

## ETHANOL-BLEND FUEL SUPPLY AGREEMENT

THIS ETHANOL-BLEND FUEL SUPPLY AGREEMENT (“Agreement”), dated \_\_\_\_\_, 2016, is entered into by and between PROTEC FUEL MANAGEMENT, LLC, a Florida limited liability company (“Supplier”) and THE CITY OF HOLLYWOOD, FLORIDA, a municipal corporation chartered and existing under the laws of the State of Florida (the “City”).

### Preliminary Statement

A. In connection with its various municipal functions, the City requires regular procurement of motor fuel and fuel additive products. The City has adopted and is implementing sustainability plans, including (without limitation) by prioritizing flex-fuel capabilities in its fleet of vehicles. In this connection, the City has determined to utilize ethanol-based “E-85” Flex Fuel (referred to as “E-85 Flex-Fuel”).

B. Supplier is a locally-based, nationally-operating provider of motor fuel products. Noting that the United States Department of Energy has promoted bio-fuel use, notably ethanol-based fuels, and that state and local governments and others throughout the United States have relied increasingly on ethanol-blended fuels, and having become aware of the City’s sustainability plans and initiatives through its affiliation with and support of the South Florida Clean Cities Coalition, Supplier submitted a proposal to provide for the City the necessary supporting infrastructure to facilitate the City’s use of E-85 Flex Fuel, with the understanding that the City provides its fleet with the availability of E-85 fuel for a five year term at the City’s 1600 South Park Road fuel facility (the “Location”).

C. The City has agreed to obtain E-85 Flex Fuel to meet its requirements, with deliveries effectuated at 1600 South Park Road (the “Location”).

D. To facilitate the City’s use of E-85 Flex Fuel at the Location, Supplier has arranged to procure, permit and install a retrofit to the existing fueling equipment and dispensing system to be E-85 compliant to include emptying and preparing an existing 10,000 gallon fuel tank for receipt of E-85 fuel, all as described in Exhibit 1 attached hereto, customized to meet City specifications, to be implemented at the City’s specified Location on a conditional no-cost basis.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, Supplier and the City, each intending to be legally bound, agree as follows:

1. Introduction. The foregoing recitals are true and correct and form the basis for this Agreement.

2. Fuel Supply Contract. During the Term (defined below), the City agrees to purchase from Supplier on a non-exclusive basis, and Supplier agrees to sell to the City and deliver E-85 Flex Fuel pursuant to the City’s periodic requisitions at the Location. If during the Term, pricing is more advantageous from another vendor, the City may purchase up to a single tanker load of E-85 Flex Fuel from a third-party fuel supplier per transaction, provided that: (a) the third-party fuel supplier’s offered price for the E-85 Flex Fuel is greater than three percent (3%) lower than the then-current contract price for the E-85 Flex Fuel from Supplier; and (b) the City has provided Supplier with the third-party fuel supplier’s offered price. Assuming that the City has met all of the conditions set forth in items (a) and (b) above, the Supplier shall then have the right to match the price within four (4) hours following the City providing Supplier the third party fuel supplier’s price. If Supplier is unable

to match the third-party fuel supplier's price within the 4-hour period set forth above, then the City may proceed with the purchase of E-85 Flex Fuel from the third-party fuel supplier for that particular transaction only. Notwithstanding the foregoing, the City's ability to purchase E-85 Flex Fuel from a third-party fuel supplier as set forth hereof shall not be considered a waiver or negation of the terms and conditions of this Agreement including without limitation the City's agreement to otherwise purchase E-85 Flex Fuel from Supplier. For clarification purposes, any and each purchase from a third-party fuel supplier in accordance with the terms set forth hereof is restricted for a single shipment of product in the form of: one (1) tanker load of E-85 Flex Fuel not to exceed 8,250 gallons. The E-85 Flex Fuel provided shall meet and satisfy the ATSM D 4806 biofuel standard specifications (latest issue) for denatured fuel ethanol for blending with gasoline, as well as corresponding Florida state standards (if applicable). If any change in law or regulatory or industry standard requires or results in a change in the specifications as set forth herein, Supplier shall promptly notify the City and Supplier will conform to the altered specifications.

### 3. Delivery Procedures.

(a) Requisitions. Each week during the Term or on an as needed basis, the City will provide Supplier with a completed requisition form substantially similar to the form attached as Exhibit A hereto ("Order Form"). Supplier will procure the type and quantity of Fuel specified in the current Order Form and arrange for delivery of the requested Fuel to the Location within 24 hours after receipt of each Order Form. Upon completion of each delivery at the Location, a representative of the City will complete and execute a document substantially in the form attached as Exhibit B hereto ("Delivery Receipt"), accurately stating the date of receipt, time, and type and quantity of Fuel delivered in gallons.

(b) Requirements. Deliveries shall be effectuated in accordance with reasonable rules and procedures adopted by the City and as in effect from time to time, as pertain to third-person contractors or suppliers having access to the Location. The volume of E-85 Flex Fuel delivered hereunder shall be corrected to 60 degrees Fahrenheit volume. Supplier shall provide appropriate equipment and trained staff to measure accurately, report and record the quantity of fuel delivered to the City. The quantity measuring equipment shall be certified by the public authority responsible for the administration of weights and measures at the point of delivery. Gravity and temperature measuring instruments shall be provided and maintained by Supplier. The City shall have the right to check the accuracy of the measuring devices Supplier uses for delivery of fuel hereunder. Supplier shall maintain accurate and complete records with respect to types and quantities of fuel supplied for at least one year, and allow the City to inspect and audit the same upon reasonable prior notice.

(c) Deviation from Specifications. Any Fuel presented for delivery which is found to deviate from the specifications confirmed herein ("Off-Specification Fuel") may be rejected by the City in the City's discretion. The City shall notify Supplier in writing of a rejection of Fuel which it determines to be Off-Specification Fuel. Upon receipt of such notice, Supplier shall have an opportunity to make an independent inspection of the Fuel to determine the quality thereof. Supplier shall, at its expense, remove Off-Specification Fuel from the City's storage tanks at the Location, and Supplier shall credit the City with the as-delivered Price of the Off-Specification Fuel rejected.

### 4. Dispenser Procurement; Location Preparation and Cost Amortization.

(a) Supplier Equipment Retro-fit Contribution. In connection with and consideration of this Agreement, to facilitate the City's use of E-85 Flex Fuel, Supplier will, for \$27,487.95 and for the benefit of the City, procure, permit and install a retrofit to the existing fueling

equipment and dispensing system to be E-85 compliant to include emptying and preparing an existing 10,000 gallon fuel tank for receipt of E-85 fuel, all as described in Exhibit 1 attached hereto, customized to meet City specifications (the “Supplier-provided Retro-fit Dispensing System” Contribution). The foregoing undertakings and performance by Supplier with respect to the Supplier-provided Retro-fit Dispensing System are referred to as the “Supplier Contribution”.

(b) Cost Amortization. The City acknowledges and agrees that (i) the Supplier Contribution confers valuable consideration in support of this Agreement and the City’s sustainability plans; (ii) the Supplier Contribution is undertaken with the expectation and agreement that the City will purchase E-85 Flex Fuel for the Location for a period of not less than sixty consecutive months commencing with the beginning of the Term (the “Procurement Period”). The City and Supplier acknowledge that the Supplier Contribution is at no-cost to the City; conditioned, however, on the City’s procuring E-85 Flex Fuel for the Location for not less than the Procurement Period. If prior to the end of the Procurement Period the City suspends E-85 Flex Fuel purchasing (“Early Termination”), then, the City shall automatically owe Supplier the unamortized dollar amount of Supplier’s out-of-pocket costs incurred in procuring and installing the Supplier-provided Retro-fit Dispensing System; calculated by dividing \$27,487.95 by the number of days in the Procurement Period, and then multiplying that product by the number of days from the date on which Early Termination occurs through the end of the Procurement Period (“Cost Recovery Amount”). If Early Termination occurs, Supplier will provide the City with an invoice for the Cost Recovery Amount, including the calculation thereof, whereupon the Cost Recovery Amount shall become a monetary obligation of the City, and the City will take actions as reasonably necessary to draw on funds and/or appropriate funds to pay the Cost Recovery Amount within thirty days of invoicing or within thirty days of the adoption of the next annual budget pursuant to which funds are appropriated to pay the Cost Recovery Amount. The unpaid Cost Recovery Amount will accrue interest at the rate of 5% per annum if not paid within thirty days of invoicing.

