

STATE OF TEXAS §
COUNTY OF FORT BEND §

KNOW ALL BY THESE PRESENTS:

**FIRST AMENDMENT to AGREEMENT FOR BULK FUEL
BETWEEN SUSSER PETROLEUM OPERATING COMPANY LLC AND FORT BEND COUNTY
PURSUANT TO RFP 17-001**

THIS FIRST AMENDMENT, is made and entered into by and between Fort Bend County (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Susser Petroleum Operating Company LLC, (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WHEREAS, the parties have executed and accepted that certain Agreement for Bulk Fuel Services, pursuant to RFP 17-001 (the "Agreement"), on or about November 8, 2016, attached herein as Exhibit A; and,

WHEREAS, the following changes are incorporated as if a part of the original Agreement incorporated by reference in the same as if fully set forth verbatim herein;

NOW, THEREFORE, the parties do mutually agree as follows:

1. Section 27.A. of the Disadvantaged Business Enterprise clause shall be amended to read:

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal has not been established for this procurement.

Except as provided herein, all terms and conditions of the Agreement, including any addenda or amendments, not modified shall remain in full force and effect. If there is a conflict between this First Amendment and the Agreement, the provisions of this First Amendment shall prevail with regard to the conflict.

{Execution Page Follows}
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IN WITNESS WHEREOF, the parties put their hands to this Amendment on the dates indicated below.

FORT BEND COUNTY

SUSSER PETROLEUM OPERATING
COMPANY, LLC

Robert E. Hebert, County Judge

Michael J. McAfee
Authorized Agent- Signature

Date

MICHAEL J. McAfee
Authorized Agent- Printed Name

ATTEST:

ACTING V.P. FRANCHISE
Title

Laura Richard, County Clerk

6/15/17
Date

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert E. Sturdivant, County Auditor

EXHIBIT A: AGREEMENT FOR BULK FUEL BETWEEN SUSSER PETROLEUM OPERATING
COMPANY LLC AND FORT BEND COUNTY PURSUANT TO RFP 17-001

EXHIBIT A

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR BULK FUEL
BETWEEN SUSSE PETROLEUM OPERATING COMPANY LLC AND FORT BEND COUNTY
PURSUANT TO RFP 17-001**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Susser Petroleum Operating Company LLC (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide bulk fuel products (hereinafter "Services") pursuant to RFP 17-001; and

WHEREAS, Contractor represents that it is qualified and desires to perform such services.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Bulk Fuel Products

- A. Contractor shall provide bulk fuel products at the prices set forth in the attached Exhibit A. Prices include any and all assessed fees, charges, transportation/delivery costs and applicable taxes.
- B. Gasoline
 - 1. Contractor shall furnish and deliver bulk gasoline in the quantities requested by County. Delivered gasoline shall be in strict compliance with all applicable environmental rules, statutes, specifications, codes, and guidelines, including but not limited to all requirements and regulations established by the Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), individual State Commissions on Environmental Quality, Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) rules, statutes, specifications, codes and guidelines as applicable.
 - 2. Delivered gasoline shall meet the following minimum octane ratings:
 - a. Regular unleaded: 87 Octane
 - b. Midgrade unleaded: 89 Octane

3. The octane rating shall be determined by adding the research octane number (RON) and the motor octane number (MON), then dividing by two (2). It is not acceptable to mix or blend lower octane rated gasoline with higher octane rated gasoline to meet minimum specified requirements.
4. All grades of gasoline furnished and delivered shall contain required rust inhibitors, oxidation inhibitors and detergent additives for use in, and recommended for, engines with fuel injector systems.
5. Contractor shall be liable for all remediation and damages to equipment and property resulting from the delivery and/or usage of defective, contaminated or non-compliant gasoline.
6. Contractor shall furnish and deliver, on an as needed basis, gasoline with a specification sheet describing the product, and an original copy of the manifest identifying the refinery or common carrier pipeline terminal from where the fuel was loaded for delivery to the customer. The delivered product must meet all applicable laws and requirements at time of delivery as applicable to the purchasing agency.
7. All deliveries shall be accompanied by an original copy of the refinery manifest (reproduced copies are unacceptable). The Bill of Lading must be identifiable as to the refinery or common carrier pipeline terminal. Deliveries from any other source will be rejected. Any transport arriving without proper paperwork will not be allowed to unload.

