.
- 1.13 **Fiscal Funding:** A multi-year lease or lease/purchase arrangement (if requested by the specifications), or any contract continuing as a result of an extension option, must include fiscal funding out. If, for any reason, funds are not appropriated to continue the lease or contract, said lease or contract shall become null and void. After expiration of the lease, leased equipment shall be removed by the bidder from the using department without penalty of any kind or form to Fort Bend County. All charges and physical activity related to delivery, installation, removal and redelivery shall be the responsibility of the bidder.

Initials of Bidder: SH

- 1.14 Pricing: Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the bid sheet. Prices shall be all inclusive. No price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, bidder MUST indicate the items required and attendant costs or forfeit the right to payment for such items.
- 1.15 Silence of Specifications: The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item bid.
- 1.16 Supplemental Materials: Bidders are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements, which the bidder wishes to include as a condition of the bid, must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.
- 1.17 Material Safety Data Sheets: Under the "Hazardous Communication Act", commonly known as the "Texas Right To Know Act", a bidder must provide to County and using departments, with each delivery, material safety data sheets, which are, applicable to hazardous substances defined in the Act. Bidders are obligated to maintain a current, updated file in the Fort Bend County Purchasing Department. Failure of the bidder to maintain such a file will be cause to reject any bid applying thereto.
- 1.18 Name Brands: Specifications may reference name brands and model numbers. It is not the intent of Fort Bend County to restrict these bids in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Bidders may offer items of equal stature and the burden of proof of such stature rests with them. Fort Bend County shall act as sole judge in determining equality and acceptability of products offered.

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- 1.19 **Color Selection:** Determination of colors of materials is a right reserved by the using department unless otherwise specified in the bid. Unspecified colors shall be quoted as standard colors, not colors, which require up charges or special handling. Unspecified fabrics or vinyl should be construed as medium grade. If bidder fails to get color/material approvals prior to delivery of merchandise, the using department may refuse to accept the items and demand correct shipment without penalty, subject to other legal remedies.
- 1.20 **Evaluation:** Evaluation shall be used as a determinant as to which bid items or services are the most efficient and/or most economical for the County. It shall be based on all factors, which have a bearing on price and performance of the items in the user environment. All bids are subject to tabulation by the Fort Bend County Purchasing Department and recommendation to Fort Bend County Commissioners Court. Compliance with all bid requirements, delivery and needs of the using department are considerations in evaluating bids. Pricing is NOT the only criteria for making a recommendation. The Fort Bend County Purchasing Department reserves the right to contact any bidder, at any time, to clarify, verify or request information with regard to any bid.
- 1.21 **Inspections:** Fort Bend County reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the using department. If a bidder cannot furnish a sample of a bid item, where applicable, for review, or fails to satisfactorily show an ability to perform, the County can reject the bid as inadequate.
- 1.22 **Testing:** Fort Bend County reserves the right to test equipment, supplies, material and goods bid for quality, compliance with specifications and ability to meet the needs of the user. Demonstration units must be available for review. Should the goods or services fail to meet requirements and/or be unavailable for evaluation, the bid is subject to rejection.
- 1.23 **Disqualification of Bidder:** Upon signing this bid document, a bidder offering to sell supplies, materials, services, or equipment to Fort Bend County certifies that the bidder has not violated the antitrust laws of this state codified in section 15.01, et seq., Business & Commerce Code, or the federal antitrust laws, and has not communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. Any or all bids may be rejected if the County believes that collusion exists among the bidders. Bids in which the prices are obviously unbalanced may be rejected. If multiple bids are submitted by a bidder and after the bids are opened, one of the bids is withdrawn, the result will be that all of the bids submitted by that bidder will be withdrawn; however, nothing herein prohibits a vendor from submitting multiple bids for different products or services.

Initials of Bidder: SH

- 1.24 Awards: Fort Bend County reserves the right to award this contract on the basis of lowest and best bid in accordance with the laws of the State of Texas, to waive any formality or irregularity, to make awards to more than one bidder, to reject any or all bids. In the event the lowest dollar bidder meeting specifications is not awarded a contract, the bidder may appear before the Commissioners Court and present evidence concerning his responsibility.
- 1.25 Assignment: The successful vendor may not assign, sell or otherwise transfer this contract without written permission of Fort Bend County Commissioners Court.
- 1.26 Term Contracts: If the contract is intended to cover a specific time period, said time will be given in the specifications under scope.
- 1.27 Maintenance: Maintenance required for equipment bid should be available in Fort Bend County by a manufacturer authorized maintenance facility. Costs for this service shall be shown on the bid sheet as requested or on a separate sheet, as required. If Fort Bend County opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and should be priced accordingly.
- 1.28 Contract Obligation: Fort Bend County Commissioners Court must award the contract and the County Judge or other person authorized by the Fort Bend County Commissioners Court must sign the contract before it becomes binding on Fort Bend County or the bidders. Department heads are not authorized to sign agreements for Fort Bend County. Binding agreements shall remain in effect until all products and/or services covered by this purchase have been satisfactorily delivered and accepted.
- 1.29 Title Transfer: Title and Risk of Loss of goods shall not pass to Fort Bend County until Fort Bend County actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 4:00 p.m., Monday through Friday. Bidders are advised to consult the using department for instructions. The place of delivery shall be shown under the "Special Requirement" section of this bid document and/or on the Purchase Order as a "Ship To:" address.

