Decatur ISD
FUEL Contract
11/16/2026

The attached fuel prices for the upcoming contract has been received.

The item is listed as 9.D. as TASB Fuel Contract.

The recommendation is to delegate to the Superintendent to approve the contact.

According to email communication between TASB and Transportation,

> **"that is all that needs to be signed at this time. They will send out an actual contract for signatures at a later date."**

Accordingly, the actual contract will arrive at a later date but the commitment needs to be approved to be sent to TASB.

The recommendation is to delegate to the Superintendent authority to sign a fuel contract up to one year.

LETTER OF COMMITMENT TO TASB ENERGY COOPERATIVE FIXED-RATE TRANSPORTATION FUEL POOL

Re: **Commitment to Participate in TASB Energy Cooperative Fixed-Rate Transportation Fuel Pool**

Commitment Period: Date of execution of this Letter of Commitment through December 31, 2026
Fixed-Rate Period: January 1, 2027 through May 31, 2027

The independent school district (ISD) or other political subdivision listed below ("Entity") executes this Letter of Commitment and the attached Annex 1 and Ratable Schedule (collectively "Commitment Agreement") to the TASB Energy Cooperative ("Cooperative"). Entity hereby commits to purchase gasoline and/or diesel fuel (collectively "Fuel") through the Cooperative's Fixed-Rate Transportation Fuel Program, specifically the fuel pool organized for the Fixed-Rate Period set forth above ("Pool"), from the Selected Vendor (as described and provided for herein) in the volume and under the terms set forth in this Commitment Agreement.

Entity acknowledges that the Cooperative, through a competitive procurement process, approved multiple vendors who may be requested to bid on specific fixed-rate fuel pools established by the Cooperative. The vendor requested to bid on this pool will be Mansfield Oil Company. Working with and through its administrator, the Texas Association of School Boards, Inc. (TASB), the Cooperative will request executable pricing for the Pool and will award the Selected Vendor of the Pool if the Cooperative or its designee determines that the vendor's submitted pricing provides the best value for Entity and other Pool participants. (In this Agreement, the awarded vendor for the Pool is referred to as "Selected Vendor.")

If the Cooperative establishes the Pool, Entity hereby commits to purchase its Fuel from the Selected Vendor, in accordance with this Commitment Agreement, provided that the Fuel price does not exceed the per gallon price set forth in Annex 1, which amount is at or below the per gallon cap established by the Cooperative.

This Commitment Agreement shall be binding upon Entity until the earlier of the end of Commitment Period set forth above, or the date the purchase agreement for the TASB Energy Cooperative fixed-rate transportation fuel program ("Purchase Agreement") is executed between Entity and the Selected Vendor. If, by the end of the Commitment Period, the Cooperative, directly or through TASB, does not choose a Selected Vendor, i.e., does not award the Pool to any vendor as the best value vendor for Entity and other Pool participants, then Entity is not required to purchase Fuel through the Pool and the Cooperative is not required to solicit additional bids to provide Fuel to Entity.

Entity understands and agrees to be bound by the following terms:

1. Entity represents and affirms that it is a member of the Cooperative and has previously executed, and has not otherwise terminated, its Interlocal Participation Agreement.

2. Entity represents and affirms that Entity (i) wishes to participate in the Pool, (ii) has reviewed the standard Purchase Agreement, a copy of which is attached hereto as Exhibit A, and (iii) shall execute the Purchase Agreement with the Selected Vendor under the terms selected and set forth in Annex 1 and the Ratable Schedule attached thereto.

3. In consideration for the services provided by the Cooperative and the Cooperative's administrator, TASB, in establishing and administering the fuel program and the Pool, Entity agrees that the Cooperative and TASB shall be jointly entitled to receive, and the Selected Vendor shall pay, a service fee based on the total number of gallons of Fuel purchased by Entity under the Purchase Agreement and calculated as five cents ($0.05) per gallon for the first 500,000 gallons delivered to Entity under the Purchase Agreement; two cents ($0.02) per gallon for gallons 500,001 through 1,000,000 delivered to Entity under the Purchase Agreement; and one-half cent ($0.005) per gallon for gallons 1,000,000 and above delivered to Entity under the Purchase Agreement..

4. Subject to Section 5 (regarding force majeure), Entity shall be in default of this Commitment Agreement if Entity fails to execute the Purchase Agreement approved by the Cooperative, provided that the per gallon cap set forth in Annex 1 has not been exceeded.

