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RESOLUTION R-84-05

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT EXTENSION WITH AVALON PETROLEUM COMPANY FOR DIESEL FUEL AND GASOLINE

WHEREAS, the City of Wheaton, Illinois ("City"), is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such, the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this resolution pertains to the government and affairs of the City and its residents; and

WHEREAS, the City had received a proposal from Avalon Petroleum Company of Tinley Park, Illinois and in accordance with Paragraph 3 (Contract Extension Option), Special Provisions section of the agreement between the City and Avalon Petroleum Company, dated September 2, 2003, for diesel fuel and gasoline, the contract can be extended for two twelve month time periods, in which fiscal year 2004-2005 was the first, and fiscal year 2005-2006 will be the second; and

WHEREAS, the City is satisfied with the quality and timeliness of service received from Avalon Petroleum Company; and

WHEREAS, Avalon Petroleum Company has agreed to hold firm their pricing and service agreement; and

WHEREAS, the City still has a need for such services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the City Manager is authorized to sign and the City Clerk is authorized to attest to an agreement extension between the City of Wheaton and Avalon Petroleum Company of Tinley Park, Illinois for diesel fuel and gasoline.

ADOPTED this 17th day of October, 2005.

Mayor

ATTEST:

Enya M. Connally
City Clerk

Roll Call Vote

Ayes: Councilman Mouhelis
 Councilman Suess
 Councilwoman Corry
 Councilman Johnson
 Mayor Carr
 Councilman Levine

Nays: None

Absent: Councilman Bolds

Motion Carried Unanimously



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**Agreement Between the City of Wheaton, Illinois
and AVALON PETROLEUM COMPANY
for DIESEL FUEL AND GASOLINE**

This Agreement is entered into by and between the City of Wheaton, an Illinois municipal corporation ("City"), 303 West Wesley Street, Wheaton, IL 60187, and *Avalon Petroleum Company* ("Contractor"), 7601 West 191st Street of Tinley Park, Illinois 60477.

WITNESSETH:

Whereas, the City has determined that it is necessary to obtain the goods and/or services as more fully recited in the *Request for Bid Proposal* dated *September 2, 2003*, a copy of which is attached hereto and incorporated herein as Exhibit A; and

Whereas, the City has heretofore requested proposals for the work, materials, and services necessary to perform the services and complete all the work as specified in Exhibit A; and

Whereas, the Contractor did submit a *bid proposal* to the City for the work specified, which is attached hereto and incorporated herein as Exhibit B; and

Whereas, the City did on the *17th day of October, 2005*, select the Contractor for the work specified in this Agreement and Exhibits.

Now, therefore, for in consideration of their mutual promises, terms, covenants, agreements, and conditions recited in this Agreement, the City and the Contractor hereto do hereby agree as follows:

1. *Scope of Services.* The Contractor shall furnish all labor, materials, and equipment to provide the City of Wheaton with *Diesel Fuel and Gasoline* as described in this Agreement and attached Exhibits. The Contractor represents and warrants that it shall perform the services in a manner consistent with the level of care and skill customarily exercised by other professional contractors under similar circumstances.

2. *Compensation.* The City shall compensate the Contractor *according to the terms of the Contractor's proposal which is attached hereto as Exhibit B*.

3. *Term of Agreement.* This Agreement shall commence at 12:01 a.m. on *October 6th, 2005* and shall terminate at 11:59 p.m. on *October 5th, 2006*. The City, at its option, may extend this Agreement for an additional period (*month by month*) if the Contractor holds firm to the original proposal prices, conditions, and specifications.

4. *Additional Services.* The Contractor shall provide only those goods and perform only those services specified in this Agreement and attached Exhibits. In the event the Contractor or the City determines that additional goods and/or services are required to complete the project, such additional goods shall not be provided and/or such additional services shall not be performed unless directed in writing by the City. Terms, frequency, and prices for additional services shall be as mutually agreed upon in writing by the City and the Contractor.

5. *Hold Harmless and Indemnification.* The Contractor shall defend, hold harmless, and indemnify the City, its officers, agents, employees, and elected officials, in whole or in part from any loss, damage, demand, liability, cause of action, fine, judgment, or settlement, together with all costs and expenses related thereto (including reasonable expert witness and attorney fees), that may be incurred as a result of bodily injury, sickness, death, or property damage or as a result of any other claim or suit of any nature whatsoever arising from or in any manner connected with directly or indirectly, the negligent acts, errors, omissions, or intentional acts or omissions, or omissions of any agent, subcontractor, or contractor hired to perform any services on behalf of the Contractor.