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- 1.30 **Purchase Order and Delivery:** The successful bidder shall not deliver products or provide services without a Fort Bend County Purchase Order, signed by an authorized agent of the Fort Bend County Purchasing Department. The fastest, most reasonable delivery time shall be indicated by the bidder in the proper place on the bid sheet. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped F.O.B. inside delivery unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the appropriate room or place designated by the using department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach, which must be rectified prior to expiration of the time for performance. Failure to rectify within the performance period will be considered cause to reject future deliveries and cancellation of the contract by Fort Bend County without prejudice to other remedies provided by law. Where delivery times are critical, Fort Bend County reserves the right to award accordingly.
- 1.31 **Contract Extension:** Extensions may be made only by written agreement between Fort Bend County and the bidder. Any price escalations are limited to those stated by the bidder in the original bid.
- 1.32 **Termination:** Fort Bend County reserves the right to terminate the contract for default if Seller breaches any of the terms therein, including warranties of bidder or if the bidder becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies, which Fort Bend County may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to Fort Bend County's satisfaction and/or to meet all other obligations and requirements. Contracts may be terminated without cause upon thirty (30) days written notice to either party unless otherwise specified.
- 1.33 **Recycled Materials:** Fort Bend County encourages the use of products made of recycled materials and shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. Fort Bend County will be the sole judge in determining product preference application.
- 1.34 **Interlocal Participation:** Additional governmental entities, within Fort Bend County, may purchase from this bid. Vendor agrees to accept purchase orders from those participating entities and to invoice each entity separately.

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- 1.35 Escalation Clause: Successful bidder may apply for a price increase to the Fort Bend County Commissioners Court. Price increase will be the amount increased to the vendor from his supplier. Written documentation of the increase must be provided to the Purchasing Agent. No application for a price increase may be submitted within the first four (4) months of this contract. Increases of more than 25% of the original bid price will not be considered.

2.0 TERMS AND CONDITIONS:

- 2.1 Seller to Package Goods: Seller will package goods in accordance with good commercial practice. Each delivery container shall be clearly and permanently marked as follows (a) Seller's name and address; (b) Consignee's name, address and purchase order number and the bid number if applicable; (c) Container number and total number of containers (e.g. box 1 of 4 boxes); and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform to requirements of common carriers and any applicable specifications. Fort Bend County's count or weight shall be final and conclusive on shipments not accompanied by packing list.
- 2.2 Shipment Under Reservation Prohibited: Seller is not authorized to ship goods under reservation and no tender of a bill of lading will operate as a tender of goods.
- 2.3 Title and Risk of Loss: The title and risk of loss of the goods shall not pass to the County until a County employee actually receives and takes possession of the goods at the point or points of delivery.
- 2.4 Delivery Terms: F.O.B. Destination Freight Prepaid, Inside Delivery, unless delivery terms are specified otherwise on Purchase Order.
- 2.5 No Replacement of Defective Tender: Every tender or delivery of goods must fully comply with all provisions of the Purchase Order as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender.
- 2.6 Place of Delivery: The place of delivery shall be that set forth in the block of the purchase order entitled "Ship To". Any change thereto shall be effective by modification as provided for in Clause number 2.20 "Modifications", hereof. The terms of this agreement are "no arrival, no sale", at the discretion of Fort Bend County.

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2.7 Invoices and Payments:

2.7.1 Seller shall submit separate invoices, in duplicate. Invoices shall indicate the purchase order number and the bid number if applicable. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight waybill when applicable should be attached to the invoice.

2.7.2 Fort Bend County's obligation is payable only and solely from funds available for the purpose of this purchase. Lack of funds shall render the order null and void to the extent funds are not available and any delivered but unpaid goods will be returned to Seller by the county.

2.7.3 Do not include Federal Excise, State, or City Sales Tax. Fort Bend County is a tax-exempt governmental entity.

2.8 Gratuities: Fort Bend County may, by written notice to the Seller, cancel any order without liability, if it is determined by the County that gratuities, in the form of entertainment, gifts, or otherwise were offered or given by the Seller, or any agent or representative of the Seller to any officer or employee of Fort Bend County with a view toward securing an order. In the event an order is canceled by the County pursuant to this provision, the County shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.