(c) Inspections. Subject to scheduling reasonably in advance, Supplier shall be entitled to enter the Location to physically inspect the Supplier-provided Retro-fit Dispensing System from time to time; provided that such access will be at Supplier’s sole risk, and Supplier will have no right to impose liens at the Location.

(d) Bill of Sale for Retro-fit Dispensing System. Supplier will provide the City with a bill of sale for the Supplier-provided Dispenser system and other equipment, upon completion of installation. The dispenser manufacturer and any and all equipment manufacturers shall be solely responsible for any and all warranties, and Supplier shall assign to the City all such warranties. Supplier and or third party installer shall provide a one year warranty for installation of the system.

5. Term. The term of this Agreement (the “Term”) will commence on the date this Agreement is executed by the City and Supplier (“Commencement Date”), and expire (unless renewed or extended by mutual agreement of the Parties) on the fifth anniversary of the Commencement Date. The City may at any time terminate the Term, upon at least 30 days’ prior notice to Supplier; subject in all events to payment of outstanding invoices and the Cost Recovery Amount if Early Termination occurs. In addition, the Term is subject to termination for default, as provided below.

6. Prices. Supplier will supply and deliver E-85 Flex Fuel to the City, and the City will purchase E-85 Flex Fuel delivered hereunder, at prices (“Prices”) that will be determined based upon contract “Formula Prices”. “Formula Prices” shall mean a discounted price per gallon established by reference to the OPIS daily average posting for unbranded 87E10 gasoline, FOB Fort Lauderdale, Florida, adjusted by an agreed-upon discount for an agreed-upon period, to be confirmed by the Parties from time to time based on actual prevailing market conditions (i.e. Supplier’s contracted E-85

price). In addition to the Products rate, the City shall pay the transportation cost plus any and all taxes imposed, levied or assessed by any governmental authority on, against or in respect to the sale of Products hereunder including sales taxes, use taxes, gross receipts taxes and all other taxes, excises, duties, charges, fees, licenses, permits and others fees in connection with the sale and use of Products. Supplier's invoice to the City shall include the net volume delivered and the per unit price.

(a) Pricing in Gallons shall be rounded to the nearest fourth decimal place. All U.S. dollar amounts shall be rounded to the nearest cent.

(b) In the case of Formula Prices, if an independent third-party's publication source ceases to publish an existing agreed-upon basis for the Formula Price or if such publication materially changes the methodology by which the existing agreed-upon Formula Price is determined, then (i) either Party may by notice to the other propose a new basis to determine the Formula Price, using any independent publication source or medium that is recognized in the industry and (ii) from and after the giving of such notice, the Formula Price shall be adjusted to conform therewith; or alternatively, (iii) either Party may elect to terminate the Term if they do not accept a new methodology or source for determining Formula Price and if they cannot agree on Market Prices despite good faith efforts to do so. If Early Termination occurs because the Parties are unable to agree on Prices, the City will nevertheless be obligated to pay Supplier the Cost Recovery Amount.

(c) Supplier shall retain data supporting calculation of Prices for at least the duration of the Term and for one year thereafter, and allow the City to inspect and audit the same upon reasonable prior notice. In no event shall any noticed change in Prices have any retroactive effect, unless the City specifically consents thereto in writing.