C. Diesel Fuel

1. Contractor shall furnish and deliver diesel fuel in the quantities requested by County. Delivered diesel fuel shall be in strict compliance with all applicable environmental rules, statutes, specifications, codes, and guidelines, including but not limited to all requirements and regulations established by the Federal Emergency Management Agency (FEMA), Environmental Protection Agency (EPA), individual State Commissions on Environmental Quality, Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) rules, statutes, specifications, codes and guidelines as applicable.
2. Delivered diesel shall contain all required inhibitors and additives for use in, and recommended for diesel engines.
3. Contractor shall be liable for all remediation and damages to equipment and property resulting from the delivery and/or usage of defective, contaminated or non-compliant fuel.
4. It is the intent of this contract to make available any formulations of diesel fuel sanctioned by the state commission on environmental quality as applicable.
5. Delivered diesel shall be accompanied by an original copy of the refinery manifest (reproduced copies are unacceptable). The Bill of Lading must be identifiable as to the refinery or common carrier pipeline terminal. Deliveries from any other source will be rejected. Any transport arriving without proper paperwork will not be allowed to unload.

Section 3. Delivery

A. Locations and Times:

1. Deliveries for diesel and unleaded fuel are to be made to Fort Bend County's bulk storage facility located at 2751 Klauke Road in Rosenberg. Red-Dyed diesel will be delivered to the Drainage District located at 1022 Blume Road in Rosenberg. All locations require pump off trucks. Fort Bend County reserves the right to add or delete locations.
2. Deliveries accepted Monday through Friday 7:00AM through 3:30 PM. Due to a declared emergency, deliveries may be required to take place on weekends and holidays.
3. All deliveries must be made no later than twenty-four (24) hours after request by County, unless otherwise agreed to in writing by the parties.

B. All delivery vehicles must:

1. Utilize a verifiable accurate fuel measuring system.
2. Utilize vapor recovery systems.
3. Be independently capable of pumping fuel to County tanks.
4. Have appropriate certifications from the State of Texas.

Section 4. Emergency Response

- A. Contractor shall deliver products covered by this Agreement to County in a priority manner in the event of, and for the duration of, any declared state of emergency or disaster.
- B. County reserves the right to obtain the products and services covered by this Agreement from other sources in the event an emergency or disaster is declared and such products or services are necessary to meet the needs of the emergency or disaster. Contractor shall not be entitled to damages for products or services procured from another source pursuant to this Section.

Section 5. Personnel

- A. Contractor represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Scope of Services when and as required and without delays.
- B. All employees of Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor who, in the opinion of County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

Section 6. Term

The term of this Agreement shall begin on December 1, 2016 and end on September 30, 2017. The Agreement is renewable annually for four (4) additional one year terms under the same terms and conditions if mutually agreed upon by the parties in writing.

Section 7. Compensation and Payment

- A. Contractor's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services is the amount certified as available by the Fort Bend County Auditor below, plus any additional amounts of funds from time to time that become certified available by the Auditor.
- B. All performance of the Scope of Services by Contractor including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.
- C. County will pay Contractor based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Contractor shall submit to County two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to County. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

Section 8. Modifications and Waivers

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 9. Termination

- A. Termination for Convenience: County may terminate this Agreement at any time upon thirty (30) days written notice issued by the County Judge or the County Purchasing Agent.

B. Termination for Default

1. County may terminate the whole or any part of this Agreement for cause in the following circumstances:
 - a. If Contractor fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;
 - b. If Contractor materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.
 2. If, after termination, it is determined by County that for any reason whatsoever that Contractor was not in default, or that the default was excusable, services may continue in accordance with the terms and conditions of this Agreement or the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with this Section.
- C. Upon termination of this Agreement, County shall compensate Contractor in accordance with the above Compensation Section for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Contractor's final invoice for said services will be presented to and paid by County in the same manner set forth in the Compensation Section above.
- D. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 10. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to County on request.

Section 11. Inspection of Books and Records

Contractor will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four years.

Section 12. Insurance

- A. Prior to commencement of the Services, Contractor shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Contractor shall provide certified copies of insurance endorsements and/or policies if requested by County. Contractor shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Contractor shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
 5. MCS-90 Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 must be attached to commercial automobile coverage.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if

required). All Liability policies written on behalf of Contractor shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

- C. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. Contractor shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Contractor.

Section 13. Indemnity

- A. **CONTRACTOR SHALL DEFEND, INDEMNIFY, AND SAVE HARMLESS COUNTY FROM AND AGAINST ALL CLAIMS, LIABILITY, AND EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF CONTRACTOR OR ANY OF CONTRACTOR'S AGENTS, SERVANTS OR EMPLOYEES.**
- B. Contractor shall timely report all such matters to County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien, or judgment, not later than the fifteenth day of each month, provide County with a written report on each such matter, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of County required by Contractor in the defense of each matter.
- C. Contractor's duty to defend, indemnify, and hold County harmless shall be absolute. It shall not abate or end by reason of the expiration or termination of this Agreement unless otherwise agreed by County in writing. The provisions of this Section shall survive the termination of the Agreement and shall remain in full force and effect with respect to all such matters when they arise.
- D. In the event of a dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien, or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Contractor, Contractor shall never the less defend such claim, demand, suit, action, proceeding, lien, or judgment until and unless there is a determination by a court of competent jurisdiction that the acts and omissions of Contractor are not at issue in the matter.

