STATE OF MONTANA TERM CONTRACT

Department of Administration
State Procurement Bureau
165 Mitchell Building
PO Box 200135
Helena, MT 59620-0135
Phone: (406) 444-2575 Fax: (406) 444-2529
TTY Users-Dial 711
http://gsd.mt.gov/

T.C. #: SPB15-3067V-10
Title: Bulk Propane Delivery Services
This is an exclusive contract.

CONTRACT TERM	FROM	December 10, 2015	CONTRACT STATUS	NEW (x)
	TO	October 31, 2018		RENEW ( )
VENDOR ADDRESS	Breen Oil & Tire Company P O Box 10 Choteau, MT 59422		ORDER ADDRESS	
ATTN:	Mary Christiaens		ATTN:	
PHONE:	(406) 466-2575		PHONE:	
FAX:	(406) 400-2575		FAX:	
E-MAIL:	marychristiaens@yahoo.com		E-MAIL:	

PRICES: Per Contract Agreement

DELIVERY: Per Contract Agreement

F.O.B.: Per Contract Agreement

TERMS: Per Contract Agreement

REMARKS:

IFB/RFP No.: IFB15-3067V	Rick Dorvall, CONTRACTS OFFICER	DATE: 12/10/2015

AUTHORIZED SIGNATURE

Bulk Propane Delivery Services Term Contract
SPB15-3067V-10

THIS CONTRACT is entered into by and between State of Montana, Department of Administration, State Financial Services Division, State Procurement Bureau (State), whose address and phone number are 125 N. Roberts St., Room 165 Helena, MT 59620, 406-444-2575 and **Breen Oil & Tire Company**, (Contractor), whose address and phone number are **PO Box 10, Choteau, MT 59422** and **(406) 466-2575**.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The contract's initial term is upon contract execution through October 31, 2018, unless terminated earlier as provided in this contract. In no event is this contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the contract and the procurement officer signature approving the form of the contract do not constitute an authorized signature.

1.2 Contract Renewal. State may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in two-year intervals, or any interval that is advantageous to State. This contract, including any renewals, may not exceed a total of seven years.

2. COST ADJUSTMENTS

2.1 Monthly Price Adjustments. An average rack price will be determined, as described below, at the beginning of the contract. State anticipates calculating this price on the first Thursday of each month beginning December 5, 2015. Price changes per gallon will be determined monthly as described in the following steps:

- Contract propane prices shall be adjusted monthly, beginning December 3, 2015, based on the rack price of Conoco/Phillips refinery, Billings, Montana as posted from approximately the first Thursday of the month. Contract pricing adjustments will be effective the Friday following the Thursday price adjustment.
- Prices between these dates may be adjusted if the price increases or decreases by $0.05 or more.
- Rack price increases or decreases will continue to be reported monthly. Each month, State shall post an addendum that reports the current rack price. The addendum will show the rack price per gallon up to a twelve month period, or, the previous 12 price adjustments if the price has increased or decreased by $0.05 or more.

If this pricing structure becomes unworkable or detrimental to the State in the State's sole judgment, or does not accurately depict market conditions, State reserves the right to modify the pricing structure to reflect market conditions; adjust the monthly effective date; or cancel the contract under Section 16.2 by giving 30 days written notice to contract holders.

2.2 Monthly Addendum. Contractors shall check the "term contract" website for a monthly contract addendum or following a rapid change in wholesale pricing. State reserves the right to modify pricing per Section 2.1 of this contract. Contractors unable to locate either the term contract or monthly addenda shall contact State Liaison identified in Section 21.1

2.3 Cost Adjustments Negotiated Based on Changes in Contractor's Costs. ***After the contract's initial term and if State agrees to a renewal***, the parties may negotiate cost adjustments at the time of contract renewal. Any cost increases shall be based on demonstrated industrywide or regional increases in Contractor's costs. State is not obligated to agree upon a renewal or a cost increase.

3. SERVICES AND/OR SUPPLIES

3.1 Propane Service. Contractor shall provide to the awarded locations in Attachment A, propane deliveries within a reasonable time frame as designated by the individual ordering agency.

3.2 Tanks. Propane tanks at each location are designated as "State"- owned or "Vendor" -owned (to be supplied by the contract holder). Previous contract holders will be removing their tanks for replacement by the new contract holders, as required.

THE COST OF TANK CHANGEOVERS RESULTING FROM BID AWARD IS SOLELY THE RESPONSIBILITY OF THE SUCCESSFUL VENDOR. TANK RENTAL FEES, IF ANY, ARE TO BE INCLUDED IN THE BID PRICE PER GALLON. IF THE "OLD" TANK IS REMOVED AND A "NEW" VENDOR TANK IS INSTALLED, ANY EXISTING STATE -OWNED PROPANE WILL BE TRANSFERRED INTO NEW TANK.

3.3 Term Contract Reporting- Annual Requirements. By July 31st of each year, contractors shall report annual propane purchases by location. Each report shall contain the product description, total quantity sold/delivered, total dollars expended, and the purchasing agency. Annual reports shall reflect purchases for the previous 12 month period beginning on July 1st and ending on June 30th. The first report under this contract will be due on or before July 31, 2016. The report should reference Term Contract #SPB15-3067V.

PLEASE NOTE: CONTRACTORS SUPPLYING PROPANE TO LOCATIONS UNDER THE PREVIOUS CONTRACT AND/OR THIS CONTRACT SHALL SUBMIT REPORTS AS FOLLOWS:

1. **Purchasing Report #1.** Contractors supplying propane to locations under the previous Term Contract (SPB#09-1081D or SPB#09-1082D) shall submit a purchase report for ***July 1, 2015 through October 31, 2015.***

2. **Purchasing Report #2.** Contractors supplying propane to locations under this Term Contract (SPB#15-3067V) shall submit a purchase report for ***November 1, 2015 through June 30, 2016.***

3. **Contractors Continuing Service to the Same Location under the Previous Contract.** Contractors continuing to supply propane to the same location per this contract and the previous contract ***shall submit 2 Reports by July 31, 2016. As defined above, the two reports shall be for the service periods defined as "Purchasing Report #1" and "Purchasing Report #2". Contractors shall clearly label each report with 1) The Service Period; and 2) The Contract Number.***

State Procurement Bureau may check reported volumes and dollar totals against state records for verification. A Contractor failing to provide timely or accurate reports provides State justification for contract cancellation and/or consideration for future State contract awards.

4. WARRANTIES

4.1 Warranty of Services. Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract and any industry standards. State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, State may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration of the bulk propane deliveries to be provided, State shall pay Contractor according to the following schedule: Net 30 days after approved, properly submitted invoice.

5.2 Withholding of Payment. State may withhold disputed payments to Contractor under the subject statement of work (or where no statement of work exists, the applicable contract). The withholding may not be greater than, in the aggregate, fifteen percent (15%) of the total value of the subject statement of work or applicable contract. With respect to payments subject to milestone acceptance criteria, State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. Contractor is not relieved of its performance obligation if such payment(s) is withheld.

5.3 Payment Terms. Unless otherwise noted in the solicitation document, State has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate State's electronic funds transfer payments.

5.4 Reference to Contract. The contract number SHALL appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, State is not obligated to pay the invoice.

6. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units. However, State Procurement Bureau makes no guarantee of any public procurement unit participation in this contract.

7. EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is considered to be an "Exclusive" use contract and state agencies shall obtain the specified product/service from the contract holder(s), unless the contract allows otherwise. However, State does not guarantee any minimum usage totals and it is the individual agency's responsibility to comply with the terms of the contract.

8. ACCESS AND RETENTION OF RECORDS

8.1 Access to Records. Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. State may terminate this contract under section 16, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

8.2 Retention Period. Contractor shall create and retain all records supporting the bulk propane deliveries for a period of eight years after either the completion date of this contract or termination of the contract.

9. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this contract without State's prior written consent. (18-4-141, MCA.) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and

omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this contract.

10. HOLD HARMLESS/INDEMNIFICATION

Contractor agrees to protect, defend, and save State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of State, under this contract.

11. REQUIRED INSURANCE

11.1 General Requirements. Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

11.2 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

11.3 Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000.00 per occurrence and $2,000,000.00 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products, and completed operations; and the premises owned, leased, occupied, or used.