5. If, by reason of act of God, flood, storm, explosion, fire, labor trouble, strike, insurrection, riot, acts of the public enemy, pandemic or epidemic, or federal, state or local law, order, rule, or regulation affecting all similarly situated companies or entities, the Cooperative, Entity, or Selected Vendor is prevented from complying with any obligation, covenant, or condition in this Commitment Agreement without negligence and upon exercise of due diligence, the claiming party shall be relieved of the obligation to comply with such obligation or covenant and may terminate this Commitment Agreement without liability. Termination in accordance with this paragraph for a force majeure event shall not be deemed an event of default under this Commitment Agreement.

6. In the event of a default by Entity, either the Selected Vendor or the Cooperative (including the Cooperative's third-party designee) may provide Entity with notice of such default. If Entity has not cured such default within five (5) calendar days after receipt of such notice, then a breach will have occurred and the Cooperative and/or Selected Vendor may terminate this Commitment Agreement and obtain recourse as provided herein.

7. If the Selected Vendor terminates this Commitment Agreement because of Entity's default, the Selected Vendor may determine whether it has incurred direct damages, including, but not limited to, purchasing gasoline and diesel fuel in the wholesale market to supply Entity and any lost revenue, and shall calculate the direct, actual damages incurred, provided, however, that in no event shall such damages include or shall Entity be responsible for consequential, speculative, incidental, exemplary, punitive, special, or indirect damages (including lost profits). Further, the Selected Vendor shall have the duty to mitigate damages and to use commercially reasonable efforts to minimize any damages it may incur

as a result of Entity's default. Entity shall pay the damages within 45 days of receipt of a written damages calculation, accompanied by detailed supporting documentation, from the Selected Vendor. Neither the Cooperative nor TASB shall be liable or have any obligation to the Selected Vendor arising from or related to Entity's default under this Commitment Agreement.

8. TASB, on behalf of the Cooperative, has negotiated the terms of the attached standard Purchase Agreement with the Selected Vendor. However, neither TASB nor the Cooperative is providing specific expert or legal advice to Entity, and no agency, fiduciary, or attorney-client relationship exists between or among TASB, the Cooperative and Entity.

9. The person executing this Commitment Agreement on behalf of Entity represents that he or she has the authority to enter into this Commitment Agreement on behalf of Entity, that all necessary and prerequisite administrative procedures, policies, and laws have been complied with and that the governing body of Entity is bound by such execution of this Commitment Agreement.

10. This Commitment Agreement, together with the Interlocal Participation Agreement executed by Entity with the Cooperative, and any amendments thereto, represents the complete understanding of the parties. To the extent that there is a conflict between these agreements and any prior agreements or any oral or written communications, this Commitment Agreement shall control and take precedence over all prior agreements.

[Signature Follows on Next Page]

Entity, intending to be legally bound, does, acting through its authorized representative, affix its signature as evidence of its agreement.

ENTITY NAME:

Decatur ISD

Myles James
Printed Name

CFO
Title

By Entity's Authorized Representative:

Signature

Date

NOTICES AND INFORMATION

Entity Contact:	Myles James
Address:	307 S Cates St. Decatur, TX 76234
Telephone:	940-393-7104
E-mail:	Myles.james@decaturisd.us

ANNEX 1:

Binding Commitment to the TASB Energy Cooperative and its Selected Vendor
Fixed-Rate Transportation Fuel Pool

Entity agrees to purchase a total of 2000 **gallons of regular unleaded gasoline** and 17,000 **gallons of ultra-low sulfur diesel** during the Fixed-Rate Period of **January 1, 2027** through **May 31, 2027**, provided that the fixed price per gallon (excluding regulated delivery charges and applicable taxes) **does not exceed $3.70 per gallon for regular unleaded gasoline** and **does not exceed $4.80 per gallon for ultra-low sulfur diesel fuel.** Entity further agrees to use commercially reasonable efforts to lift each product at each delivery point in accordance with the attached Ratable Schedule and terms of the Purchase Agreement.