7. Risk of Loss. Title to E-85 Flex Fuel and the risk of loss of E-85 Flex Fuel shall pass to the City at the intake flange of the storage tanks at the Location.

8. Invoicing and Payment. Supplier shall invoice the City for all E-85 Flex Fuel delivered hereunder, net 30 days from issuance of Bill of Lading. Invoices shall state the Prices for E-85 Flex Fuel and separately list taxes, duties and any other charges as separate line items. The monthly invoice will reconcile the actual quantity of E-85 Flex Fuel delivered, amount of payment, and discounts. Any credit due to the City shall be applied to the amounts due for the next billing period, or paid to the City upon termination of the Term. Invoices shall be issued based on bills of lading evidencing each delivery, and payment shall be effected solely in United States Dollars. Invoices shall be due and payable within 30 days of issuance. If the City is entitled to purchase any Fuel free of taxes, duties or charges, the City shall deliver to Supplier a valid exemption certificate for such purchase, and Supplier shall comply therewith so as to ensure that the City receives the full tax benefits to which the City is entitled.

9. Supplier's Representations. Supplier represents and warrants to the City as follows: (a) Supplier has all permits, licenses, consents and authority required to execute, deliver and perform its obligations under this Agreement, (b) Supplier's execution, delivery and performance under this Agreement has been duly authorized by all necessary or appropriate acts and proceedings, corporate or otherwise, and does not violate, conflict with or result in a breach or default under any law, regulation, judgment, order, agreement or understanding that is applicable to Supplier, (c) this Agreement is the legal, valid and binding obligation of the Supplier, enforceable against it in accordance with its terms, and (d) the E-Fuel supplied by Supplier to the Location shall satisfy and conform with the Specifications stated herein.

10. Insurance. Without limiting any of the other obligations or liability of the Supplier, Supplier shall provide, pay for, and maintain in force throughout the contract term and any extension terms(s), the insurance coverages set forth in this section. The Supplier shall furnish original certificates to the City's Procurement Director and receive approval by the City's Risk Manager, prior to the commencement of any work.

Coverage shall be provided by a company or companies authorized to transact business in the State of Florida and the company or companies must maintain a minimum rating of A-, V11, as assigned by the A.M. Best Company.

Any Sub-Contractor used by the contractor shall supply such similar insurance required of the contractor. Such certificates shall name the City as an Additional Insured.

Cancellation: Should any of the policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

A. Comprehensive General Liability:

Commercial General Liability Insurance with not less than the following limits:

General Aggregate	\$1,000,000
Products-Comp/Op Aggregate	\$1,000,000
Personal and Advertising injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage	\$50,000

The City shall be named as an additional insured.

Coverage shall include contractual liability assumed under this agreement, products and completed operations, personal injury, broad form property damage, and premises-operations.

B. Commercial Automobile Liability:

Commercial Automobile Liability Insurance with not less than the following limits:

Combined Single Limit	\$1,000,000
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The City shall be named as an additional insured.

Coverage shall include contractual liability assumed under this agreement, owned, hired and non-owned vehicles.

C. Worker's Compensation Insurance:

Worker's Compensation Insurance covering the contractor and the contractor's employees not less than the following limits:

Each Accident	\$100,000
Disease Policy Limit	\$500,000
Disease Each Employee	\$100,000

The insurance policy shall not contain any exceptions that would exclude coverage for risks that can be directly or reasonably related to the scope of goods or services in this bid/proposal. A violation of this requirement at any time during the term, or any extension thereof shall be grounds for the immediate termination of any contract entered in to pursuant to this bid/proposal. In order to show that this requirement has been met, along with an insurance declaration sheet demonstrating the existence of a valid policy of insurance meeting the requirements of this bid/proposal, the successful contractor must submit a signed statement from insurance agency of record that the full policy contains no such exception.

