

# Agreement

## Association of Central Oklahoma Governments

### E85 Tank Installation

This AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2005 by and between the Association of Central Oklahoma Governments with a mailing address of 21 E. Main Street, Suite 100, Oklahoma City, OK 73104, hereinafter referred to as “ACOG” and (Recipient Name), hereinafter referred to as “the RECIPIENT.”

The purpose of this AGREEMENT is to identify actions that are required to be performed by the RECIPIENT and ACOG to implement an E85 Infrastructure Development Project to install an E85-compatible fuel tank and dispenser and to dispense ethanol-blended motor fuel in concentrations not less than E10 [10 volume percent (10%) anhydrous denatured fuel ethanol, 90 volume percent (90%) regular unleaded gasoline] and not greater than E85 [85 volume percent (85%) anhydrous denatured fuel ethanol, 15 volume percent (15%) regular unleaded gasoline] to the public on a Continual Basis at (Station location).

For the purposes of this agreement, “E10” is defined as a blend of typically 10% denatured ethanol [ethyl alcohol ( $C_2H_5OH$ ) containing 5% hydrocarbon denaturant] and 90% hydrocarbon by volume. The hydrocarbons shall meet all applicable state and federal requirements. Total hydrocarbon volume shall range from 88% to 90% of the total volume of the E10 based on seasonal conditions and standards developed and adopted by the American Society for Testing and Materials, ASTM D4806-04a and the American Automobile Manufacturers Association Specification for Fuel Ethanol as Dispensed to Vehicles dated August 25, 1995. Such specifications are attached as appendices to the AGREEMENT and incorporated by reference.

“E85” is defined as a blend of typically 85% denatured ethanol [ethyl alcohol ( $C_2H_5OH$ ) containing 5% hydrocarbon denaturant] and 15% hydrocarbon by volume. The hydrocarbons shall meet all applicable state and federal requirements. Total hydrocarbon volume shall range from 15% to 30% of the total volume of the E85 based on seasonal conditions and standards developed and adopted by the American Society for Testing and Materials, ASTM D5798 and the American Automobile Manufacturers Association Specification for Fuel Ethanol as Dispensed to Vehicles dated August 25, 1995. Such specifications are attached as appendices to the AGREEMENT and incorporated by reference.

For the purposes of this agreement, *ethanol-blended fuel* is understood to mean either E10 or E85.

For the purposes of this agreement, **Continual Basis** is defined as providing ethanol-blended fuel regularly, consistently, and without interruption. Such fuel shall be available 360 days a year for at least 12 hours per day.

I. DURING THE PERIOD OF THE AGREEMENT THE RECIPIENT HEREBY AGREES:

- A. To comply with all applicable laws, ordinances and codes of the state and local government and all conditions, rules and regulations of the U.S. General Services Administration which relate to the administration of grants.
- B. To maintain records regarding total cost of E85 project, number of gallons of ethanol-blended fuel sold on monthly basis, fuel cost, consumer comments and other information relevant to this agreement for a period of five (5) years from the date the E85 tank is operational. The RECIPIENT shall provide sales totals to ACOG on a monthly basis. Should an audit, litigation or other action involving the records be started prior to the end of the five-year period, all records must be retained until each issue arising out of the action is resolved. All costs for which payment is claimed shall be supported by properly executed payrolls, time records, invoices or other documentation evidencing, in proper detail, the nature of the charges.
- C. To permit representatives of the U.S. General Services Administration, the Comptroller General of the United States, state of Oklahoma or any other representatives duly authorized by ACOG to have access to any books, documents, papers and records of the RECIPIENT that are directly pertinent to this agreement for the purpose of making an audit or examination. The RECIPIENT further agrees that ACOG staff or its authorized representative may carry out monitoring and evaluation activities so long as said activities do not materially interfere with RECIPIENT's business activities.
- D. That the services to be performed shall not be assigned, sublet, or transferred to any other corporation or organization without the prior written approval of ACOG.
- E. To cooperate fully with ACOG to audit fiscal transactions related to expenditures made under the terms of the AGREEMENT. This audit will be done in accordance with the provisions of generally accepted auditing standards, and the disposition of any discrepancies relating to questioned costs of fiscal irregularities on part of the RECIPIENT will be responsibility of the RECIPIENT. Audits will be conducted at the sole discretion of ACOG.
- F. To insure that any information released to the general public concerning this AGREEMENT or work completed under this AGREEMENT include reference to the fact that ACOG is a grantor and that federal support came from the U.S. General Services Administration. All press releases, news media advisories, or other materials provided for the benefit of public consideration relating to the establishment of this E85-compatible refueling facility, shall be approved in advance of distribution by ACOG Project Coordinator or by his or her designated representative. The price and blend concentration of the ethanol-blended fuel (E10 or E85) will be placed on the marquee of the refueling facility and appropriate ethanol blend percentage signage must be prominently displayed on the fuel pump unless expressly prohibited by local or state jurisdictions.

G. To comply with any U.S. General Services Administration regulations and requirements concerning patents, inventions and copyrights.

H. To use funds provided by ACOG solely to acquire and install an underground/aboveground tank and pump in order to be able to sell and dispense ethanol-blended fuel at ([Station location](#)). All improvements and materials supported with funds provided by ACOG must meet Fuel Ethanol Compatibility Standards and Dispensing Equipment List for E85 Fuel Vehicles as established and adopted by the American Automotive Manufacturers Association and dated August 10, 1995. Such specifications are attached to this AGREEMENT and incorporated by reference.

1. This E85-compatible dispensing apparatus is estimated to be in operation and available for use by the general public by on or before ([dispensing date](#)), but ACOG recognizes that reasonable time delays in the commencement of sale could occur as a result of construction schedule changes. For the purpose of section H.2. of this AGREEMENT, ([dispensing date](#)) plus the reasonable time delay occurring as a result of construction schedule changes shall constitute the definition of the **EFFECTIVE DATE**.
2. Subject to the terms of this AGREEMENT, RECIPIENT will continue to dispense ethanol-blended fuel from the above-specified refueling location on a Continual Basis. Should the RECIPIENT not continue to dispense and market ethanol-blended fuel for retail sale to the general public from the location identified above, the RECIPIENT shall be subject to the following actions:
  - a. If within 1 day to 365 days after the effective date of this AGREEMENT, the RECIPIENT is not dispensing and marketing ethanol-blended fuel for retail sale to the general public from the location identified within this AGREEMENT on a Continual Basis, the RECIPIENT shall reimburse ACOG 100 percent (100%) of the amount of financial support provided by ACOG to the RECIPIENT pursuant to this AGREEMENT within thirty (30) days after written notice and request from ACOG.
    - (1) Interruptions of fuel availability as a result of supplier difficulties or shortages that affect the RECIPIENT's ability to offer ethanol-blended fuel to the general public on a Continual Basis must be immediately reported to ACOG. Failure to report supply disruptions may result in the termination of this AGREEMENT.
    - (2) The RECIPIENT shall have the opportunity to meet and confer with ACOG to review the factors that may have resulted in the interruption of the availability of E85 fuel.
  - b. If from the 366<sup>th</sup> day of the effective date of the AGREEMENT to 24 months from the effective date of this AGREEMENT, the RECIPIENT is not dispensing and marketing ethanol-blended fuel for retail sale to the general

public from the location identified within this AGREEMENT on a Continual Basis, the RECIPIENT shall reimburse the U.S. General Services Administration (GSA) 75 percent (75%) of the amount of financial support provided by ACOG and/or the GSA to the RECIPIENT pursuant to this AGREEMENT within thirty (30) days after written notice and request from ACOG.

