

STATE OF TEXAS           §  
   §  
 COUNTY OF FORT BEND    §

**AGREEMENT FOR BULK FUEL PRODUCTS AND SERVICES  
 RFP 12-051**

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 LLC (hereinafter "Contractor"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County desires that Contractor provide bulk fuel products and services (hereinafter "Services") pursuant to RFP 12-051; 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**

**Article I. Bulk Fuel Products**

1.1 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. Invoices shall be provided to County via email or such other manner as is requested by County.

1.2 Gasoline

1.2.1 Contractor shall furnish and deliver gasoline in the quantities requested by County. Delivered gasoline shall be in strict compliance with all applicable environmental rules, statutes, specifications, codes, and guidelines.

1.2.2 Delivered gasoline shall meet the following minimum octane ratings:

1.2.2.1 Regular unleaded: 87 octane

1.2.2.2 Mid-grade unleaded: 89 octane

1.2.3 The octane rating shall be determined by adding the research octane number and the motor octane number, then dividing by two (2). It is not acceptable to blend or lower octane rated gasoline with higher octane rated gasoline to meet the minimum octane requirements.

1.2.4 Delivered gasoline shall contain all inhibitors and additives required or recommended for use in engines with fuel injector systems.

1.2.5 Contractor shall be liable for all remediation and damages to County equipment and property resulting from the delivery and/or usage of defective, contaminated, or non-compliant gasoline.

1.2.6 Delivered gasoline shall be accompanied by an original copy of the refinery manifest. The bill of lading must be identifiable as to the refinery or common carrier pipeline where the fuel was loaded. Deliveries from any other source will be rejected. Any transport arriving without proper paperwork will not be allowed to unload.

### 1.3 Diesel/Biodiesel Fuel

1.3.1 Contractor shall furnish and deliver diesel/biodiesel fuel in the quantities requested by County. Delivered diesel/biodiesel fuel shall be in strict compliance with all applicable environmental rules, statutes, specifications, codes, and guidelines.

1.3.2 Delivered diesel/biodiesel shall contain all inhibitors and additives required or recommended for use in diesel engines.

1.3.3 Contractor shall be liable for all remediation and damages to County equipment and property resulting from the delivery and/or usage of defective, contaminated, or non-compliant diesel/biodiesel fuel.

1.3.4 Delivered diesel/biodiesel shall be accompanied by an original copy of the refinery manifest. The bill of lading must be identifiable as to the refinery or common carrier pipeline where the fuel was loaded. Deliveries from any other source will be rejected. Any transport arriving without proper paperwork will not be allowed to unload.

## **Article II. Delivery**

2.1 Gasoline and diesel/biodiesel fuels shall be delivered to 2751 Klauke Road, Rosenberg, Texas. Red-dyed diesel shall be delivered to 1022 Blume Road, Rosenberg, Texas.

2.2 All delivery vehicles must:

2.2.1 Utilize a verifiable accurate fuel measuring system.

2.2.2 Utilize vapor recovery systems.

2.2.3 Be independently capable of pumping fuel to County tanks.

2.2.4 Have appropriate certifications from the State of Texas.

2.3 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.

**Article III. Emergency Response**

3.1 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.

3.2 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 Article.

**Article IV. Personnel**

4.1 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.

4.2 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.

**Article V. Term**

This term of this Agreement shall begin upon execution by all parties and end on September 30, 2012. 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.

**Article VI. Modifications**

Any modifications to this Agreement must be in writing and must be signed by both parties.

**Article VII. Termination**

7.1 Termination for Convenience

7.1.1 Either party may terminate this Agreement at any time upon thirty (30) days written notice.

## 7.2 Termination for Default

7.2.1 County may terminate the whole or any part of this Agreement for cause in the following circumstances:

7.2.1.1 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;

7.2.1.2 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.

7.2.2 If, after termination, it is determined for any reason whatsoever that Contractor was not in default, or that the default was excusable, 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 Section 7.1 above.

7.3 Upon termination of this Agreement, County shall compensate Contractor for those products and 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 Section 1.1.

7.4 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.