2.9 Special Tools and Test Equipment: If the price stated on the face of an order includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filing this order, such special tooling equipment and any process sheets related thereto shall become the property of the County and to the extent feasible shall be identified by the Seller as such.

2.10 Warranty/Price:

2.10.1 The price to be paid by the County shall be that contained in Seller's quote or bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by an order for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty the prices of the items shall be reduced to the Seller's current prices on orders by others. Fort Bend County may cancel this contract without liability.

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- 2.10.2 The Seller warrants that no person or selling agency has been employed or retained to solicit or secure any County order based upon any agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. A breach or violation of this warranty gives the County the right, in addition to any other right or rights, to cancel this contract without liability.
- 2.11 **Warranty Product:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render an order voidable at the option of the County. Seller warrants that the goods furnished will conform to the specifications, drawings, and description listed in the bid invitation and purchase order as applicable, and to the sample(s) furnished by Seller if any. In the event of a conflict between the specifications, drawings, and descriptions, the specifications shall govern.
- 2.12 **Safety Warranty:** Seller warrants that the product sold to Fort Bend County shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, the County may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within 10 days, correction made by the County will be at Seller's expense.
- 2.13 **No Warranty by Fort Bend County Against Infringements:** As part of a contract for sale Seller agrees to ascertain whether goods manufactured in accordance with the specifications will give rise to the rightful claim of any third person by way of infringement. Fort Bend County makes no warranty that the production of goods according to the specification will not give rise to such a claim and in no event shall Fort Bend County be liable to Seller for indemnification in the event the Seller is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement will result, he will notify Fort Bend County to this effect in writing within two days after the receiving Purchase Order. If the County does not receive notice and is subsequently held liable for the infringement, Seller will defend and save the County harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement, this contract shall be null and void except that the County will pay Seller the reasonable cost of his search as to infringements.
- 2.14 **Right of Inspection:** The County shall have the right to inspect the goods at delivery before accepting them.

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- 2.15 Cancellation: Fort Bend County shall have the right to cancel for default all or any part of the undelivered portion of an order if Seller breaches any of the terms hereof including warranties of Seller, or if the Seller becomes insolvent or files for protection under the bankruptcy laws. Such rights of cancellation are in addition to and not in lieu of any other remedies, which Fort Bend County may have in law or equity.
- 2.16 Termination: The performance of work under a Purchase Order may be terminated in whole or in part by the County in accordance with this provision. Termination of work there under shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Fort Bend County set forth in Clause 15 herein.
- 2.17 Force Majeure: Force Majeure means a delay encountered by a party in the performance of its obligations under this Agreement, which is caused by an event beyond the reasonable control of that party. Without limiting the generality of the foregoing, "Force Majeure" shall include but not be restricted to the following types of events: acts of God or public enemy; acts of governmental or regulatory authorities; fires, floods, epidemics or serious accidents; unusually severe weather conditions; strikes, lockouts, or other labor disputes; and defaults by subcontractors. In the event of a Force Majeure, the affected party shall not be deemed to have violated its obligations under this Agreement, and the time for performance of any obligations of that party shall be extended by a period of time necessary to overcome the effects of the Force Majeure, provided that the foregoing shall not prevent this Agreement from terminating in accordance with the termination provisions. If any event constituting a Force Majeure occurs, the affected party shall notify the other parties in writing, within twenty-four (24) hours, and disclose the estimated length of delay, and cause of the delay.
- 2.18 Assignment-Delegation: No right or interest in an order shall be assigned or delegation of any obligation made by Seller without the written permission of Fort Bend County. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.
- 2.19 Waiver: No claim or right arising out of a breach of any contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waived or renunciation is supported by consideration and is in writing signed by the aggrieved party.
- 2.20 Modification: A Purchase Order can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

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- 2.21 **Parol Evidence:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any terms rendered under this agreement and shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to control.
- 2.22 **Applicable Law:** This agreement shall be governed by the Uniform Commercial Code. Whenever the term "Uniform Commercial Code" is used it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas and in effective on the date of the purchase order.
- 2.23 **Advertising:** Seller shall not advertise or publish, without the County's prior consent the fact that Fort Bend County has entered into any contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state, or local government.
- 2.24 **Right to Assurance:** Whenever the County in good faith has reason to question the other party's intent to perform. The County may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the County may treat this failure as an anticipatory repudiation of the contract.
- 2.25 **Venue:** Both parties agree that venue for any litigation arising from this contract shall lie in Richmond, Fort Bend County, Texas.
- 2.26 **Prohibition Against Personal Interest in Contracts:** No officer or employee of the County shall have a financial interest, direct or indirect, in any contract with the County, or shall be financially interested, directly or indirectly, in the sale to the County of any land, materials, supplies, or service, except on behalf of the County as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee guilty thereof shall be subject to disciplinary action under applicable laws, statutes and codes of the State of Texas. Any violation of this section, with the knowledge, expressed or implied of the person or corporation contracting with the County shall render the contract involved voidable by the County Commissioners Court.