This Binding Commitment shall be in effect until **December 31, 2026**. For purposes of establishing the Pool, each Fuel type will be considered a separate commitment. Market conditions may result in the Pool for each Fuel type being established on different dates. If unfavorable market conditions prevent the Cooperative from achieving the per gallon cap price for any particular Fuel, a Pool may still be established for the remaining Fuel(s), if any, for which the cap price was achieved. Entity agrees that, if the cap price is achieved and a Pool established before the end of the Commitment Period, it will execute the designated Purchase Agreement on or before the start of the Fixed-Rate Period. If the Commitment Period ends within five business days of the start of the Fixed-Rate Period, Entity shall execute the Purchase Agreement within 10 business days of the end of the Commitment Period and prior to scheduling Entity's first Fuel delivery. The undersigned signatory represents and warrants that he/she has all necessary authorization and approvals to execute this Binding Commitment.

Entity: Decatur ISD

Signature: _____

Printed Name: Myles James

Title: CFO

RATABLE SCHEDULE

Delivery Month	Unleaded Gasoline (Gallons)	Ultra Low Sulfur Diesel (Gallons)
January 2027	500	4250
February 2027	500	4250
March 2027	500	4250
April 2027	500	4250
May 2027	500	4250
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Name of ISD or Political Subdivision: Decatur ISD

Signature: _____

Printed Name of Signatory: Myles James

Address: 307 S. Cates St. Decatur, Tx 76234

Telephone: 940-393-1704

Email: Myles.jmaes@decaturisd.us

Date: _____

Tank Address: 243 Buchanan Rd. Decatur, Tx 76234

_____

Delivery Contact: Tammy Slimp

Telephone: 940-393-7122

Purchasing Contact: Myles James

Telephone: 940-393-7104

PLEASE COMPLETE AND RETURN THE ENTIRE DOCUMENT TO THE COOPERATIVE'S ADMINISTRATOR BY SENDING VIA EMAIL TO:
adrian.porras@tasb.org

EXHIBIT A

PURCHASE AGREEMENT FORM

TRANSPORTATION FUEL PURCHASE AGREEMENT

FOR TASB ENERGY COOPERATIVE MEMBER PURCHASERS
FIXED-RATE TRANSPORTATION FUEL PROGRAM

PLEASE RETURN ACCEPTANCE BY FAX TO SELLER AT:

SELLER'S NAME:
SELLER'S ADDRESS:
SELLER'S TELEPHONE:
SELLER'S FAX:
SELLER'S EMAIL:

COOPERATIVE MEMBER PURCHASER'S NAME:
PURCHASER'S ADDRESS:
PURCHASER'S TELEPHONE:
PURCHASER'S FAX:
PURCHASER'S EMAIL:

Subject to the terms and conditions contained in this Transportation Fuel Purchase Agreement ("Agreement"), Purchaser agrees to purchase, and Seller agrees to sell, the following product(s) at the price and in the quantities as set forth in this Agreement. Seller and Purchaser may be referred to individually as a "Party" and collectively as "Parties" herein.

I. PRODUCTS AND PRICING

1. PRODUCT(S): _____

2. PRICE PER GALLON: _____ ("Contract Price")

3. VOLUME(S): _____ ("Contract Volume")

4. DELIVERY PERIOD: _____ through _____ ("Delivery Period")

5. DELIVERY ADDRESS [Insert full delivery address]: _____

6. CONTRACT TERM: This Agreement begins on the date it has been executed by both Parties and, unless terminated earlier as provided for herein, ends on the 90th day after the date of the last delivery.

7. OTHER PRODUCT AND PRICING INFORMATION:

RACK: ☐ Yes ☐ No **DELIVERED**: ☐ Yes ☐ No **F.O.B.**: Insert F.O.B address

GALLONS: ☐ Net ☐ Gross **DELIVERY FEES**: ☐ Included ☐ Excluded

TAXES: Excluded **SUPERFUND:** N/A **ENVIRONMENTAL FEES**: Excluded

Prices exclude all taxes and fees. Subject to Article II, Section 16, Purchaser is responsible for all applicable taxes and fees and Purchaser will be billed for all taxes and fees as a separate line item. Seller will not be responsible for

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any taxes or fees associated with any changes or modification in Purchaser's tax status or tax rates. Purchaser acknowledges that taxes and fees are subject to change from time to time without notice and, subject to Article II,

Section 16, Purchaser shall be responsible for all taxes and fees including, without limitation, superfund fees, whether existing at the time of execution of this Agreement or subsequently imposed.