The City reserves the right to require any other insurance it deems necessary depending upon the exposures.

11. Independent Contractor. Supplier shall have exclusive control, direction and supervision of its employees and service providers. Supplier will be considered for all purposes hereunder as an independent contractor and will not at any time be considered an agent, servant or employee of the City. Supplier will pay and be responsible for all federal, state and local income taxes attributable to Supplier, as well as contributions for unemployment insurance, withholding, social security, sales and all other taxes associated with Supplier and its business.

12. Default. Any of the following shall be considered a “Default”:

(a) If the City shall fail to make payment due hereunder in full within thirty days of invoicing;

(b) If Supplier shall fail to deliver the Supplier-provided Retro-fit Dispensing System as agreed, or if Supplier fails to make timely delivery of any E-Fuel to the City as and when due;

(c) If any of Supplier’s representations hereunder are false in any material respect;

(d) If Supplier breaches any other obligation under this Agreement and fails to cure such breach within 30 days of written notice from the City;

(e) If the City fail to take receipt of any E-85 Flex Fuel when properly delivered by Supplier;

(f) If Supplier becomes bankrupt or insolvent, however evidenced or defined, or files a petition or otherwise commences a proceeding under any debtor relief laws; or if such a petition is filed or proceeding commenced against Supplier and is not dismissed within 30 days, or if a liquidator, administrator, receiver or trustee is appointed with respect to Supplier.

13. Remedies. If a Default occurs, the non-defaulting Party (“Performing Party”) shall have the right, upon five days’ prior notice to the defaulting Party (“Defaulting Party”) (except in the case of Default specified in clause (f) above in which case no notice is required); to (a) suspend performance under this Agreement and/or (b) terminate this Agreement and/or proceed against Defaulting Party for damages occasioned by its Default. The Performing Party’s rights under this Section shall be in addition to, and not in limitation or exclusion of, any other rights which the Performing Party may have (whether by agreement, operation of law or otherwise). The Defaulting Party shall indemnify and hold the Performing Party harmless from all costs and expenses (including reasonable attorney fees) incurred in the exercise of any remedies hereunder. Termination of the Term

effected by a Performing Party shall not affect any other rights or remedies of such party under the law or otherwise. Notwithstanding Early Termination, each Party shall fulfill all obligations accrued under the Agreement prior to the time the termination becomes effective and/or all obligations that survive the termination.

14. Force Majeure.

(a) As used in this Agreement, an event or act of “Force Majeure” is defined as follows: Acts of God and the public enemy, wars, riots, strikes, labor disputes, lockouts, blockades, insurrections, inability to secure materials or labor by reason of allocations promulgated by authorized governmental agencies, unavailability of shipping, epidemics, landslides, lightning, earthquakes, fires, tsunamis, floods, tidal waves, volcanic eruptions, explosions, failure of machinery or pipelines, unavailability of useable or suitable crude oil, suspension of crude oil supplies or any other cause not reasonably within the control of the affected Party which materially affects that Party’s ability to fulfill any provisions of this Agreement.

(b) Supplier’s obligation to purchase or receive Fuel shall be suspended for any period in which an event or act of force majeure exists as to Supplier. However, nothing in this Section shall excuse any failure or delay of any Party in paying any monetary obligation that arose before the event of Force Majeure.

(c) The Party claiming Force Majeure shall give the other Party verbal notice of such act or event of Force Majeure within twenty-four (24) hours of the occurrence and shall also send written confirmation of the same to the other Party promptly thereafter. The Party claiming Force Majeure shall use commercially reasonable efforts to abate or mitigate the Force Majeure effect; provided, however, that a Party’s obligation to mitigate Force Majeure shall not require such Party to settle strikes or lockouts or government claims by acceding to any demands when, in the discretion of that Party, it would be inappropriate to do so.

