

**CAR
POOL**



**PETROLEUM
TRADERS**

GASOLINE & DIESEL FUEL DELIVERY SERVICES

TERM:	AWARD:		ERP:
5/12/2022 TO 2/28/2027	SEE AGREEMENT AND AMENDMENT		#655 
	ORG:	OBJECT:	
	66126700	749000	
REVIEWED BY: COURTNEY A. GABBARA - COHL, STOKER & TOSKEY, PC			
REVIEWED BY: JENNIFER L. BLISS - COHL, STOKER & TOSKEY, PC			

#2022-04-052

DESTROY:

4/12/22

#2024-04-042

2034

4/22/24

RESOLUTION

NO: 2022-04-052

LIVINGSTON COUNTY

DATE: April 12, 2022

Resolution Authorizing an Agreement with Petroleum Traders Corporation to Provide Gasoline Delivery Services – Car Pool

WHEREAS, the Livingston County Transportation Complex has a 12,000 gallon underground storage tank onsite that previously dispensed diesel fuel but was recently converted to dispense gasoline; and

WHEREAS, due to higher operating and maintenance costs compared to propane and gasoline engines LETS is phasing out diesel buses after the remaining five are decommissioned by 2024, and the amount of diesel used by other County departments is negligible; and

WHEREAS, purchasing gasoline in bulk will provide significant cost savings compared to retail, and all County departments will have the option to fuel vehicles at the Transportation Complex upon request; and

WHEREAS, to secure the most favorable pricing the Car Pool Department solicited bids for gasoline delivery services based on the per gallon delivery fee, with the fuel cost to be determined by the Oil Price Information Service (OPIS) Daily Contract Benchmark File report; and

WHEREAS, in accordance with the County Procurement Policy, a competitive bid process was performed through CoPro+ with bid notifications posted on the County website and BidNet website; and

WHEREAS, three responses were received and the low bidder was Petroleum Traders Corporation of Fort Wayne, IN with a delivery cost of \$0.0253 per gallon; and

WHEREAS, the agreement term will be five (5) years with no renewals.

THEREFORE BE IT RESOLVED that the Livingston County Board of Commissioners hereby authorizes an agreement with Petroleum Traders Corporation of Fort Wayne, IN to provide gasoline delivery services at a cost of \$0.0253 per gallon for a period of five (5) years.

BE IT FURTHER RESOLVED that the Chair of the Livingston County Board of Commissioners is authorized to sign all forms, assurances, contracts/agreements, renewals and future amendments for monetary and contract language adjustments upon review and/or preparation by civil counsel.

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MOVED: M. Smith
SECONDED: B. Plank
CARRIED: 6-0-3



Memorandum

To: Livingston County Board of Commissioners
From: Greg Kellogg, Transportation Director
Date: 03/24/2022
Re: Resolution Authorizing an Agreement with Petroleum Traders Corporation to Provide Gasoline Delivery Services – Car Pool

The Livingston County Transportation Complex has a 12,000 gallon underground storage tank onsite that previously dispensed diesel fuel but was recently converted to dispense gasoline. Due to higher operating and maintenance costs compared to propane and gasoline engines LETS is phasing out diesel buses after the remaining five are decommissioned by 2024, and the amount of diesel used by other County departments is negligible.

Purchasing gasoline in bulk will provide significant cost savings compared to retail, and all County departments will have the option to fuel vehicles at the Transportation Complex upon request. The Fuel Cloud fuel management system allows Car Pool to assign PIN numbers to each driver and record departmental usage. Car Pool will then charge the departments monthly for actual fuel costs through Munis.

To secure the most favorable pricing the Car Pool Department solicited bids for gasoline delivery services based on the per gallon delivery fee, with the fuel cost to be determined by the Oil Price Information Service (OPIS) Daily Contract Benchmark File report.

In accordance with the County Procurement Policy, a competitive bid process was performed through CoPro+ with bid notifications posted on the County website and BidNet website. Three responses were received and the low bidder was Petroleum Traders Corporation of Fort Wayne, IN with a delivery cost of \$0.0253 per gallon. Please see attached bid synopsis for details.

The agreement term will be five (5) years with no renewals.

Please do not hesitate to contact me at 517-540-7843 if you have any questions.



**Bid Synopsis
For
Gasoline Deliveries**

ITB Issued & Publicly Posted: 02/09/2022	Public Postings: Livingston Co. Website (livgov.com) BidNet (bidnetdirect.com/mitn)
Solicitation #: ITB-LC-22-01	
RFP Due Date: 02/28/2022	Bids Received: 3

The Evaluation Committee has completed evaluation of the bids received for the Invitation to Bid referenced above. The purpose of the ITB is to secure gasoline deliveries for the Livingston County Car Pool, and competitively award a contract that will provide gasoline for the next five years. It is anticipated that other County departments will also be fueling from this delivery point (LETS, EMS, Sheriff, etc.). Below is a recap of the bid evaluation.

The ITB was publicly posted. Three responses were received as follows:

1. Corrigan Oil
2. Petroleum Traders Corporation
3. RKA Petroleum

All bidders submitted their responses within the timeframe outlined in the ITB; all required forms, signatures, and notarizations were included.