6. *Insurance.* The Contractor and each of its agents, subcontractors, and consultants hired to perform any services provided for in this Agreement and attached Exhibits, shall purchase and maintain during the term of this Agreement, commercial general liability insurance coverage of not less than one million dollars (\$1,000,000.00) in the aggregate, worker's compensation insurance with limits as required by the applicable statutes of the State of Illinois, commercial automobile liability insurance covering Contractor's owned, non-owned, and leased vehicles with coverage limits of not less than one million dollars (\$1,000,000.00) per accident, and umbrella or excess liability insurance coverage of not less than one million (\$1,000,000.00) per occurrence. The City shall be named as an additional insured on all insurance policies. Nothing herein set forth shall be construed to create any obligation on the part of the City to indemnify Contractor for any claims of negligence against Contractor or its agents or employees. Prior to commencement of any work under this Agreement, Contractor shall file with the City the required original certificates of insurance with endorsements, which shall clearly state all of the following:

- A. The policy number; name of insurance company; name and address of the agent or authorized representative; name, address, and telephone number of the insured; project name and address; policy expiration date; and specific coverage amounts; and
- B. That the City shall receive thirty (30) days written notice prior to cancellation or alterations reducing the policy limits; and
- C. Contractor's insurance is primary with respects to any other valid or collectible insurance City may possess, including any self-insured retention that City may have; and

D. Any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with Contractor's insurance; and

E. All insurance carriers providing coverages under this Agreement shall be admitted and authorized to do business in the State of Illinois and shall be rated at least A:X in A.M. Best and Companies Insurance Guide or otherwise acceptable to the City. Insurance policies and certificates issued by non-admitted insurance companies are unacceptable; and

F. Any deductibles or self-insured retention shall be stated on the certificates of insurance provided to the City; and

G. The City may require increases in Contractor's insurance coverage amounts over the course of this Agreement as it deems necessary so long as it reimburses Contractor for the actual increase in Contractor's insurance premiums attributable to the City's requested increase; and

H. Where Contractor's coverage is primary, Contractor shall control the defense to the extent of its insurance limits.

7. Compliance with Laws. The Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations, and all City ordinances, rules and regulations now in force or hereafter enacted, in the provision of the goods and/or performance of the services required under this Agreement.

8. Termination of Contract. If the Contractor fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon seven (7) days written notice to the Contractor. In the event of a termination, the City shall pay the Contractor for services performed as of the effective date of termination, less any sums attributable, directly or indirectly, to Contractor's breach. The written notice required under this paragraph shall be either (i) served personally during regular business hours; (ii) served by facsimile data transmission during regular business hours; or (iii) served by certified or registered mail, return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail. Notice served personally and by facsimile data transmission shall be effective upon receipt, and notice served by United States mail shall be effective three (3) business days after mailing.

9. Discrimination Prohibited. The Contractor shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/1-101 et seq. (1992 State Bar Edition), and with all rules and regulations established by the Department of Human Rights. The Contractor agrees that it will not deny employment to any person or refuse to enter into any contract for services provided for in this Agreement to be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois Human Rights Act.

10. Status of Independent Contractor. Both City and Contractor agree that Contractor

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will act as an Independent Contractor in the performance of duties under this agreement. Accordingly, the Independent Contractor shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Contractor's activities in accordance with this agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. Contractor further acknowledges under the terms of this Agreement, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. Contractor is not in any way authorized to make any contract, agreement, or promise on behalf of City, or to create any implied obligation on behalf of City, and Contractor specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Contractor, except those specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Contractor complies with the terms of this Agreement.

11. *Assignment; Successors and Assigns.* This Agreement may not be assigned by either of the parties hereto without the written consent of all other parties. Upon approval of assignment, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

12. *Recovery of Costs.* In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the City shall be entitled to recover all costs and expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees, if so provided in any order of the Court.

13. *Notification.* All notification under this Agreement shall be made as follows:

If to the Contractor:

Avalon Petroleum Company
Attn: *William L. Katzenberger*
7601 West 191st Street
Tinley Park, Illinois 60477

If to the City:

City of Wheaton
Attn: *Mark Horton*
303 W. Wesley Street, Box 727
Wheaton, IL 60189-727

14. *Waiver.* Any failure of either the City or the Contractor to strictly enforce any term, right, or condition of this Agreement shall not be construed as a waiver of such term, right, or condition.

15. *Integration.* The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, contracts, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

16. *Non-disclosure.* During the course of the work specified in this Agreement, Contractor may have access to proprietary and confidential information including, but not limited

to, methods, processes, formulae, compositions, systems, techniques, computer programs, databases, research projects, resident name and address information, financial data, and other data. Contractor shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose such information to any third party without the express written consent of the City.

17. *Severability.* If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.

In Witness Whereof, the parties have entered into this Agreement this 17th day of October, 2005.

City of Wheaton, an Illinois municipal corporation

By _____

Donald B. Rose, City Manager

Attest:

Emily Consolazio, City Clerk

Avalon Petroleum Company

By _____

Attest: