

ORDINANCE NO. 23-058

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR FUELING SERVICES WITH FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC D.B.A. FUELMAN OF ATLANTA, GEORGIA, TO PROVIDE FUEL CREDIT CARD SERVICES FOR ALL CITY OWNED VEHICLES; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the City has been utilizing FleetCor Technologies Operating Company, LLC d.b.a. Fuelman for fuel purchases for many years; and

WHEREAS, a request for proposals (RFP) was issued on October 6, 2022, for Fuel Credit Card Services for all City owned vehicles in which four (4) proposals were received and evaluated by a selection committee and based upon the proposer's technical ability, experience, qualifications, and price, it was determined the proposal of FleetCor Technologies Operating Company, LLC d.b.a. Fuelman of Atlanta, Georgia, was the best and most favorable and advantageous to the City; and

WHEREAS, FleetCor Technologies Operating Company, LLC and the City desire to enter into this agreement to document the services to be provided, pricing, and terms and conditions for the fuel credit card services provided to the City; and

WHEREAS, the agreement is for a twelve (12) month period beginning April 1, 2023, and includes an option to be renewed up to two (2) additional successive twelve (12) month periods; and

WHEREAS, the cost for fuel purchases will be paid from each department's appropriate budget including Police, Fire, City Manager, Code Compliance, Community Development, Engineering, Fleet, Horticulture, Municipal Court, Parks and Recreation, Water Plant (BIWW), Wastewater Treatment Plant, Water Distribution, Sewer Maintenance, Street, Building, and Transit; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules and in accordance with Section 14 of the City Charter in order to execute the Agreement prior to the effective date of April 1, 2023; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of Municipal Departments of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

PAGE 2 - ORDINANCE NO. 23-058

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO,
THAT:

Section 1. The City Manager is authorized and directed to enter into an Agreement for Fueling Services with FleetCor Technologies Operating Company, LLC d.b.a. Fuelman of Atlanta, Georgia, to provide fuel credit card services for all City owned vehicles, a copy of which is marked Exhibit "A" and is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST: _____
CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: March 13, 2023



AGREEMENT FOR FUELING SERVICES

FleetCor Technologies Operating Company, LLC d.b.a. Fuelman (herein "FleetCor"), with offices at 3280 Peachtree Rd., Suite 2400, Atlanta, GA 30305, and the City of Sandusky, Ohio (herein "Customer"), with offices at 240 Columbus Ave., Sandusky, Ohio 44870 enter into this Agreement For Fueling Services, including the attached FleetCor (Fuelman) General Terms and Conditions for Use of Fleet Cards (together the "Agreement") on _____, 2023 (the "Effective Date").

RECITALS:

WHEREAS, Customer is a municipal corporation organized under the laws of the State of Ohio and the Charter of the City of Sandusky;

WHEREAS, Customer issued a Request for Proposals (RFP) for Fuel Credit Card Services on October 6, 2022 (herein "RFP for Fuel Credit Card Services"), which FleetCor responded to and submitted response on October 27, 2022 (herein "FleetCor's RFP Response").

WHEREAS, Customer subsequently awarded the RFP to FleetCor as the most qualified respondent in letter dated November 30, 2022.

WHEREAS, FleetCor and Customer desire to enter into this Agreement to officially agree to the services to be provided, pricing, and terms and conditions for the fuel card program and fueling services provided by the Fuelman Fleet Card program provided to Customer by FleetCor.

WHEREAS, the RFP for Fuel Credit Card Services and FleetCor's RFP Response are considered a part of this Agreement and together form the basis of this Agreement, except as modified hereby.

NOW, THEREFORE, for valuable consideration, FleetCor and Customer agree to the foregoing Recitals and further agree as follows:

1. **Nature of Agreement.** FleetCor will provide Customer with fuel cards (Fuelman Network Cards) which will be used for the purchase of fuel by Customer through third party fuel marketers identified by FleetCor. FleetCor will provide Customer with an account(s) through the use of which Customer may access its fuel purchasing information and use as provided in this Agreement.
2. **Term and Termination.** The initial term of this Agreement begins on the Effective Date and will continue for twelve (12) months, thereafter the Agreement may renew as shall be mutually agreed for up to two (2) additional successive twelve (12) month periods. This Agreement may be terminated by either party upon the other party's breach of this Agreement which is not cured within sixty (60) days after receipt of notice of such breach. After the initial term, this Agreement may be terminated by either party for any reason with sixty (60) days written notice.
3. **Services Provided and Costs.** Services provided to Customer and associated cost include:
 - 3.1. **Account Setup & Cards** – assistance with establishing card purchasing limits, exception reporting, and online account management and reporting access. Unless otherwise arranged, Cards are delivered "unlocked" via U.S. Mail and are ready to be distributed and used upon receipt. Account setup and the initial order of cards for a new account are provided at no charge.
 - 3.2. **Replacement Cards or Additional Cards Ordered** – Replacement cards or additional cards may be ordered via the online application, phone or in writing (customer service). Card replacements (including lost or stolen), additional cards and replacement of expiring cards shall be free of charge.
 - 3.3. **Expedited Card Shipping.** Standard shipping of card orders is via U.S. Mail (free of charge). For expedited shipping, FleetCor's standard shipping rates shall apply (rates subject to change). Current rates are: 2nd Day Air - \$25.00, Next Day Air - \$35.00.
 - 3.4. **Online Account Management** – At no charge FleetCor shall provide assistance and training to use the online browser-based account management system. Access to the online system will be tailored to Customer's desired best practice for managing branch locations or departments. Customer will be able to establish secure logons that allow authorized card program administrators or managers to view existing cards, drivers, vehicles, purchasing limits; order new cards; lock existing cards or PINs; create new driver or vehicle IDs/PINs; and view/print/download fleet management reports or optional reports from the system, or download transaction data.
 - 3.5. **Reporting** – At no charge FleetCor shall provide a Fleet Management Report for each Customer branch location at each billing interval to support the amounts invoiced on a consolidated invoice/statement. The system generated statement and fleet management reports are available on-line free of charge or may be delivered via email (pdf attachment or URL link). Upon request FleetCor will provide additional optional management reports or other advanced reporting (including electronic transaction data) from the system or FleetCor's data system. Optional reports or other advanced data reporting shall be delivered via the online account management system, email, or Secure File Transfer Protocol (SFTP).
 - 3.6. **Card Purchasing Controls, Exceptions and Denial Alerts, Fraud Monitoring and Alerts.** At no additional cost, and subject to merchant POS Authorization Limitations as defined in the attached Terms and Conditions, the Fuelman fleet card program will provide Customer ability to establish "Card Purchasing Controls" herein referred to as "Standard Parameter Controls", explained further below. Additionally, FleetCor provides Customer the ability to receive Exceptions and Denial Alerts, Exceptions Flagged in Reporting, and the system does employ Fraud Monitoring and Fraud Alert Notices, which are explained further below.
 - 3.6.1 **Standard Parameter Controls.** Cards may be configured to attempt to limit card usage and transaction amounts, for example, by limiting Vehicle/Card authorization to: maximum gallons or dollars per transaction, maximum gallons or dollars in a week, maximum number of transactions in a 24 hour period, limit card usage to certain days of the week, and times of day. Fuel grade restrictions can also be established, however fuel grade restrictions cannot be enforced in a typical retail Point-of-Sale (POS) transaction. Maximum non-fuel dollar limits for fleet supplies and fleet services can also be established, however these limits may or may not be enforceable subject to merchant POS authorization limitations. Cards are also configured to prompt for a valid driver identification number (ID) and an odometer reading at fueling locations prior to turning on the pump or completing a transaction inside the retail station. At most stations, fuel pumps can automatically shut off at a Card's transaction dollar limit. Transaction dollar limits are established using the vehicle/card's tank capacity gallons or weekly gallon limit, with gallon limits converted to dollar limits transmitted to the card accepting

station's POS system during the authorization process. Upon Customer's request, FleetCor will establish these Standard Parameter Controls, or Customer can establish these Standard Parameter Controls using the online system, as a means of assisting Customer in limiting purchase abuse and fraud. While FleetCor attempts to control the use of the Card to the parameters selected, Customer agrees to pay for all transactions on the Account ("Charges") regardless of whether such Charges are within or outside the parameters established for each Card.

3.6.2 Exceptions and Denial Alerts and Exceptions Flagged in Reporting. Additionally, upon request FleetCor may establish the system to provide Customer "Exceptions Alerts" via email to designated program administrators for Customer, and Exceptions are also noted on Customer's Fleet Management Reporting provided at billing. An "Exception" occurs when one of the Standard Parameter Controls is exceeded or when a wrong fuel grade purchase occurs. A "Denial" occurs when an attempted transaction exceeded one of the Standard Parameter Controls and the system denied or declined the transaction. Exceptions Alerts and exceptions noted on reporting provide valuable tools to assist Customer in identifying purchase abuse and fraud. Denials help block violations of Customer's established fueling policies established through the Standard Parameter Controls and help stop losses due to abuse of the cards or fraud, and they provide Customer ability to identify personnel that need additional training on use of the card program.

3.6.3 Fraud Monitoring and Fraud Alerts. The Fuelman transaction processing system utilizes an enhanced fraud monitoring system to monitor transactions for fraud. The system utilizes fraud models and business rules to help defend against fraud such as card-skimming and counterfeiting. If suspected fraudulent activity is identified, the system may automatically send, or FleetCor fraud analysts working flagged transactions may send Fraud Alert Email Notices via email to the designated Customer fleet contact on the account. It is important that Customer make sure the designated contact person(s) on the account(s) are accurate for sake of receiving these alerts. The Customer fleet contact person will need to reply to such notices acknowledging whether the transaction is legitimate, then actions will be taken to immediately lock the card and order replacement. Upon request, additional enhanced authorization controls (business rules) are available for implementation, such as geographic restrictions to limit card use from certain States. FleetCor does not guarantee that its fraud monitoring solution, enhanced authorization controls or standard parameter controls and exception reporting will detect, identify and stop all fraud, therefore it is Customer's responsibility to utilize Fuelman reporting or transaction data we provide to review and monitor card use. Customer is responsible for requesting locking of cards identified as being used fraudulently or suspected being used for non-Customer purchases.

3.7. Customer Support – At no charge FleetCor will provide professional fleet purchasing card service representatives that are available during regular business hours to assist with major account changes and inquiries such as: adding a location or authorized user; changing card controls; credit limit inquiries or requests for credit limit increases, changing exception reporting, or normal card and PIN ordering. After hours, the Fuelman Customer Service Call Center will be available at 1-800-877-0800.

3.8. 24x7 Toll Free Authorization Assistance – At no charge FleetCor will provide 24x7 voice authorization assistance for Cardholders or Merchants through a toll free Help Desk call center (1-800-877-9013).

4. Price of Services. FleetCor agrees to price fuel to Customer based on an OPIS-based wholesale cost (indexed) pricing formula. Subject to the Never below FleetCor's Cost pricing exception/ deviation defined below, FleetCor hereby proposes that the price for fuel products purchased by Customer will be equal to the **sum of the items listed below:**

a) Applicable terminal/rack refiner price (branded or unbranded) as reported by the Oil Price Information Service (OPIS) each Thursday (hereafter "OPIS Newsletter Prices") for each product purchased that calendar week. OPIS is an independent company that tracks and provides refiner terminal rack prices to re-sellers by Rack Market.

Note: Rack Market refers to where petroleum products are sold at the wholesale level from primary storage. Rack refers to loading racks where tanker trucks fill up. Erie County, Ohio retail locations typically pull their product from either the Toledo, OH rack or Lorain, OH rack, however the applicable rack for pricing may vary if Customer travels out of the area.

b) Freight rate (Fuel Delivery to Retail Acceptance Sites). Freight rates vary by location based on applicable transportation costs per gallon provided to FleetCor by the card accepting merchant (including any dealer rate adjustments).

c) All applicable taxes (Tax Exempt Billing further clarified herein).

d) FleetCor's cost plus service fee or mark-up (margin) per gallon shall be as follows by fuel product:

Unleaded Gasoline	<u>\$ 0.120</u>	Premium Gasoline	<u>\$ 0.120</u>
Mid Grade Gasoline	<u>\$ 0.120</u>	Diesel Fuel	<u>\$ 0.160</u>

4.1 Never Below FleetCor's Cost (Pricing Exception/Deviation). FleetCor reserves the right to never bill the Customer for any purchase at an off-site retail/ commercial location at a price below FleetCor's cost to settle with the card accepting Merchant and in the event that the City's OPIS Index based price (including markup and all merchant taxes) calculates to be below FleetCor's cost to settle with the Merchant, FleetCor's cost shall apply.

4.2 Tax Exempt Billing. FleetCor shall provide tax exempt billing to Customer to the extent allowed by the Federal and State Government. Currently FleetCor is only allowed to exempt the Federal motor fuel excise tax which is **\$0.183 per gallon for gasoline and \$0.243 per gallon for diesel fuel**. Customer shall provide tax exemption certificates or other related information as required from time to time by FleetCor Tax department to maintain tax exempt status. Current federal and State taxes (rates subject to change) that cannot be exempted for transaction in Ohio are as follows:

	Gasoline Non-Exempt Tax Rate Per Gallon	Diesel Non-Exempt Tax Rate Per Gallon
Federal LUST Tax	\$0.0010	\$0.0010
Federal Oil Spill Liability Tax	\$0.0021	\$0.0021
State of Ohio Gasoline or Diesel Tax	\$0.3850	\$0.4700
Ohio Petro Activity Tax – Gas or Diesel	\$0.02196	\$0.02745
TOTAL NON-EXEMPT TAX	\$0.41006	\$0.50055

5. **Payment Terms.** Customer agrees to be billed **Weekly** and pay the full statement amount within **Thirty (30)** days of the FleetCor Statement date either by check or online bill pay.

6. **Notices.** All written notices or other communications under this Agreement shall be deemed duly given when made in writing and delivered in hand, or upon receipt when properly addressed return-receipt-requested and delivered by United States Postal Service or other delivery service to the following addresses:

Customer: City of Sandusky
 John Orzech, Interim City Manager
 240 Columbus Ave
 Sandusky, OH 44870
 419-627-5846
 jorzech@cityofsandusky.com

Copy to: City of Sandusky
 Michelle Reeder, Finance Director
 240 Columbus Ave
 Sandusky, OH 44870
 419-627-5776
 mreeder@cityofsandusky.com

FleetCor: FleetCor Technologies Operating Company, LLC
 543 Cox Road, Suite C-2
 Gastonia, NC 28054
 Attn: Mark Roberts
 Phone: (704) 853-2662
 Mobile: (704) 674-6848
 Email: markroberts@fleetcor.com

Copy to: FleetCor Legal Department
 3280 Peachtree Road, Suite 2400
 Atlanta, Georgia 30305

This Agreement sets forth the complete understanding of FleetCor and Customer with respect to the matters herein, and supersedes any agreements between the parties prior to the Effective Date.

Agreed and accepted:

FLEETCOR TECHNOLOGIES OPERATING COMPANY, LLC d.b.a. FUELMAN

CITY OF SANDUSKY, OHIO

 Signature

 Signature

 Printed Name

 Printed Name

 Title

 Title

 Date

 Date

FLEETCOR (FUELMAN) GENERAL TERMS & CONDITIONS FOR USE OF FLEET CARDS

1.1 Security, Loss, Theft, or Unauthorized Use of Card.

1.1.1 General Security. Each Card can be programmed to only allow Fuel or both Fuel & Maintenance services such as oil changes, vehicle washes, etc. Typically, each Transaction is authorized with the Card number, product code, quantity and driver's Driver ID across the proprietary Fuelman network to ensure that the purchase is authorized and limited to the product and quantity (e.g. gallons of Fuel or dollars of Maintenance) that have been pre-approved. This system also helps prevent unauthorized Driver IDs and stolen Cards from being used to make purchases. The product and quantity controls are subject to each Merchant Location's POS Authorization Limitations described herein.

1.1.2 Fuelman's Liability. In the event of an unauthorized Transaction occurs, Fuelman assumes full responsibility for said unauthorized Transaction if the Customer has complied with the responsibilities set forth in paragraphs 1.1.3 and 1.1.4. Fuelman will immediately suspend or terminate the use of a Card if the Customer notifies Fuelman of the fact that it is either: a) a lost or stolen card; or b) it is a card that the Customer has identified being used for non-Customer use purchases (i.e. suspected fraudulent transactions) in accordance with 1.1.4.

1.1.3 Customer's Responsibility. It is the responsibility of Customer to ensure proper security controls are kept in place to protect the Cards and Driver IDs and that only authorized employees or agents of Customer use them to make purchases. It is also the Customer's responsibility to lock any inactive, misplaced, or stolen Cards and Driver IDs immediately. Fuelman is not responsible for fraudulent Transactions made on unlocked Cards with valid Driver IDs. Customer should use the online account application to lock Cards and Driver IDs instantly. Alternatively, the Customer can contact Fuelman Customer Service during regular business hours via fax or email with the requested change, in which case Fuelman will make the requested changes within 24 hours and assume responsibility for any unauthorized purchases at that point. All Transactions in which a valid/unlocked Card number was used in conjunction with a valid/active Driver ID will be considered to be authorized Transactions in which the Customer is fully responsible for payment, until the Customer has notified Fuelman of a lost or stolen card, or a card suspected to have been used for non-Customer use purposes in accordance with the terms of 1.1.4. It is also the Customer's responsibility to review the standard fleet management reports and optional eMail exception alerts to identify potential purchasing discrepancies. Customer should instruct its Cardholders to keep any record of their Driver ID separate from the vehicle's Card.

1.1.4 Lost or Stolen Cards. The Customer shall report all lost or stolen Cards, or Cards that the Customer has identified as being used for non-Customer purposes, to Fuelman immediately via phone call or email to Fuelman's Customer Service Department identifying the Card number and such other details concerning the loss or theft of the Cards as are known by the Customer at the time of the report. The Customer shall be liable for all Transactions made by the Card only until midnight of the day that Fuelman receives the Customer's notice that the Card is lost, stolen or is suspected of being abused for non-Customer purposes. Notice includes, but is not limited to, contact with Fuelman via email, facsimile, or a phone call to Fuelman Customer Service. After normal operating hours for Fuelman Customer Service, and on weekends and holidays, the Customer must provide notice by calling the Fuelman 24 Hour Helpdesk (1-800-877-9013). The Customer and Guarantor(s) agree to and acknowledge full liability for any losses resulting from any failure to report the loss or theft of Card(s) in accordance with the terms hereof.

1.1.5 Terminated Drivers. It is the Customer's responsibility to lock a terminated driver's Driver ID as explained herein.

1.1.6 Merchant Limitations. The personnel (if any) at a Merchant Location are not the agents or employees of Fuelman and Fuelman shall not be responsible for the products or services rendered by any of the Merchants or any other liability or damage which arises from the action or negligence of the personnel of any of the Merchants, their agents or their employees.

1.1.7 POS Authorization Limitations. Authorization controls are provided as a convenience to the Customer and are not guaranteed to prevent

unauthorized purchases. Specifically, depending on the particular point-of-sale (POS) equipment and Fuel dispenser controls being used by a particular Merchant Location, the product type and spending limit may not be enforceable prior to completing the Transaction. In these situations, the Transaction will still be considered to be authorized, but will be identified as an exception on the Customer's standard fleet management report and reported via email if desired by Customer.

1.1.8 Claims. All claims for defective Fuel or Maintenance must be made to the Merchant operating the Merchant Location where such Fuel or Maintenance was purchased. Any claim for defective Fuel or Maintenance is waived by Client unless made in writing to Merchant, with a copy to Fuelman, within fifteen (15) days from the date of the purchase of the alleged defective Fuel or Maintenance giving rise to the claim.

1.2 Account Administration and Card Issuance.

1.2.1 Credit Limit. Upon receipt of notice of award of Bid/contract and signed credit applications from Customer, Fuelman will establish an aggregate spending limit for all the Cards issued to Customer under the Account(s) (the "Credit Limit") based on Fuelman's evaluation of the Customer's creditworthiness. The initial Credit Limit has already been established (for existing older accounts already using Fuelman). Fuelman reserves the right to increase or decrease this Credit Limit at any time with or without providing notice to Customer. So long as sufficient creditworthiness exists, the intention shall be to have sufficient credit limit to meet the anticipated purchasing projections or purchasing history/activity of the Customer under the billing frequency and terms provided in the Bid or this response to Bid.

1.2.2 Administration of Cards. Customer shall be solely responsible for the use, maintenance, administration, and security of the Cards and Driver IDs within Customer's business, including, but not limited to, distributing Cards to, and collecting Cards from, its employees and agents. Notwithstanding any other provision in this Agreement, Customer is responsible for any loss or misuse of Cards by its employees and agents. See sections 1.1.3 and 1.1.4 for more information regarding Customer responsibilities.

1.2.3 Cancellation of Cards. If, at any time, for any reason, Customer desires to cancel any particular Card, but not the Account, Customer's Representative must notify Fuelman via the online application or in writing of such cancellation. Customer's liability for purchases made using the canceled Card shall end at midnight of the day that Fuelman receives notice of such Card cancellation. The on-line application allows customer to instantly cancel (lock) cards.

1.2.4 Account Administration (Contact Persons). To ensure effective communication between your Fleet Manager or Card Program Administrator, your Accounts Payable Representative, and Fuelman, Customer will provide the requested contact information for both an authorized Fleet Contact and Billing Contact. Up-to-date information about your account will be communicated through these designated persons. For example, if your account becomes past due or exceeds the assigned credit limit, or if we have identified suspected fraudulent activity, the listed individuals on the account may be notified electronically to avoid a disruption in service or to confirm whether suspected fraudulent purchases identified are legitimate. Customer shall contact Fuelman customer service or your account manager if any of this information changes for the authorized Fleet Contact or Billing Contact person.

1.2.5 Suspension of Cards. Fuelman, at its sole discretion, may suspend or terminate the use of any Card at any time for any reason, including, but not limited to, inactivity, unusual activity, or suspected loss, theft, fraud, or in compliance with the USA Patriot Act. However, nothing in this Agreement shall obligate Fuelman to monitor the use of any Card, and, as described in this Agreement, Customer is solely responsible for the use of any outstanding Cards.

1.2.6 Suspension of Account. Fuelman, at its sole discretion, may suspend or terminate the use of an Account at any time for any reason, including, but not limited to, inactivity, unusual activity, change in creditworthiness, late payment (excessive days beyond terms), aggregate

outstanding balance owing on the Account (outstanding Account balance and unbilled Transactions) over the Credit Limit or in compliance with the USA Patriot Act.

occasioned or caused by circumstances beyond its control.

1.3 Payments.

1.3.1 Applying Payments. Fuelman uses a "balance-forward" based accounting system. Therefore, all payments made by Customer to Fuelman will be applied accordingly against the outstanding amount due at the time the payment is received. Subject to applicable law, we will apply and allocate payments and credits among balances owed by Customer (whether for purchases, fees, interest, or otherwise) in any order and manner determined by Fuelman in its sole discretion. Customer agrees that Fuelman has the unconditional right to exercise this discretion in a way that is most favorable or convenient to Fuelman.

1.3.2 Payment Methods/Remittance Advice. By the Due Date specified on FleetCor's Invoice/Statement to Client, Client will submit payment by valid check or other payment method described below equal to the accumulated balance of the Account for the previous Billing Cycle. All remittances should include the complete Bill Group (BG) account number in order to be processed. Checks paying multiple BG account numbers should include a check stub or remittance advice listing all BG account numbers being paid including amount for each. Failure to include the complete BG account number(s) shall delay payment posting which might cause the account to be considered delinquent. Additional payment methods include:

1.3.3 Electronic Payment Option (EFT Pull by FleetCor). To ensure that no late fees or finance charges occur, FleetCor offers the option for client to use Electronic Funds Transfer payment method that will be set to occur on the due date. Client must submit an EFT Authorization form with voided check to establish this payment option. This payment option is Free of Charge.

1.3.4 Web-based Payment Option (Using BillTrust™). Another payment option available for Customer to ensure payments are received by due dates, FleetCor offers the option for client to use an Internet based web payment method powered by BillTrust™, FleetCor's on-line payment processing partner. Customer would initiate payments on-line using instructions that will be provided by FleetCor upon request by Customer.

1.3.5 Payment by Phone. By the Due Date, Fuelman will initiate, at Client's request, payment by phone. Fuelman reserves the right to charge a fee of twenty five (\$25) for each payment by phone.

1.3.6 Late Payments. All payments made by Customer to Fuelman that are not received by the Due Date are considered late.

1.3.7 Insufficient Funds. If a check, credit card charge, or EFT/ACH is returned or denied, Fuelman reserves the right to charge Insufficient Funds Fee equaling the lesser of fifty dollars (\$50) or the maximum amount allowable by applicable law for each occurrence.

1.4 Limitation of Liability.

THE PARTIES WILL HAVE NO LIABILITY FOR INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING CLAIMS FOR LOSS OF PROFITS, WHETHER RESULTING DIRECTLY OR INDIRECTLY TO CUSTOMER, FLEETCOR, GUARANTOR, OR THIRD PARTIES, AND WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR RESULT FROM A BREACH OF THIS AGREEMENT. IN THE EVENT A COURT IN A FINAL, NON-APPEALABLE AWARD FINDS FLEETCOR OR CUSTOMER LIABLE FOR ANY DIRECT DAMAGES, FLEETCOR OR CUSTOMER'S LIABILITY IN THE AGGREGATE FOR SUCH DIRECT DAMAGES WILL NOT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER TO FLEETCOR FOR THE THREE (3) MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

1.5 Force Majeure.

FleetCor shall not be liable for failure to perform when such failure is

EXHIBIT "A"