11.4 Specific Requirements for Automobile Liability. Contractor shall purchase and maintain coverage with split limits of $500,000 per person (personal injury), $1,000,000 per accident occurrence (personal injury), and $100,000 per accident occurrence (property damage), OR combined single limits of $1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

11.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention shall be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

11.6 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. Contractor shall notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

12. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance shall be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption shall be valid for the entire contract term and any renewal. Upon expiration, a renewal document shall be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

13. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.I. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract must be made on the basis of merit and qualifications and there must be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

14. DISABILITY ACCOMMODATIONS

State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

15. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana shall register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, shall determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they shall register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at http://sos.mt.gov.

16. CONTRACT TERMINATION

16.1 Termination for Cause with Notice to Cure Requirement. State may terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this contract after giving Contractor written notice of the stated failure. The written notice shall demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

16.2 Termination for Convenience. State may, by written notice to Contractor, terminate this contract without cause and without incurring liability to Contractor. State shall give notice of termination to Contractor at least 30 days before the effective date of termination. State shall pay Contractor only that amount, or prorated portion thereof, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

16.3 Termination for Cause with Notice to Cure Requirement. Contractor may terminate this contract for the State's failure to perform any of its duties under this contract after giving the State written notice of the failure. The written notice shall demand performance of the stated failure within a specified period of time of not less than (insert number of days) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

16.4 Reduction of Funding. State shall by law terminate this contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

17. EVENT OF BREACH – REMEDIES

17.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

- products or services furnished fail to conform to any requirement;
- failure to submit any report required by this contract;
- failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior State approval or breaching section 22.1 obligations; or
- voluntary or involuntary bankruptcy or receivership.

17.2 Event of Breach by State. State's failure to perform any material terms or conditions of this contract constitutes an event of breach.

17.3 Actions in Event of Breach. Upon Contractor's material breach, State may:

- terminate this contract under Section 16.1 and pursue any of its remedies under this contract, at law, or in equity; or
- treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon State's material breach, Contractor may:

- terminate this contract under section 16.3 and pursue any of its remedies under this contract, at law, or in equity; or
- treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

18. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

19. WAIVER OF BREACH

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

20. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without State Procurement Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

21. LIAISONS AND SERVICE OF NOTICES

21.1 Contract Liaisons. All project management and coordination on State's behalf shall be through a single point of contact designated as State's liaison. Contractor shall designate a liaison that must provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract shall be coordinated between State's liaison and Contractor's liaison.

Rick Dorvall is State's liaison.
125 N. Roberts Street
Helena, MT 59620
Telephone: 406-444-3366
Fax: 406-444-2529
E-mail: rickdorvall@mt.gov

Mary Christiaens is Contractor's liaison.
Address: PO Box 10
City, State, Zip Code: Choteau, MT 59422
Telephone: (406) 466-2575
Fax: (406) 400-2575
E-mail: marychristiaens@yahoo.com

21.2 Notifications. State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints shall first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

22. MEETINGS

22.1 Technical or Contractual Problems. Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to State. State may request the meetings as problems arise and must be coordinated by State. State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

23. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If State terminates a project or this contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

24. CHOICE OF LAW AND VENUE

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or this contract shall be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

25. TAX EXEMPTION

State of Montana is exempt from Federal Excise Taxes (#81-0302402).

26. AUTHORITY

This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

27. SEVERABILITY

A declaration by any court or any other binding legal source that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually and materially dependent.

28. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

28.1 Contract. This contract consists of **11** numbered pages, any Attachments as required, Solicitation #15-3067V, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

28.2 Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification shall be in a written agreement signed by the parties.

29. WAIVER

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

30. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

STATE OF MONTANA
Department of Administration
State Financial Services Division
125 N. Roberts Street
Helena, MT 59620-0135

BY: Cheryl Grey, SFSD Administrator
(Name/Title)

(Signature)

DATE: 12-10-15

Breen Oil & Tire Company
PO Box 10
Choteau, MT 59422
FEDERAL ID # 81-0429780

BY: Mary Christiaens Mgr
(Name/Title)

(Signature)

DATE: 12-8-15

Approved as to Legal Content:

Mike Manion 12/7/15
Legal Counsel (Date)

Approved as to Form:

12/2/15
Procurement Officer (Date)
State Procurement Bureau

Attachment A

Loc. No	County	Agency	Location	# of Tanks	Owned by (VENDOR or STATE)	Est. ann. Usage (Gal)	Bid Winner Breen Oil & Tire Company
54	Glacier	MDT	St. Mary, HWY MTCE FACILITY	2	S	5400	$0.38