3.0 SCOPE:

It is the intent of Fort Bend County to contract with one (1) vendor to provide a fuel treatment program, which meets or exceeds the specifications contained herein.

Initials of Bidder: SH

4.0 PERIOD OF CONTRACT:

This contract is for the period ending **31 March 2010**, renewable annually for four (4) years (through **31 March 2014**) under the same terms and conditions if mutually agreeable by both parties. This contract may be terminated by either party for any reason by giving thirty (30) days written notice of intent to terminate.

5.0 BID FORM COMPLETION:

Fill out, initial each page, SIGN CONTRACT SHEET, and return to the Fort Bend County Purchasing Department ONE (1) complete bid form. An authorized representative of the bidder MUST sign the contract sheet. The contract will be binding only when signed by the County Judge, Fort Bend County and a purchase order authorizing the item(s) desired has been issued. The use of liquid paper is NOT acceptable and may result in the disqualification of bid. If an error is made, vendor MUST draw a line through error and initial each change.

6.0 GENERAL INFORMATION:

- 6.1 Fuel treatment program for centralized fueling station located at 2751 Klauke Road, Rosenberg Texas 77471.
- 6.2 Bid price is FOB Fort Bend County.

7.0 VENDOR SELECTION:

This contract will be awarded to the overall lowest bidder meeting specifications.

8.0 POINT OF CONTACT:

Point of contact will be Debbie Kaminski, CPPB, Assistant County Purchasing Agent at (281) 341-8643 or kaminskid@co.fort-bend.tx.us.

9.0 SPECIFICATIONS FOR GASOLINE ADDITIVE:

This standard is intended to specify the requirements necessary for enhancing the overall performance and stability of gasoline and will be considered the mitigating factor in the selection and procurement process of a fuel gasoline additive and accompanying product and service contributions.

- 9.1 Scope
 - 9.1.1 Gasoline Conditioner and Performance Improver
 - 9.1.1.1 Performance Ingredients
 - 9.1.1.2 Test Criteria and Performance Requirements
 - 9.1.1.3 Dilution / Mix Ratios

Initials of Bidder: SH

9.1.1.4 Packaging Requirements

9.1.2 Gasoline biocide/fungicide

9.1.2.1 Gasoline testing

9.1.2.2 Submission of Proposal

9.2 Gasoline Conditioner and Performance Improver:

The product shall be added to Gasoline bulk storage or directly to Gasoline reservoir for enhanced engine performance through cleanliness, extended component and Gasoline storage life through accepted testing methodology as sited and reduced emissions and increased mileage or hours per gallon as tested per unit upon acceptance. The Gasoline Conditioner and Performance Improver must not contain any Methyl Ethyl Ketone (MEK).

9.2.1 Performance Ingredients

The product must contain all of the following ingredients in order to be considered.

9.2.1.1 Detergents / Dispersants: Cleans the Gasoline system and components and suspends deposits

9.2.1.2 Rust and Corrosion Inhibitors: Inhibits rust and corrosion in the system

9.2.1.3 Oxidation Inhibitors: Inhibits the formation of gum and varnish and extends Gasoline life

9.2.1.4 Pour Point Depressants: Reduces Gasoline pour point temperature

9.2.1.5 Lubricants: Enhances the lubrication value of the Gasoline which reduces system wear

To ensure that the supplied product contains the prescribed additives package, and that said additives are in the necessary concentrations to provide the required benefits – all proposed products must meet the following test criteria and performance requirements.

9.2.2 Test Criteria and Performance Requirements

All of the tests described below must be carried out and their values to be within the prescribed limits.

9.2.2.1 Cleanliness - tests used to determine the ability of the additive to clean direct injectors and keep them clean during normal and severe operation.

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- 9.2.2.2 *Chrysler 2.2L PFI Keep Clean Test: “Street gasoline - Regular Gasoline with additive Base line case not to exceed 5% fouling in less than 2000 miles*
- 9.2.2.3 *Chrysler 2.2L PFI Keep Clean Test: Base Line Top Treated Provide Results Well below passing limit even after 5,000 miles One Tank” (300 mile) PFI Clean-Up “Base line” case (commercial Gasoline with LAC additive) cannot clean injectors to be below 5% fouling in 300 miles.*
- 9.2.2.4 *IVD Keep Clean Improvement: BMW 318i IVD Test - 5K Mile Commercial RUL (LAC) Improvement in keep clean performance of street gasoline - <100mg deposit*
- 9.2.2.5 *IVD Clean-Up Benefit: BMW 318i IVD Test , 13K Mile Dirty-Up on Commercial RUL (LAC), 10K Mile Clean-Up on Same: Average 15% deposit removal*
- 9.2.2.6 *Rapid (One tank) IVD Clean-up: 5K Mile Dirty-Up on Commercial RUL (LAC) - “Street gasoline” 300 Mile Clean-Up on Same Gasoline with rapid clean up benefit across different sensitive vehicles to provide less than 400mg average intake valve deposit build-up.*
- 9.2.2.7 *Shall provide excellent Injector Plugging DIG Detergency Performance – minimum of 85% LTFT Improvement*
- 9.2.3 **Rust and Corrosion Protection** – determination of the ability of the Fuel Gasoline additive to prevent the oxidation of metal components.
 - 9.2.3.1 *Copper Corrosion: ASTM D 130 determines the ability of the Gasoline additive to inhibit corrosion of copper. The acceptable value is 1A on a scale of 1A being most effect at inhibiting corrosion to 4D being least effective at inhibiting copper corrosion.*
 - 9.2.3.2 *Rust Prevention: ASTM D 665 determines the ability of the Gasoline additive to inhibit rust. The Fuel Gasoline and additive mixture must pass this test.*
- 9.2.4 **Pour Point Reduction** – determination of the ability of the Fuel Gasoline additive to lower the point temperature of Fuel Gasoline.
 - 9.2.4.1 *Pour Point Depression: ASTM D 1177 determines the ability of the Fuel Gasoline additive to reduce the pour point temperature of the Gasoline by modifying the crystal formation. The additive must lower the pour point by no less than 20°F.*

9.3 Dilution and Mix Ratio:

The product shall be administered at the rate of 1 gallon of treatment to 1000 gallons of Gasoline to bulk storage tanks or on-board Gasoline tanks to achieve enhanced engine performance, extended component and Gasoline storage life, reduced emissions, and increased mileage or hours per gallon.

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9.4 Packaging Requirements

The product will be made available in 1 pint, 1 quart, 1 gallon; 2.5 gallon, 5 gallon, 7 gallon, 20 gallon, 35 gallon, 55 gallon, and 350-gallon containers in DOT approved package with directions for use and all necessary safety precautions.

9.5 Gasoline Biocide/Fungicide

A Gasoline biocide and fungicide will be provided at no charge to the user. It shall be a mixture of two active amine compounds that will function in the Gasoline and water phase respectfully. The product should be in a stable form and be soluble in oil. The biocide/fungicide should be used to inhibit microbial growth in all types of hydrocarbon Gasoline and achieve a complete "kill" of all microbes within 8 hours and be applied at 1 gallon of treatment to 4000 gallons of Fuel Gasoline to bulk storage tanks or on-board Fuel Gasoline tanks.

9.6 Value Added Contributions

The vendor must be able to readily supply the following value added contributions at no additional cost:

9.6.1 On-Site Lubrication Training:

- 9.6.1.1 General Lubrication
- 9.6.1.2 Lubrication & Application
- 9.6.1.3 Gear and Transmission Lubrication
- 9.6.1.4 Hydraulic Fluid
- 9.6.1.5 Motor Oil
- 9.6.1.6 Oil Analysis Training

9.6.2 Gasoline Testing: Fuel Gasoline testing will be carried out by the supplier on a routine basis to establish the following:

- 9.6.2.1 Culture and Analysis of bacteria concentration
- 9.6.2.2 Culture and Analysis of fungus concentration
- 9.6.2.3 Test results will be made available to the Gasoline management team along with written maintenance recommendations from a recognized Gasoline-testing laboratory. Samples to be shipped via ground transport with DOT approved packaging and procedures

9.6.3 Inventory Management & Tagging Products and Suggested Procedures

9.6.4 Internet Based Equipment Maintenance Management Software

The application should allow the user to:

- 9.6.4.1 Manage Equipment Costs

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- 9.6.4.2 Schedule unlimited maintenance procedures and work orders on a daily, weekly, monthly, quarterly or annual basis
 - 9.6.4.3 Track Gasoline delivery and usage
 - 9.6.4.4 Manage equipment inventory
 - 9.6.4.5 Create and manage work orders
 - 9.6.4.6 Track and Analyze equipment and part service, reliability and failure history.
 - 9.6.4.7 Analyze historical maintenance issues and predict future events
 - 9.6.4.8 Locate maintenance, equipment or part "hotspots"
 - 9.6.4.9 Net Based accessible from any computer at any time
 - 9.6.4.10 Three levels of administrative access provides control information
- 9.6.5 Plant Survey & Inventory Consolidation Recommendations
- 9.6.5.1 Equipment Efficiency Audits
 - 9.6.5.2 Reliability Performance Assessments
 - 9.6.5.3 Lubrication Equipment Assessments
- 9.6.6 Value Recognition Reports: Reliability reports and cost reduction based on analysis of downtime, labor costs, and parts replacements as it relates to products and services provided by lubricant and supplies.
- 9.6.7 Solar Powered Direct Inject Diesel Fuel Improver Injector
- 9.6.7.1 Injects the correct amount of diesel fuel improver every time diesel fuel is delivered.
 - 9.6.7.2 Fuel treatment is automatically added during the fuel delivery to ensure thorough mixing.
 - 9.6.7.3 Reduces waste by delivering a precise amount of fuel improver.
 - 9.6.7.4 Requires no electrical or compressed air connections to operate. Allows for remote installation.
 - 9.6.7.5 Allows for the most efficient and non-intrusive installation for each customer site.
 - 9.6.7.6 Durable and Reliable and able to operate under high flow and high pressure conditions.