- c. If from the 731<sup>st</sup> day of the effective date of the AGREEMENT to 36 months from the effective date of this AGREEMENT, the RECIPIENT is not dispensing and marketing ethanol-blended fuel for retail sale to the general public from the location identified within this AGREEMENT on a Continual Basis, the RECIPIENT shall reimburse the U.S. General Services Administration (GSA) 50 percent (50%) of the amount of financial support provided by ACOG and/or the GSA to the RECIPIENT pursuant to this AGREEMENT within thirty (30) days after written notice and request from ACOG.
- d. If from the 1096<sup>th</sup> day of the effective date of the AGREEMENT to 48 months from the effective date of this AGREEMENT, the RECIPIENT is not dispensing and marketing ethanol-blended fuel for retail sale to the general public from the location identified within this AGREEMENT on a Continual Basis, the RECIPIENT shall reimburse ACOG 25 percent (25%) of the amount of financial support provided by ACOG to the RECIPIENT pursuant to this AGREEMENT within thirty (30) days after written notice and request from ACOG.
- e. After the 1461<sup>st</sup> day, or upon the expiration of 48 months from the date this AGREEMENT is executed of uninterrupted retail sale of ethanol-blended fuel, all financial obligations of the RECIPIENT shall be deemed satisfied. After 48 months, the RECIPIENT shall be allowed to discontinue the sale of ethanol-blended fuel without further obligation to ACOG.
- f. Obviously stated, it is the desire of ACOG to have the RECIPIENT continue sale of ethanol-blended fuel after the period of this AGREEMENT, however, RECIPIENT is under no obligation to do so.

I. The RECIPIENT agrees that any and all financial assistance provided to it from ACOG shall be solely used to acquire and install equipment relating to the stated purpose of this AGREEMENT. No funds provided by ACOG shall be used for any other purpose.

J. The RECIPIENT agrees to protect, indemnify and save harmless ACOG, its members, officers, employees, and representatives from and against any and all liabilities, losses, suits, judgments, claims, demands and causes of action in connection with the performance of this AGREEMENT by the RECIPIENT.

II. IN CONSIDERATION OF THE PERFORMANCE OF THESE SERVICES BY THE RECIPIENT, THE ASSOCIATION OF CENTRAL OKLAHOMA GOVERNMENTS AGREES TO THE FOLLOWING:

- A. Disburse to the RECIPIENT (**Amount**) to carry out the activities and services described in this agreement relating to installation of an E85-compatible fueling site at (**Station location**).
1. Financial assistance provided the RECIPIENT by ACOG will be based on actual costs of equipment and installation and such financial assistance shall not to exceed (**Amount**).
  2. All financial support provided to the RECIPIENT by ACOG will be on a cost reimbursement basis only. RECIPIENT shall submit copies of paid invoices to ACOG identifying and specifying the cost of the improvements that have been undertaken to provide ethanol-blended fuel being made available to the general public. Final reimbursement shall be provided to the RECIPIENT within sixty (60) days after the E85-compatible fueling equipment is fully operational and upon completion of a final inspection of the newly installed equipment by the Project Coordinator of ACOG or his or her authorized representative.
- B. ACOG shall make available other technical assistance as may be necessary and prudent for the purpose of promoting the efforts of the RECIPIENT.

III. THE FOLLOWING CONDITIONS APPLY TO THE RECIPIENT AND ACOG:

- A. The written terms and provisions of this AGREEMENT shall supersede all prior verbal statements of any representative of the parties to this AGREEMENT and such statements shall not be effected or construed as entering into or forming a part of, or altering in any manner whatsoever, this AGREEMENT or the AGREEMENT documents.
- B. If for any cause within the RECIPIENT'S reasonable control, the RECIPIENT shall fail to fulfill in a timely and proper manner its obligations pursuant to this AGREEMENT, or if RECIPIENT shall violate any of the stipulations of the AGREEMENT, ACOG shall thereupon have the right to terminate this AGREEMENT by giving not less than 30 days written notice to the RECIPIENT via Certified Mail of such intent to terminate and shall specify the reason for and effective date thereof. ACOG shall provide the RECIPIENT an opportunity for consultation and shall allow the RECIPIENT to cure the cause for termination. Such termination shall result in the repayment by RECIPIENT of funds provided by ACOG as set forth in Section II.A.1. and 2., hereof.
- C. Cause for Termination
1. Failure of the RECIPIENT to fulfill in a timely manner its obligations under this AGREEMENT, including compliance with the attached equipment and fuel specifications.