## **Article VIII. Insurance**

8.1 Prior to commencement of the Services, Contractor and any subcontractor used by Contractor to perform the Services 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 the insurance endorsements and/or policies if requested by County. Contractor and any subcontractor used by Contractor to perform the Services 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 and any subcontractor used by Contractor to perform the Services 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:

8.1.1 Workers' Compensation insurance in accordance with the laws of the State of Texas. Contractor and any agent, servant, employee, or subcontractor of Contractor must obtain genuine Workers' Compensation insurance prior to performing services on County property. 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.

8.1.2 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.

8.1.3 Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

8.1.4 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.

8.2 County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Contractor and any subcontractor used by Contractor to perform the Services shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

8.3 If required coverage is written on a claims-made basis, Contractor and any subcontractor used by Contractor to perform the Services warrant 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 that work under the Agreement is completed.

#### **Article IX. Indemnity**

9.1 **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.**

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 The provision of insurance by Contractor shall not limit the liability of Contractor under this Agreement.

9.7 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.

#### **Article X. Confidential and Proprietary Information**

10.1 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 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 furnished by County to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (d) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information.

10.2 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 turn over to County all documents, papers, and other matter in Contractor's possession which embody Confidential Information.

10.3 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.

10.4 Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

#### **Article XI. Independent Contractor**

11.1 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.

11.2 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.

#### **Article XII. Contract Administration**

12.1 All written notices, demands, and other papers or documents to be delivered to County under this Agreement shall be delivered to the Fort Bend County Purchasing Agent, 301 Jackson Street, Suite 201, Richmond, Texas 77469, or at such other place or places as it may

from time to time designate by written notice delivered to Contractor. For purposes of notice under this Agreement, a copy of any notice or communication hereunder shall also be forwarded to the following address: Fort Bend County, 301 Jackson Street, Suite 719, Richmond, Texas 77469, Attention: County Judge.

12.2 All written notices, demands, and other papers or documents to be delivered to Contractor under this Agreement shall be delivered to Susser Petroleum Company LLC, 555 E. Airtex Drive, Houston Texas 77070, Attention: Rocky Dewbre, with a copy to E.V. Bonner, 4525 Ayers, Corpus Christi, Texas 78415, or such other place or places as Contractor may designate by written notice delivered to County.

**Article XIII. 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, Contractor shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

**Article XIV. Performance Warranty**

14.1 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.

14.2 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.

**Article XV. Assignment**

Neither party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party.

**Article XVI. Applicable Law**

This Agreement shall be construed under and in accordance with the laws of the State of Texas. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all disputes arising hereunder and waive the right to sue or be sued elsewhere.

**Article XVII. 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.

**Article XVIII. 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.

**Article XIX. Program Fraud and False or Fraudulent Statement and Related Acts**

19.1 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.

19.2 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.

19.3 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.

## **Article XX. Access to Records and Reports**

20.1 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.

20.2 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.

## **Article XXI. 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.

## **Article XXII. Civil Rights Requirements**

22.1 The following requirements apply to the underlying contract:

22.1.1 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.

22.1.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

22.1.2.1 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.

22.1.2.2 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.

22.1.2.3 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.

23.2 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.

### **Article XXIII. Disadvantaged Business Enterprise (DBE)**

23.1 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.

23.2 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)).

23.3 Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

23.4 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.

23.5 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.

#### **Article XXIV. 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.

#### **Article XXV. Government-Wide Debarment and Suspension (Non-Procurement)**

25.1 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.

25.2 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.

25.3 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.

#### **Article XXVI. 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.

#### **Article XXVII. 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.

#### **Article XXVIII. 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.

#### **Article XXIX. Cargo Preference**

29.1 Contractor agrees:

29.1.1 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;

29.1.2 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.)

29.1.3 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.

**Article XXX. 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.

**Article XXXI. 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.

**Article XXXII. Recycled Products**

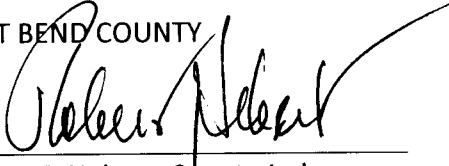
Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items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

**Article XXXIII. Conflict**

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

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 22 day of May, 2012.

FORT BEND COUNTY



Robert E. Hebert, County Judge

SUSSER PETROLEUM COMPANY LLC



Authorized Agent- Signature

**Gail Workman**

Authorized Agent Name

ATTEST:

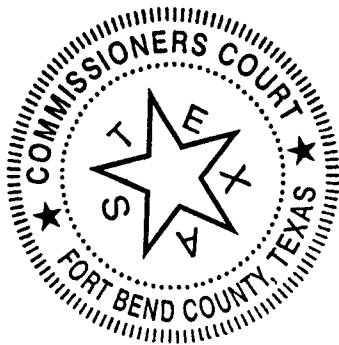


Dianne Wilson, County Clerk

Title

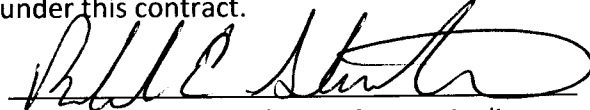
5-17-12

Date



**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$1,500,000<sup>00</sup> to accomplish and pay the obligation of Fort Bend County under this contract.

  
Robert Edward Sturdivant, County Auditor

# EXHIBIT A



## 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 EFT based on stated terms.
- Susser Petroleum Company 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 NCPA member offices daily every morning - or provide contact information at DTN to verify/audit daily pricing.

### PAYMENT/PRICING SCHEDULE PROPOSAL

#### **EFT 7-10 Day Terms**

| Address          | Location  | Volume | Product                | Markup | Price  |
|------------------|-----------|--------|------------------------|--------|--------|
| 2751 Klauke Road | Rosenberg | 30,000 | Gasoline               | +      | 0.2525 |
|                  |           |        | Clear diesel (ULEC)    | +      | 0.2585 |
| 1022 Blume Road  | Rosenberg | 4,000  | Red-dyed diesel (ULER) | +      | 0.0585 |

#### **EFT 15 Day Terms**

| Address          | Location  | Volume | Product                | Markup | Price  |
|------------------|-----------|--------|------------------------|--------|--------|
| 2751 Klauke Road | Rosenberg | 30,000 | Gasoline               | +      | 0.2575 |
|                  |           |        | Clear diesel (ULEC)    | +      | 0.2635 |
| 1022 Blume Road  | Rosenberg | 4,000  | Red-dyed diesel (ULER) | +      | 0.0635 |

### **EFT 20 Day Terms**

| <b>EFT 20 Day Terms</b> |           |        |                        |   |               |
|-------------------------|-----------|--------|------------------------|---|---------------|
| <b>2751 Klauke Road</b> | Rosenberg | 30,000 | Gasoline               | + | <b>0.2625</b> |
|                         |           |        | Clear diesel (ULEC)    | + | <b>0.2685</b> |
| <b>1022 Blume Road</b>  | Rosenberg | 4,000  | Red-dyed diesel (ULER) | + | <b>0.0685</b> |

### **EFT 30 Day Terms**

| <b>EFT 30 Day Terms</b> |           |        |                        |   |               |
|-------------------------|-----------|--------|------------------------|---|---------------|
| <b>2751 Klauke Road</b> | Rosenberg | 30,000 | Gasoline               | + | <b>0.2675</b> |
|                         |           |        | Clear diesel (ULEC)    | + | <b>0.2735</b> |
| <b>1022 Blume Road</b>  | Rosenberg | 4,000  | Red-dyed diesel (ULER) | + | <b>0.0735</b> |

### **EFT Payment Drafting Schedule**

- Susser Petroleum Company 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 Company 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 feeds associated with the opening of a Forward Pricing contract will be the responsibility of Susser Petroleum. 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, fees and insurance charges will be the responsibility of the purchasing entity.





**ADDITIONAL REMARKS SCHEDULE**

|                                 |                  |  |  |
|---------------------------------|------------------|--|--|
| <b>AGENCY</b><br>Marsh USA Inc. |                  | <b>NAMED INSURED</b><br>Susser Holdings Corporation<br>(Named Insureds Continued on page 2)<br>P.O. Box 9036<br>Corpus Christi, TX 78469 |  |
| <b>POLICY NUMBER</b>            |                  | <b>EFFECTIVE DATE:</b>   |  |
| <b>CARRIER</b>                  | <b>NAIC CODE</b> |  |  |

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance

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 The Named Insured is completed to read:

- Susser Holdings Corporation
  - Applied Petroleum Technologies, Ltd.
  - APT Management Company, L.L.C.
  - C & G Investments, LLC
  - Cash & Go Management, LLC
  - Cash & Go, Ltd.
  - GoPetro Transport LLC
  - SSP Bevco I, LLC
  - SSP Bevco II, LLC
  - SSP Beverage LLC
  - Stripes LLC
  - Stripes Acquisition LLC
  - Stripes Holdings LLC
  - Susser Finance Corporation
  - Susser Financial Services LLC
  - Susser Holdings, L.L.C.
  - Susser Petroleum Company LLC
  - T&C Wholesale, Inc.
  - TCFS Holdings, Inc.
  - TND Beverage, LLC
  - Town & Country Food Stores, Inc.
-

**TEXAS CHANGES – CANCELLATION AND NONRENEWAL PROVISIONS  
FOR CASUALTY LINES AND COMMERCIAL PACKAGE POLICIES**

|   |                            |   |                               |
|---|----------------------------|---|-------------------------------|
| Named Insured<br>Susser Holdings Corporation                            |                            |   | Endorsement Number<br>43      |
| Policy Symbol<br>XSL  | Policy Number<br>G25533161 | Policy Period<br>12/15/2011 to 12/15/2012 | Effective Date of Endorsement |
| Issued By (Name of Insurance Company)<br>ACE American Insurance Company |                            |   |                               |

Insert the policy number. The remainder of the information is to be completed only when this endorsement is issued subsequent to the preparation of the policy.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**I. The Cancellation Condition is replaced by the following:**

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation, stating the reason for cancellation, at least 10 days before the effective date of cancellation.

However if this policy covers a condominium association, and the condominium property contains at least one residence or the condominium declarations conform with the Texas Uniform Condominium Act, then the notice of cancellation, as described above, will be provided to the First Named Insured 30 days before the effective date of cancellation. We will also provide 30 days' written notice to each unit-owner to whom we issued a certificate or memorandum of insurance, by mailing or delivering the notice to each last mailing address known to us.

The permissible reasons for cancellation are as follows:

- a. If this policy has been in effect for 60 days or less, we may cancel for any reason except, that under the provisions of the Texas Insurance Code, we may not cancel this policy solely because the policyholder is an elected official.
- b. If this policy has been in effect for more than 60 days, or if it is a renewal or continuation of a policy issued by us, we may cancel only for one or more of the following reasons:
  - (1) Fraud in obtaining coverage;
  - (2) Failure to pay premiums when due;
  - (3) An increase in hazard within the control of the insured which would produce an increase in rate;
  - (4) Loss of our reinsurance covering all or part of the risk covered by the policy; or
  - (5) If we have been placed in supervision, conservatorship or receivership and the cancellation is approved or directed by the supervisor, conservator or receiver.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

**II. The following Condition supersedes any provision to the contrary:**

**NONRENEWAL**

1. We may elect not to renew this policy except, that under the provisions of the Texas Insurance Code, we may not refuse to renew this policy solely because the policyholder is an elected official.

2. This Paragraph 2., applies unless the policy qualifies under Paragraph 3. below.

If we elect not to renew this policy, we may do so by mailing or delivering to the first Named Insured, at the last mailing address known to us, written notice of nonrenewal, stating the reason for nonrenewal, at least 60 days before the expiration date. If notice is mailed or delivered less than 60 days before the expiration date, this policy will remain in effect until the 61<sup>st</sup> day after the date on which the notice is mailed or delivered. Earned premium for any period of coverage that extends beyond the expiration date will be computed pro rata based on the previous year's premium.

3. If this policy covers a condominium association, and the condominium property contains at least one residence or the condominium declarations conform with the Texas Uniform Condominium Act, then we will mail or deliver written notice of nonrenewal, at least 30 days before the expiration or anniversary date of the policy, to:
  - a. The first Named Insured: and
  - b. Each unit-owner to whom we issued a certificate or memorandum of insurance.

We will mail or deliver such notice to each last mailing address known to us.

4. If notice is mailed, proof of mailing will be sufficient proof of notice.
5. The transfer of a policyholder between admitted companies within the same insurance group is not considered a refusal to renew.

  
Authorized Agent