10.0 SPECIFICATIONS FOR DIESEL ADDITIVE:

This standard is intended to specify the requirements necessary for enhancing the overall performance and stability of #1 and/or #2 diesel fuel and will be considered the mitigating factor in the selection and procurement process of a diesel fuel additive and accompanying product and service contributions.

Initials of Bidder: SH

10.1 Scope

10.1.1 Diesel Fuel Conditioner and Performance Improver

- 10.1.1.1 Performance Ingredients
- 10.1.1.2 Test Criteria and Performance Requirements
- 10.1.1.3 Dilution / Mix Ratios
- 10.1.1.4 Packaging Requirements

10.1.2 Diesel fuel biocide/fungicide

10.1.3 Diesel fuel testing

10.1.4 Submission of Proposal

10.2 Referenced Documents

- 10.2.1 Cummins L10 Direct Injector Cleanliness Test
- 10.2.2 Peugeot XUD-0 Indirect Injector Cleanliness Test
- 10.2.3 ASTM D 613 Diesel Engine Test for Cetane Number
- 10.2.4 ASTM D 4046 Diesel Fuel Cetane Number Determination
- 10.2.5 ASTM D 976 Calculated Cetane Index Determination
- 10.2.6 ASTM D 1401 Water Separation Test
- 10.2.7 ASTM D 130 Copper Corrosion Test
- 10.2.8 ASTM D 665 Rust Test
- 10.2.9 ASTM D 525 Oxidation Test
- 10.2.10 ASTM D 1177 Pour Point Test
- 10.2.11 ASTM D 6078 Lubricity Test
- 10.2.12 ASTM 6079 Wear Test

10.3 Diesel Fuel Conditioner and Performance Improver

The product shall be added to diesel fuel bulk storage or directly to fuel reservoir for enhanced engine performance, extended component and fuel storage life, reduced emissions, and increased mileage or hours per gallon.

10.3.1 Performance Ingredients

The product must contain all of the following ingredients in order to be considered.

- 10.3.2.1 Detergents / Dispersants: Cleans the fuel system and components and suspends deposits
- 10.3.2.2 Cetane Improver: Reduces fuel ignition delay time and produces a cleaner burn pattern
- 10.3.2.3 Demulsifiers: Separates moisture (water) from fuel and prevents contamination

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- 10.3.2.4 Rust and Corrosion Inhibitors: Inhibits rust and corrosion in the system
- 10.3.2.5 Oxidation Inhibitors: Inhibits the formation of gum and varnish and extends fuel life
- 10.3.2.6 Pour Point Depressants: Reduces fuel pour point temperature
- 10.3.2.7 Lubricants: Enhances the lubrication value of the fuel which reduces system wear
- 10.3.2.8 Metal Deactivators: Counteracts dissimilar metal reactions in fuel systems
- 10.3.2.9 Cloud Point Reducers: Lowers wax formation temperature points

The product must not contain any alcohol and/or ingredients, which will emulsify water in the fuel.

To ensure that the supplied product contains the prescribed additives package, and that said additives are in the necessary concentrations to provide the required benefits – all proposed products must meet the following test criteria and performance requirements.

10.4 Test Criteria and Performance Requirements

All of the tests described below must be carried out and their values to be within the prescribed limits.

10.4.1 Diesel Fuel Injector Cleanliness - tests used to determine the ability of the additive to clean direct injectors and keep them clean during normal and severe operation.

10.4.1.1 *Direct Injection*: Cummins L-10 Injector test performance value shall not exceed 10 where an engine with 0 hours = 1 and an engine which has experienced normal operation = 30.

10.4.1.2 *Indirect Injection*: Peugeot XUD-0 Indirect Injector Cleanliness test performance value shall have greater than a 10% increase in average flow in comparison to the reference fuel and should be greater than a 40% increased flow when compared to untreated fuel after 19,000 miles of operation.

10.4.2 Cetane Number Improvement – determination of the ignition quality of diesel fuel, which measures ignition delay, compared to primary reference fuels. The higher the Cetane Number, the easier an engine will start, producing less white smoking and diesel knock, and increased burn efficiency resulting in improved performance and mileage. The acceptable cetane improvement at various mix ratios is noted in Table 1 according to the diesel fuel's API Gravity.