8. FREIGHT IF BILLED SEPARATELY:

Purchaser will be billed at Seller's freight cost without markup. Freight rates are based on full transport loads of 7500 gallons for diesel fuel and 8500 gallons for gasoline. Prices per gallon will be adjusted as appropriate in cases where transport loads are less than the minimum gallon loads identified in this paragraph. In these cases, Purchaser will be billed the adjusted freight rate per gallon times the number of gross gallons received.

Seller shall use commercially reasonable efforts to minimize delivery costs. If freight rates have increased by 25 percent or more since Purchaser's most recent delivery, Seller shall notify Purchaser in advance and receive written confirmation from Purchaser to proceed prior to scheduling delivery and incurring costs. Purchaser shall not be responsible for freight rates in excess of 125 percent of the rate for Purchaser's most recent scheduled delivery unless Purchaser authorizes Seller to proceed with delivery in accordance with this Section.

9. PURCHASER'S CREDIT TERMS: All payments shall be made in United States dollars.

ARTICLE II: ADDITIONAL TERMS AND CONDITIONS OF SALE

1. RATABLE USAGE.

a. During the Delivery Period of this Agreement, Purchaser shall use commercially reasonable efforts to lift each Product at each delivery point in accordance with the Ratable Schedule ("Schedule") which is attached to this Agreement as Exhibit A and made a part of this Agreement for all purposes. Should Purchaser fail to lift the total number of gallons indicated for a particular month, Purchaser may make up the shortage at any time, without penalty, prior to the end of the Delivery Period. Subject to force majeure or early termination as provided in this Agreement, Purchaser shall purchase the Contract Volume and lift such total number of gallons by the end of the Delivery Period.

b. If Purchaser purchases more gallons during the Delivery Period than the Contract Volume, the additional gallons will be priced at a rate negotiated prior to delivery.

2A. SCHEDULED DELIVERIES. Purchaser shall notify Seller of the date on which a delivery is to be made and the number of gallons to be delivered (each a "Scheduled Delivery"). Seller shall immediately notify Purchaser if Seller is or will be unable to deliver the Product in accordance with Schedule or to make a Scheduled Delivery. Each Scheduled Delivery shall be credited against the Contract Volume.

a. **Scheduled Deliveries Not Taken by Purchaser:** In the event Purchaser fails to take a Scheduled Delivery of any portion of the Product during the Delivery Period, through no fault of Seller, and does not take delivery within five (5) days of the scheduled date, the Parties shall reconcile for the undelivered quantities as follows:

(i) If the then current market price is less than the Contract Price, Purchaser shall pay Seller the positive amount resulting from the Contract Price minus the then current market price for the Product (i.e. the loss to Seller per gallon) multiplied by the number of gallons of Product scheduled but not delivered.

(ii) If the then current market price is greater than the Contract Price, Seller shall pay to Purchaser the positive amount resulting from the then current market price for the Product minus the Contract Price (i.e. the gain to Seller per gallon) multiplied by the number of gallons of Product scheduled but not delivered.

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b. **Scheduled Deliveries Not Completed by Seller.** If Seller fails to make a Scheduled Delivery of any portion of the Product to Purchaser during the Delivery Period, through no fault of Purchaser, and does not make delivery within five (5) days of the scheduled date, Seller agrees to pay Purchaser the positive amount, if any,

resulting from the then current market price for the Product minus the Contract Price (i.e. the gain, if any, to Seller per gallon) multiplied by the undelivered quantity of Product.

2B. ACCOUNT RECONCILIATION.

a. **Notice of Remaining Contract Volume Prior to End of Delivery Period.** 90 days prior to the end of the Delivery Period, Seller shall provide Purchaser with an account reconciliation showing the number of gallons remaining under the Contract Volume that Purchaser has not lifted or Seller has not delivered.

b. **Account Reconciliation at End of Delivery Period.** No later than 60 days after the date of the last delivery under this Agreement, Seller shall provide Purchaser with an account reconciliation showing the number of gallons under the Contract Volume that Purchaser has not lifted or Seller has not delivered, if any, that have not been accounted for as set forth in Article II, Section 2A.

c. If, at the end of the Delivery Period, Purchaser has not lifted the full Contract Volume and performance was not otherwise excused by a provision of this Agreement or other written agreement of the parties, Seller shall bill or pay Purchaser for any unused or undelivered gallons of the Contract Volume as follows:

i. If the Contract Price exceeds the market price on the fifth day following the end of the Delivery Period, Seller shall invoice Purchaser for the positive difference between the Contract Price and such market price (i.e. the loss to Seller per gallon) multiplied by the number of Contract Volume gallons required, but not scheduled, by Purchaser during the Delivery Period. Invoices under this Section shall be paid in accordance with Article II, Section 3.

ii. If the market price per gallon on the fifth day following the end of the Delivery Period exceeds the Contract Price, Seller shall, within 30 days, pay Purchaser the positive difference between such market price and the Contract Price (i.e. the gain to Seller per gallon) multiplied by the number of gallons required, but not scheduled, by Purchaser during the Delivery Period.

d. **Documentation.** Upon request, Seller shall provide Purchaser documentation supporting the calculation of any amounts to be credited or paid under Article II, Section 2A or Section 2B.