(d) After the Force Majeure event is terminated, Supplier shall not be obligated to sell and deliver and the City shall not be obligated to purchase and receive the undelivered quantity of Fuel which normally would have been sold and delivered during the suspension or reduction due to the Force Majeure. However, all requirements hereunder shall be resumed upon termination of the Force Majeure.

15. Indemnification. Supplier agrees to defend, indemnify and hold harmless the City, and its departments, and its elected officials and employees, (individually and collectively, the “Indemnified Parties”), from and against any and all claims, liabilities, losses, damages, costs, fines, penalties and expenses (including attorneys’ fees) (hereinafter individually and collectively referred to as “Damages”) arising out of or in any manner directly or indirectly connected with the Supplier’s performance or omission to perform services under this Agreement. This indemnity shall survive the termination of the Term. The City agrees to give Supplier prompt and timely notice of any claim made that the City has learned of or suit instituted which in any way, directly or indirectly, contingently or otherwise, affects or might affect Supplier’s obligations under this Section, and the Supplier shall assume, at the City’s request, primary control of the defense of such suit or claim and/or the settlement thereof. The City reserves the right to participate in the defense of any such suit or claim to the extent of its own interests, and at its own expense. This Section shall survive the termination of the Term.

16. General Provisions.

(a) The validity, construction and performance of this Agreement shall be governed by the internal laws of the State of Florida, exclusive of its conflict of laws principles that would otherwise require application of a law of a different jurisdiction.

(b) The Parties waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement. The Parties acknowledge that this waiver is a material inducement to enter into a business relationship, that each has relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their future dealings. Each Party represents and warrant that it has had the opportunity of reviewing this waiver with legal counsel, and each knowingly and voluntarily waive its jury trial rights. If any dispute arises regarding the performance or interpretation of any term of this Agreement, all matters in controversy shall be submitted to mediation under the American Arbitration Association's regulations and rules. In the event of any dispute resolution proceeding between the Parties to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief awarded.

(c) Neither party may assign its obligations under the Agreement in whole or in part without prior written consent of the other party and such consent will not be unreasonably withheld.

(d) No failure or delay of any party (including their employees and agents) to exercise any right or power under the Agreement or at law shall operate as a waiver thereof, except as provided in the Agreement, nor shall any single or partial exercise of any such right or power preclude any other or further exercise thereof or the exercise of any other right or power under the Agreement, and no waiver of any party of any provision or part of any provision of the Agreement shall be binding unless expressly confirmed in writing.

(e) All notices required or allowed under this Agreement shall be given in writing to the party for whom it is intended at the address for notices specified herein or at such other address as is most recently noticed for such party by giving written notice of the change of address as set forth herein.

(f) This Agreement contains all agreements, arrangements and stipulations between the Parties in respect of the supply of E-Fuel for the Location and supersedes all prior agreements, arrangements and stipulations in respect of the same subject. Modifications or amendments to this Agreement cannot be made orally, or by course of conduct, dealing or performance, and are only valid when expressly agreed upon in writing

(g) The provisions of this Agreement are severable and the invalidity of any provision in the Agreement shall not affect all other provisions, which will remain valid and binding.

(h) In the event of emergencies related to the Services furnished herein, including but not limited to fuel spills, Supplier shall, without delay and without waiting for instructions from the City, undertake all reasonable steps to initiate corrective action consistent with local, state and federal regulations. If any such emergency is caused by the City's acts or omissions, the City agrees to reimburse Supplier its reasonable disbursements for services rendered at cost plus an accounting surcharge of ten (10%) percent.

(i) Supplier and the City acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.



17. Governmental Powers. Both Parties agree and understand that the City does not waive or surrender any of its governmental powers by execution of this Agreement.

18. No Third Party Rights. The provisions and conditions of this Agreement are solely for the benefit of the City and Supplier, and any lawful assign or successor of Supplier, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Agreement.

PROTEC FUEL MANAGEMENT, LLC, a  
Florida limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF HOLLYWOOD, a Florida municipal  
corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney, City of Hollywood