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Table 1:

| <u>Fuel API Gravity</u> | <u>Cetane Rating</u> | <u>Mix Ratio</u> |
|-------------------------|----------------------|------------------|
| 32.2 | 38 | Untreated |
| 32.2 | 41.5 | 1:1000 |
| 32.2 | 42 | 2:1000 |
| 40.7 | 52 | Untreated |
| 40.7 | 56 | 1:1000 |
| 40.7 | 57.5 | 2:1000 |

10.4.2.1 *Ignition Delay*: ASTM D 613 Cetane Number test establishes the Cetane Number of the fuel with Cetane Improver Additive compared with that of standard reference fuels with blends of n-cetane. The cetane content that matches the ignition delay of the test fuel is the Cetane Number. The diesel fuel additive should increase the Cetane Number by at least what is dictated in Table 1.

10.4.2.2 *Spectrophotometry*: ASTM D 4046 test establishes the content of 2-ethyl-hexyl-nitrate in order to determine the appropriate mix ratio of the Cetane Number improvement additive. The diesel fuel additive should increase the Cetane Number by at least what is dictated in Table 1.

10.4.2.3 *Calculated Cetane Index*: ASTM D 976 test establishes the Cetane Number by using the density and mid-boiling point of the treated fuel and a reference fuel. A nomograph is used to calculate the Cetane Index. The diesel fuel additive should increase the Cetane Rating at least what is dictated in Table 1.

10.4.3 Fuel and Water Separation – determination of the ability of the diesel fuel additive to effectively separate water from the diesel fuel while in bulk storage or in the fuel reservoir.

10.4.3.1 *Fuel/Water Demulsibility*: ASTM D 1401 at 77°F, diesel fuel and water mixture should separate immediately.

10.4.4 Rust and Corrosion Protection – determination of the ability of the diesel fuel additive to prevent the oxidation of metal components.

10.4.4.1 *Copper Corrosion*: ASTM D 130 determines the ability of the diesel fuel additive to inhibit corrosion of copper. The acceptable value is 1A on a scale of 1A being most effect at inhibiting corrosion to 4D being least effective at inhibiting copper corrosion.

10.4.4.2 *Rust Prevention*: ASTM D 665 determines the ability of the diesel fuel additive to inhibit rust. The diesel fuel and additive mixture must pass this test.

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10.4.5 Oxidation and Stability – determination of the ability of the diesel fuel additive to reduce or prevent the oxidation of the diesel fuel while in bulk storage or while in the fuel reservoir.

10.4.5.1 *Bomb Oxidation Stability*: ASTM D 525 determines the ability of the diesel fuel additive to prevent the oxidation of diesel fuel. The required minimum value for the diesel fuel additive in a reference diesel fuel is 250 minutes at 100°C at 100psi oxygen.

10.4.6 Pour Point Reduction – determination of the ability of the diesel fuel additive to lower the point temperature of diesel fuel.

10.4.6.1 *Pour Point Depression*: ASTM D 1177 determines the ability of the diesel fuel additive to reduce the pour point temperature of the diesel fuel by modifying the wax crystal formation. The additive must lower the pour point by no less than 20°F.

10.4.7 Lubrication Increase – determination of the diesel additive to increase the overall lubrication characteristics of the diesel fuel.

10.4.7.1 *Lubricity Modification*: ASTM D 6078 BOCLE Test determines the ability of the diesel fuel additive to increase the load carrying capabilities of the reference diesel fuel. The diesel fuel additive should increase the load to at least 300 grams.

10.5 Dilution and Mix Ratio

The product shall be administered at the rate of 1 gallon of treatment to 1000 gallons of diesel fuel to bulk storage tanks or on-board diesel fuel tanks to achieve enhanced engine performance, extended component and fuel storage life, reduced emissions, and increased mileage or hours per gallon.

10.6 Packaging Requirements

The product will be made available in 1 pint, 1 quart, 1 gallon; 2.5 gallon, 5 gallon, 7 gallon, 20 gallon, 35 gallon, 55 gallon, and 350-gallon containers in DOT approved package with directions for use and all necessary safety precautions.

10.7 Diesel Fuel Biocide/Fungicide

A diesel fuel biocide and fungicide will be provided at no charge to the user. It shall be a mixture of two active amine compounds that will function in the fuel and water phase respectfully. The product should be in a stable form and be soluble in oil. The biocide/fungicide should be used to inhibit microbial growth in all types of hydrocarbon fuel and achieve a complete “kill” of all microbes within 8 hours and be applied at 1 gallon of treatment to 4000 gallons of diesel fuel to bulk storage tanks or on-board diesel fuel tanks.