3. PAYMENT TERMS. All invoices are payable 45 days from date of delivery of the Product. Payment may be made by check, warrant or electronically using a method agreed to by the Parties. All undisputed amounts not paid by the 46th day after the date of delivery of the Product shall bear interest at the rate provided for in Section 2251.025 of the Texas Government Code, or successor statute. If Purchaser disputes an invoice, it shall notify Seller of the dispute not later than the 21st day after receipt of the invoice and provide Seller with an explanation of the dispute. Upon resolution of the dispute, any amount subsequently found to be owed to Seller shall be paid by Purchaser in accordance with Texas Government Code Chapter 2251.

4. **DEFAULT AND REMEDIES**.

a. **Event of Default and Termination.** For purposes of this Agreement, a default by a Party includes (i) the making of any materially false or inaccurate representation in this Agreement which the Party does not cure after at least ten business days written notice; (ii) the failure to materially observe or comply with any provision or covenant in this Agreement which the Party does not cure after at least ten business days written notice; or (iii) a repeated failure (defined as at least two times) to make or accept a Scheduled Delivery of the Product unless otherwise agreed to by the Parties in writing or unless otherwise excused by a provision of this Agreement. In the event of a Party's default, the non-defaulting Party may terminate this Agreement by providing at least ten days written notice of its intent to terminate and may seek all legal and equitable remedies permitted by law. The non-defaulting Party may also seek actual, reasonable attorneys' fees, costs and expenses incurred in connection with the other Party's default.

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b. **Suspension for Nonpayment.** In addition, in the event any undisputed invoice is not paid when due, Seller, at its option, may suspend or condition further delivery of the Product, provided that Seller gives Purchaser written notice advising that Seller has not received payment and intends to suspend or condition further delivery as a result of such nonpayment, and Purchaser fails to pay the amount due on or before the 10th day after such notice is given.

c. **Mitigation of Damages and Setoff.** Each Party shall have the obligation to take commercially reasonable action to mitigate its damages. Upon the occurrence of any default, the non-defaulting Party may set off against the indebtedness any amounts owing by the non-defaulting Party to the defaulting Party, whether or not those amounts are immediately payable.

d. Upon an event of default by Purchaser, Seller shall have the right to require Purchaser to make available any unpaid Product, the right to take possession of such Product, and the right to sell and dispose of such Product.

e. The Parties agree that neither the TASB Energy Cooperative nor its administrator, the Texas Association of School Boards, Inc., shall in any way be liable to either Party for a Party's default, performance or nonperformance under this Agreement.

5. **SELECTION OF PRODUCTS**. Determination of the suitability of any Product for the contemplated use is the sole responsibility of Purchaser and no liability shall be imposed upon Seller in connection therewith.

6. **RISK OF LOSS AND TITLE**. Risk of loss and title to products shall remain with Seller until Purchaser receives physical possession of the Product.

7. **WARRANTIES.** Seller warrants that the Product delivered to Purchaser will conform to the description on the first page of this Agreement (and related specifications).

8. ENERGY COOPERATIVE ADMINISTRATIVE FEE INCLUDED: The Contract Price includes the administrative fee provided for under the TASB Energy Cooperative ("Cooperative") contract award to Seller, which fee is based on the total number of gallons of Fuel purchased by Purchaser under this Purchase Agreement and calculated as five cents ($0.05) per gallon for the first 500,000 gallons delivered to Purchaser under this Agreement; two cents ($0.02) per gallon for gallons 500,001 through 1,000,000 delivered to Purchaser under this Agreement; and one-half cent ($0.005) per gallon for gallons 1,000,000 and above delivered to Purchaser under this Agreement. The administrative fee shall be paid by Seller to the Cooperative in accordance with the terms set forth in that certain contract between the Cooperative and Seller in effect at the time of this Agreement. In no event shall the administrative fee be included in the calculation or collection of any liquidated damages amount charged to Purchaser under Article II, Section 2A or 2B. In the event the contract between the Cooperative and Seller requires Seller to cease collection of all or part of the administrative fee, Seller shall in turn cease collection of such administrative fee from Purchaser and reduce the Contract Price by the amount of the administrative fee no longer being collected.