- E. Contractor's indemnification shall cover, and Contractor agrees to indemnify County in the event County is found to have been negligent for having selected Contractor to perform the work described in this Agreement.
- F. The provision of insurance by Contractor shall not limit the liability of Contractor under this Agreement.
- G. Contractor shall cause any sub-contractor who may have a contract to perform work under this Agreement to indemnify County and to hold County harmless from all claims that arise from the sub-contractor's operations.
- H. Loss Deduction Clause - County shall be exempt from, and in no way liable, for, any sums of money, which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Contractor and/or Subcontractor providing such insurance.

Section 14. Confidential and Proprietary Information

- A. Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Contractor or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document; (b) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.
- B. Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Contractor shall advise County immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated

or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Contractor against any such person. Contractor agrees that, except as directed by County, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Contractor will promptly turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

- C. Contractor acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.
- D. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Contractor expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 et seq., as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 15. Independent Contractor

- A. In the performance of work or services hereunder, Contractor shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of contractor or, where permitted, of its subcontractors.
- B. Contractor and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 16. Notices

- A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County
Attn: County Judge
401 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County
Attn: Purchasing Agent
301 Jackson Ste. Suite 201
Richmond, TX 77469

Contractor: Susser Petroleum Operating Company LLC
Attn: Account Manager of Wholesale Fuels
555 E. Airtex Drive
Houston Texas 77073

- C. Notice is effective only if the party giving or making the Notice has complied with requirements of this Section and if the addressee has received the Notice. A Notice is deemed received as follows:

1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 17. Compliance with Laws

Contractor shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 18. Performance Warranty

- A. Contractor warrants to County that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- B. Contractor warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

Section 19. Assignment and Delegation

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights by Contractor are prohibited under this subsection, whether they are voluntarily or involuntarily, without first obtaining written consent from County.
- B. Neither party may delegate any performance under this Agreement.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 20. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 21. Successors and Assigns

County and Contractor bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 22. No Government Obligation to Third Parties

County and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to County, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. Contractor agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 23. Program Fraud and False or Fraudulent Statement and Related Acts

- A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.
- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- C. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Section 24. Access to Records and Reports

- A. Contractor agrees to provide County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- B. Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

Section 25. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between County and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 26. Civil Rights Requirements

- A. The following requirements apply to the underlying contract:
1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
- a. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 - b. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
 - c. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.
- B. Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 27. Disadvantaged Business Enterprise (DBE)

- A. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal of 3% has been established for this procurement.
- B. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as County deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph (*see 49 CFR 26.13(b)*).
- C. Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- D. Contractor is required to pay its subcontractors performing work related to this Contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that work from County. In addition, Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this Contract is satisfactorily completed.
- E. Contractor must promptly notify County whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without the prior written consent of County.

Section 28. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests which would cause County to be in violation of the FTA terms and conditions.

Section 29. Government-Wide Debarment and Suspension (Non-Procurement)

- A. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor is required to verify that none of Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
- B. Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- C. Contractor certifies as follows: The certification in this clause is a material representation of fact relied upon by County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Section 30. Lobbying

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Section 31. Clean Air

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these

requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Section 32. Clean Water

Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Section 33. Cargo Preference

Contractor agrees:

- A. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- B. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through Contractor in the case of a subcontractor's bill-of-lading.)
- C. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Section 34. Fly America

Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an

appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Section 35. Energy Conservation Requirements

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 36. Recycled Products

Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Section 37. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 38. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 39. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall Contractor release any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

Section 40. Captions

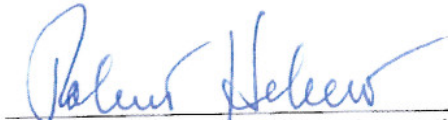
The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 41. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 8 day of November, 2016.

FORT BEND COUNTY


Robert E. Hebert, County Judge

ATTEST:


Laura Richard, County Clerk



SUSSER PETROLEUM OPERATING
COMPANY LLC


Authorized Agent- Signature

BRAD WILLIAMS
Authorized Agent- Printed Name

EXECUTIVE
VICE PRESIDENT
Title

10-27-16
Date

Exhibit A: Payment and Pricing

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$3,000,000.00 to accomplish and pay the obligation of Fort Bend County under this contract.

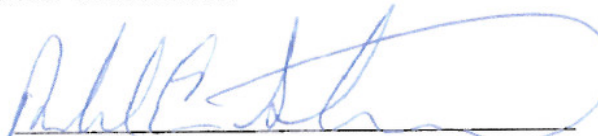

Robert Ed Sturdivant, County Auditor

EXHIBIT A

Payment and Pricing

AS ATTACHED TO
AGREEMENT FOR BULK FUEL
BETWEEN SUSSER PETROLEUM OPERATING COMPANY LLC AND FORT BEND COUNTY
PURSUANT TO RFP 17-001



Payment and Pricing

- Base price will be based on DTN lowest available unbranded rack + fixed price differential markup (markup includes freight, loading fee and any applicable taxes). Please see below for pricing/payment schedule providing incentives to pay mail in check based on stated terms.
- Susser Petroleum Operating Company LLC receives its pricing notifications through an industry-recognized service called DTN Marketing. These rack price changes are fed directly to our internal accounting system daily starting around 4:00 pm. We will forward via email a recap of this pricing to the Fort Bend office daily every morning - or provide contact information at DTN to verify/audit daily pricing.

Payment/Pricing Schedule Proposal

EFT 7-10 Day Terms

Address	City	Tank Size	Product Type	+ / - (plus or minus)	Price Dif (includes markup, freight, load fee, taxes and oil/lust fees)
2751 Klauke Road	Rosenberg	30,000	Gasoline	+	0.2416
			Clear Diesel (ULEC)	+	0.2479
1022 Blume Road	Rosenberg	4000	Red-dyed diesel (ULER)	+	0.0692

EFT 15 Day Terms

Address	City	Tank Size	Product Type	+ / - (plus or minus)	Price Dif (includes markup, freight, load fee, taxes and oil/lust fees)
2751 Klauke Road	Rosenberg	30,000	Gasoline	+	0.2441
			Clear Diesel (ULEC)	+	0.2504
1022 Blume Road	Rosenberg	4000	Red-dyed diesel (ULER)	+	0.0717

EFT 20 Day Terms

Address	City	Tank Size	Product Type	+ / - (plus or minus)	Price Dif (includes markup, freight, load fee, taxes and oil/lust fees)
2751 Klauke Road	Rosenberg	30,000	Gasoline	+	0.2466
			Clear Diesel (ULEC)	+	0.2529
1022 Blume Road	Rosenberg	4000	Red-dyed diesel (ULER)	+	0.0742

EFT 30 Day Terms

Address	City	Tank Size	Product Type	+ / - (plus or minus)	Price Dif (includes markup, freight, load fee, taxes and oil/lust fees)
2751 Klauke Road	Rosenberg	30,000	Gasoline	+	0.2491
			Clear Diesel (ULEC)	+	0.2554
1022 Blume Road	Rosenberg	4000	Red-dyed diesel (ULER)	+	0.0767

EFT Payment Drafting Schedule

- Susser Petroleum Operating Company LLC drafts 5 days a week, Monday through Friday. Individual draft notices can be sent to each purchasing entity via fax or email. Customers can also utilize the Customer Portal Website that will allow users to log in and view their account activities (balance, payment, EFT draft notifications, prices, etc.)

Fixed Forward Pricing

Refiners and fuel traders make Fixed Forward Pricing programs available to certain market places from time to time. These programs are essentially a price locking mechanism that locks in a fixed price for a specified delivery period. These programs are sold in 42,000 gallon contracts or increments- and multiple contracts may be purchased at a time.

Availability of Fixed Forward Pricing is solely at the refiner or traders' option and are not always available at all times in all markets or available for all products.

Should an entity desire to enter into a Fixed Forward Contract, Susser Petroleum Operating Company LLC will contact all approved refiner and trading partners as to the availability of products, volumes and racks. Once a base price is established, standard adders will be added to the base price of the Fixed Forward Contract and customers will be billed accordingly. Any fees associated with the opening of a Forward Pricing Contract will be the responsibility of Susser Petroleum Operating Company LLC. Any penalties associated with under lifting of the required contract amounts will be the responsibility of the purchasing entity. As with a standard rack program, all associated taxes, fee and insurance charges will be the responsibility of the purchasing entity.

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Susser Petroleum Operating Company LLC
Houston, TX United States

Certificate Number:
2017-226230

Date Filed:
06/20/2017

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

Date Acknowledged:

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

RFP 17-001
Bulk Fuel

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Susser Petroleum Operating Company LLC	Houston, TX United States	X	

5 Check only if there is NO interested Party. ☐

6 AFFIDAVIT

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL
ANNETTE M. DONNELLY, Notary Public
Media Borough, Delaware County
My Commission Expires March 20, 2019

Michael J. McAfee
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said Michael J. McAfee this the 20th day of June, 2017, to certify which, witness my hand and seal of office.

Annette M. Donnelly Annette M. Donnelly Compliance Coordinator
Signature of officer administering oath Printed name of officer administering oath Title of officer administering oath