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10.8 Diesel Fuel Testing

Diesel fuel testing will be carried out at no additional charge by the supplier on a routine basis to establish the following:

- 10.8.1 Culture and Analysis of bacteria concentration
- 10.8.2 Culture and Analysis of fungus concentration
- 10.8.3 Analysis of water concentration by Carl Fisher Method
- 10.8.4 Analyze base cetane level determined by ASTM D 613
- 10.8.5 Treat rate determination determined by ASTM D 613
- 10.8.6 Cetane Improvement after treatment determined by ASTM D 613

Test results will be made available to the fuel management team along with written maintenance recommendations from a recognized fuel-testing laboratory.

10.9 Value Added Contributions

The supplier must be able to readily supply the following value added contributions at no additional cost:

10.9.1 On-Site Lubrication Training

- 10.9.1 General Lubrication
- 10.9.2 Grease Lubrication & Application
- 10.9.3 Gear and Transmission Lubrication
- 10.9.4 Hydraulic Fluid
- 10.9.5 Motor Oil
- 10.9.6 Oil Analysis Training

10.9.2 Inventory Management & Tagging Products and Suggested Procedures

10.9.3 Internet Based Equipment Maintenance Management Software

The application should allow the user to:

- 10.9.3.1 Manage Equipment Costs
- 10.9.3.2 Schedule unlimited maintenance procedures and work orders on a daily, weekly, monthly, quarterly or annual basis
- 10.9.3.3 Track fuel delivery and usage
- 10.9.3.4 Manage equipment inventory
- 10.9.3.5 Create and manage work orders
- 10.9.3.6 Track and Analyze equipment and part service, reliability and failure history.
- 10.9.3.7 Analyze historical maintenance issues and predict future events

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- 10.9.3.8 Locate maintenance, equipment or part "hotspots"
- 10.9.3.9 Net Based accessible from any computer at any time
- 10.9.3.10 Three levels of administrative access provides control on information

10.9.4 Plant Survey & Inventory Consolidation Recommendations

- 10.9.4.1 Equipment Efficiency Audits
- 10.9.4.2 Reliability Performance Assessments
- 10.9.4.3 Lubrication Equipment Assessments

10.9.5 Value Recognition Reports

- 10.9.5.1 Reliability reports and cost reduction based on analysis of downtime, labor costs, parts replacements as it relates to products and services provided by lubricant and supplies.

10.9.6 Solar Powered Direct Inject Diesel Fuel Improver Injector

- 10.9.6.1 Injects the correct amount of diesel fuel improver every time diesel fuel is delivered.
- 10.9.6.2 Fuel treatment is automatically added during the fuel delivery to ensure thorough mixing.
- 10.9.6.3 Reduces waste by delivering a precise amount of fuel improver.
- 10.9.6.4 Requires no electrical or compressed air connections to operate. Allows for remote installation.
- 10.9.6.5 Allows for the most efficient and non-intrusive installation for each customer site.
- 10.9.6.6 Durable and Reliable and able to operate under high flow and high pressure conditions.

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11.0 PRICING FOR GASOLINE ADDITIVE:

Pricing for items must meet specifications in section 9.0:

| | |
|------------------------|-----------------------------|
| Additive | \$ <u>36.95</u> /gallon |
| Biocide/fungicide | \$ <u>No Charge</u> /gallon |
| Fuel testing, per test | \$ <u>No Charge</u> /each |
| Solar Pump | \$ <u>No Charge</u> /each |

12.0 PRICING FOR DIESEL ADDITIVE:

Pricing for items must meet specifications in section 10.0:

| | |
|------------------------|-----------------------------|
| Additive | \$ <u>44.50</u> /gallon |
| Biocide/fungicide | \$ <u>No Charge</u> /gallon |
| Fuel testing, per test | \$ <u>No Charge</u> /each |
| Solar Pump | \$ <u>No Charge</u> /each |

Initials of Bidder: SH

CONTRACT SHEET

THE STATE OF TEXAS
COUNTY OF FORT BEND

This memorandum of agreement made and entered into on the 28th day of April, 2009, by and between Fort Bend County in the State of Texas (hereinafter designated County), acting herein by County Judge Robert Hebert, by virtue of an order of Fort Bend County Commissioners Court, and Certified Labs
(company name)
(hereinafter designated Contractor).

WITNESSETH:

The Contractor and the County agree that the bid and specifications for the **Fuel Treatment Program** which are hereto attached and made a part hereof, together with this instrument and the bond (when required) shall constitute the full agreement and contract between parties and for furnishing the items set out and described; the County agrees to pay the prices stipulated in the accepted bid.

It is further agreed that this contract shall not become binding or effective until signed by the parties hereto and a purchase order authorizing the items desired has been issued.

Executed at Richmond, Texas this 28th day of April 2009.

By: [Signature] Fort Bend County, Texas
County Judge

By: [Signature]
Signature of Contractor

By: Shea Holder Sales Representative
Printed Name and Title