9. **LIMITATION OF LIABILITY. UNLESS AN EXPRESS REMEDY IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF EACH PARTY TO THE OTHER PARTY IS LIMITED TO DIRECT ACTUAL DAMAGES.** Further, to the extent permitted by law, neither Party shall be liable to the other Party for damages, whether arising from performance of obligations under this Agreement, tort (including negligence), or otherwise for loss of anticipated profits, loss by reasons of plant shutdown, non-operation or increased expense of operation, service interruption, claims of customers, cost of money, loss of use of capital or revenue, or for any special, incidental, or consequential loss or damage.

10. **DEFECTS**. Purchaser shall, within 30 days after delivery of the Product, notify Seller of any alleged defect in the Product, or the failure of the Product to conform to any specifications. If, following such Notice, Seller and Purchaser agree that there exists such a defect or failure to conform due to the fault of Seller, the Parties shall attempt to negotiate a resolution. If unable to come to a resolution, (i) the defective Product shall be returned, at Seller's expense, to Seller, properly safeguarded against normal transit hazards as Seller may require, for replacement by Seller, or (ii) Purchaser and Seller shall negotiate an agreed amount to be deducted from the Contract Price, the payment of which shall operate as a full release of Seller. Purchaser's failure to notify Seller of any such claimed defect or failure to conform within the thirty-day period shall constitute Purchaser's complete

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Purchaser's Initials _____

Seller's Initials _____

waiver of any such claim with respect to defects or nonconformance, and Purchaser's release and covenant not to sue Seller with respect to such claim.

11. **AUTHORITY**. No agent, employee, or representative of Seller or Purchaser has any authority to bind either Party to any affirmation, representation, or warranty concerning the Product or this Agreement unless an affirmation, representation, or warranty made by an agent, employee, or representative is specifically included in writing in these terms and conditions or as an amendment thereto.

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

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

14. **DELEGATIONS AND ASSIGNMENT**. No delegation of any obligation owed by a Party, or of the performance of any obligation by a Party, shall be made without the written consent of the other Party. A Party may not assign its rights and obligations under this Agreement without the other Party's written consent, which shall not be unreasonably withheld. Any delegation or assignment without the other Party's written consent is void.

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

16. **TAXES**. Purchaser represents that it is a local governmental entity that is exempt from sales, excise, and usage taxes. Purchaser shall pay all federal, state, or local taxes or charges relating to the sale, delivery, or use of the Product from which it is not exempt. Purchaser shall be responsible for all taxes whether existing at the time of execution of this Agreement or subsequently imposed.

17. **APPLICABLE LAW AND VENUE**. This Agreement and the relationship between the Parties shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, by the laws of the state of Texas. The Parties stipulate and agree that exclusive jurisdiction and venue for any cause of action arising between the Parties shall be in the state or Federal courts having subject matter jurisdiction and located in the county in which Purchaser's main administration facility is located.

18. **RESPONSIBILITY TO WARN AND REPORT**. At and after title passes to Purchaser, Purchaser assumes all responsibility for warning Purchaser's personnel and any third parties on the premises of all hazards to persons and property. Purchaser also assumes the responsibility to warn and protect Purchaser's employees and others exposed to the hazards posed by Purchaser' storage and use of the Product. It is the responsibility of both Parties to comply

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with all relevant reporting obligations under the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001 *et seq.* (EPCRA, also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)) resulting from the presence of the chemicals supplied under this Agreement.

19. **FORCE MAJEURE**. If, by reason of act of God, flood, storm, explosion, fire, labor trouble, strike, insurrection, riot, acts of the public enemy, pandemic or epidemic, or federal, state or local law, order, rule, or regulation affecting all similarly situated companies or entities, either Party ("Claiming Party"), without negligence and upon exercise of due diligence, is prevented from complying with any obligation, covenant, or condition in this Agreement, including but not limited to ability to accept delivery of Products, then, while so prevented, the condition shall be suspended or the obligation or covenant shall be extended, the Claiming Party shall be relieved of the obligation to comply with such obligation or covenant, and the Claiming Party shall not be liable for damages, including charges pursuant to Article II, Sections 2A or 2B, for failure to so comply.