2. Improper use of funds provided under this AGREEMENT.
3. Suspension or termination by the U.S. General Services Administration of the grant to ACOG under which the AGREEMENT is made, or the portion thereof delegated by this AGREEMENT.

- D. No Third-Party Rights – Nothing in this AGREEMENT shall create or be deemed to create any third-party beneficiary rights in any entity or person not a party to this AGREEMENT.
- E. This AGREEMENT may be extended or amended by mutual AGREEMENT of the parties prior to its expiration. All amendments must be in writing, signed and dated by both parties and thereupon shall become part of this AGREEMENT.
- F. Severability – In the event any portion of this AGREEMENT shall be held to be invalid, the remainder of this AGREEMENT shall remain in full force and effect as if the invalid provisions were not included herein.
- G. Governing Law – This AGREEMENT shall be construed in accordance with and governed by the laws of the State of Oklahoma.
- H. "Force Majeure" means an event or condition which is caused by an event beyond a party's reasonable control which could not have been avoided by exercise of due care. Force Majeure may include inquiries or orders of government agencies; strikes, lockouts and other labor disturbances (even if terminable by the affected party acceding to the demands of a labor group); war, riots, and civil insurrection; and fires, floods, earthquakes and loss of public utilities; and a lack of product supply or any other events beyond the reasonable control of either party. In the event of any delay or an anticipated delay in the performance hereof due to Force Majeure, the affected party shall promptly notify the other party of such delay and the cause and estimated duration of such delay. The affected party shall exercise due diligence to shorten, avoid and mitigate the effects of the delay and shall keep the other party advised as to the affected party's efforts and its estimates of the continuance of the delay. In no event shall either party be entitled to any damages, or be considered in breach of this AGREEMENT, because of any delay due to Force Majeure.

## Agreement Signature Sheet

PROJECT TITLE:

E85 Infrastructure Development

INSTRUMENT TYPE:

Contract, with attached General Terms, AAMA requirements and ASTM requirements.

RECIPIENT:

PROJECT ADMINISTRATION:

Zach D. Taylor, Executive Director  
Association of Central Oklahoma Governments  
21 East Main Street, Suite 100  
Oklahoma City, OK 73104  
405-234-2264

RECIPIENT PROJECT DIRECTOR

RECIPIENT FEDERAL EMPLOYER ID #

Federal ID #(Federal Tax ID)

AMOUNT OF OBLIGATIONS

Not greater than (Amount)

TERMS OF AGREEMENT:

ACOG shall reimburse to the RECIPIENT an amount not greater than (Amount) and in return the RECIPIENT shall dispense to the general public ethanol-blended fuel at (Station location). The RECIPIENT shall dispense such product for a period of 48 months from the Effective Date of this AGREEMENT. Failure to do so may result in the imposition of penalties as specified in the AGREEMENT.

AGREEMENT TERMS AND CONDITIONS:

This AGREEMENT consists of this form plus any other mutually agreeable terms, assurances, appendices and conditions. Specifically, the RECIPIENT agrees to follow the American Automobile Manufacturers Association Specifications for Fuel Ethanol as Dispensed to Vehicles dated August 25, 1995, and; the American Automobile Manufacturers Association Fuel Ethanol Compatibility Standards and Dispensing Equipment List for E85 Fueled Vehicles, dated August 10, 1995. Copies of these standards are attached.

Agreement Signature Sheet  
E85 Tank Installation Project  
ACOG and (Recipient Name)  
Page Two

AUTHORIZATION:

It is further represented by the parties hereto that each of the undersigned is authorized to execute and make a binding AGREEMENT on behalf of the respective parties identified below. This Signature Sheet shall bind both the RECIPIENT and ACOG pursuant to the conditions of the AGREEMENT.

EVIDENCE OF RECIPIENT ACCEPTANCE:

\_\_\_\_\_  
BY

\_\_\_\_\_  
DATE

AWARDED BY:

\_\_\_\_\_  
Zach D. Taylor  
Executive Director  
Association of Central Oklahoma Governments

\_\_\_\_\_  
DATE

SAMPLE