20. **MISCELLANEOUS**.

a. **Binding Agreement**. Subject to Article II, Section 14, this Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, heirs, successors, and assigns.

b. **Invalid Provision/Severability**. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of it. This Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

c. **Amendments**. No amendments, modifications, alterations, or additions to this Agreement shall be binding unless made in writing and signed by the Parties.

d. **Attorneys' Fees**. In the event of any litigation regarding the construction, enforcement, or validity of this Agreement, in addition to any other relief, the prevailing Party shall be entitled to recover its reasonable costs incurred, including attorneys' fees.

e. **Rule of Construction**. The judicial rule of construction requiring or allowing a document to be construed to the detriment or against the interests of the document's maker or drafter shall not apply to this Agreement.

f. **Headings**. The section headings in this Agreement are included solely for convenience and shall in no event affect or be used in connection with the interpretation of this Agreement.

g. **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but together the counterparts shall constitute one and the same document.

h. **Entire Agreement**. This Agreement constitutes the entire agreement of the Parties, all prior negotiations and agreements, whether written or oral, having been merged into this Agreement.

i. **Time of Essence**. Time is of the essence in this Agreement. The Parties shall have the right to treat all time deadlines contained in this Agreement as material and to terminate this Agreement or exercise such other remedies as may be provided in this Agreement in the event such time deadlines are not met.

j. **Computation of Time**. In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. Unless the Agreement specifies business days, all subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under federal law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday. When the Agreement specifies business days, the computation of a time period shall exclude all weekends and holidays under federal law or the state law of the state in which Purchaser's main administrative office is located. Further, for obligations of Purchaser, days on which Purchaser's main administrative office is closed shall not be counted as a business day.

k. **Authority to Sign**. Each person signing this Agreement in a representative capacity on behalf of a Party warrants and represents to each other Party that (i) the person signing has the actual authority and power to so sign, and to

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bind his principal to the provisions of this Agreement, and (ii) all entity action necessary for the making of this Agreement has been duly taken. Either Party represents and warrants to the other Party that it has complied with all rules, regulations and laws relating to its authority to execute and perform the obligations under this Agreement.

l. **Signatures**. The Parties agree that they may transmit this Agreement for execution by electronic transmission. The Parties intend that electronic signatures on this Agreement shall be deemed an original and be binding on them.

m. **Non-Appropriation.** Seller acknowledges that Purchaser is a governmental entity and that Purchaser's ability to perform its obligations under this Agreement is dependent upon the appropriation of public funds. The Parties agree that if the Delivery Period extends beyond Purchaser's then current fiscal year into another fiscal year(s) and (i) Purchaser does not have an authorized multi-year funding source or (ii) otherwise has no legally available funds for the purchase of the Product, then this Agreement will terminate. Purchaser shall not be obligated to make contract payments beyond the amounts appropriated. However, if any funds are appropriated for Product costs, such funds shall be applied first to the cost of Product to be provided pursuant to this Agreement and any such funds shall not be used to pay for Product from any other vendor. Purchaser agrees to notify Seller in writing of such non-appropriation at the earliest practicable time subsequent to the failure to appropriate. As of the termination date under this Section, Seller shall have no further duty to supply Product to Purchaser.

n. **Support.** Seller shall maintain a telephone contact for customer service support for Purchaser. Purchaser may call the number listed on the last page of this Agreement for customer support, and Seller shall notify Purchaser of any new customer support telephone number.

o. **Survival**. Expiration of this Agreement or termination by either party shall not affect the rights and obligations of the Parties that accrued prior to expiration or the effective date of the termination. Payment obligations and any other provisions, which by their terms or their nature are intended to survive, shall survive the expiration or termination of this Agreement.

WHEREFORE, the Parties have caused this Agreement to be duly executed, and each of the undersigned below represent that they have been duly authorized to execute this Agreement by all necessary action and further affirm the representations and warranties as stated in Article II, Section 19.k of this Agreement as applicable to the Party.

Purchaser	**Seller**
By (Name/Title – please print)	**Account Executive's Signature**
Authorized Signature **(Signer authorized to bind Purchaser to this Agreement)**	**Approved by Corporate Officer**
Date	**Date**
	Customer Support Phone #: _____

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