All bidders provided references from similar public sector entities. The annual volumes provided by Corrigan Oil were higher than we expect to use at the County, and Petroleum Traders' volumes are similar to what we are anticipating. RKA Petroleum did not provide annual volumes for their references.

Based on the bid submissions, it was determined that all three bidders have the capability to provide gasoline deliveries for the County. The evaluation then moved on to price. Below is a tabulation of the pricing received.

BIDDER	PRICING (+/- INDEX)
Corrigan Oil	+ \$.0575
Petroleum Traders Corporation	+ \$.0253
RKA Petroleum	+ \$.0615

Based on the above, the evaluation committee recommends award to Petroleum Traders Corporation for contract award pending Board of Commissioners approval. The contract will also be hosted by Livingston County for the Michigan Association of Counties CoPro+ Program and made available through the program to all Michigan governmental entities, public schools, colleges and universities.

COHL, STOKER & TOSKEY, P.C.
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OF COUNSEL
RICHARD D McNULTY

April 19, 2022

Carol Sue Jonckheere
Executive Assistant/Contract Administrator
Livingston County Administration
304 E. Grand River, Suite 202
Howell, MI 48843

Sent Via E-Mail

Re: Statewide Cooperative Agreement with Petroleum Traders Corporation

Dear Ms. Jonckheere:

Attached is the Statewide Cooperative Agreement to be entered into between the County and Petroleum Traders Corporation (“Contractor”) for gasoline delivery services. The term of the Agreement commences on the date in which it is fully signed and continues for five years, but no later than March 1, 2027. The compensation to be paid to the Contractor is \$0.0253 per gallon.

The County Board of Commissioners authorized the attached Agreement in **Resolution No. 2022-04-052**. A copy of this Resolution is also attached.

If the attached Agreement is satisfactory, you may after printing off copies, proceed to obtain the signatures necessary for their execution. While obtaining the necessary signatures, ensure that the parties signing insert the date in the spaces provided on the signature pages. When the Agreement has been fully signed, please e-mail a copy to my assistant Nicole Moles at nmoles@cstmlaw.com for insertion into our electronic file.

If you have any questions with regard to the attached Agreement, do not hesitate to contact me.

Sincerely,

COHL, STOKER & TOSKEY, P.C.

/s/Courtney A. Gabbara

CAG/nam

Enclosure

N:\Client\Livingston\Purchasing\Correspondence\Jonckheere\Ltr re Petroleum Traders Corp Agr for Gasoline Svcs.docx



**STATEWIDE
COOPERATIVE AGREEMENT
FOR
GASOLINE DELIVERIES**

BETWEEN

COUNTY OF LIVINGSTON

AND

PETROLEUM TRADERS CORPORATION



**STATEWIDE COOPERATIVE AGREEMENT
FOR
GASOLINE DELIVERIES**

THIS STATEWIDE COOPERATIVE AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between the **COUNTY OF LIVINGSTON**, a municipal corporation and political subdivision of the State of Michigan (hereinafter referred to as the “County”), acting on behalf of the **LIVINGSTON COUNTY FISCAL SERVICES / PROCUREMENT DIVISION**, with offices at 304 E. Grand River Avenue, Suite 204, Howell, Michigan 48843 (hereinafter referred to as the “Department”), and **PETROLEUM TRADERS CORPORATION**, with offices located at 7120 Pointe Interverness Way, P.O. Box 2357, Fort Wayne, Indiana 46801-2357. (hereinafter referred to as the “Contractor”).

RECITALS:

WHEREAS, the County requested bids for gasoline delivery for the Livingston County Car Pool for a period of five (5) years; and

WHEREAS, the County is hosting the Statewide Cooperative Contract through the Michigan Association of Counties CoPro+ in an effort to market and extend the contracted services to other government municipalities and school districts throughout the State of Michigan, enabling public municipalities and schools to “piggyback” and purchase gasoline through this competitive process; and

WHEREAS, the County has requested bids to provide the gasoline it requires in Invitation to Bid, ITB-LC-22-01 Gasoline Deliveries (hereinafter referred to as the “ITB”); and

WHEREAS, the Contractor has submitted a bid to the County to provide the County with the gasoline and related services that the County requires for the use of the Department; and

WHEREAS, the County accepts the Contractor’s bid subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, **IT IS HEREBY AGREED** as follows:

I. Agreement Period; Termination. The term of this Agreement shall go into effect on the date in which it has been fully signed by the authorized representatives of both parties (hereinafter referred to as the “Effective Date”) and shall continue for a period of Five (5) years, no later than **February 28, 2027**, at which time this Agreement shall terminate.

In the event the Contractor is unable to complete the services due to force majeure events arising out of the COVID-19 pandemic, the Contractor shall notify the County to negotiate an

extension of the time allowed for the service's completion that is mutually agreed upon in writing and signed by the authorized representatives of both the County and the Contractor. Such extension, if any, shall be at no additional cost to the County.

Irrespective of such extension of time, the County may immediately terminate this Agreement without further liability or penalty to the County, its departments, divisions, agencies, officers, commissions, officers, agents and employees, with or without cause, upon written notice to the Contractor due to force majeure events arising out of the COVID-19 pandemic. Neither the County nor the Contractor shall be considered in breach of this Agreement to the extent that performance of their respective obligations is prevented by an event related to the COVID-19 pandemic that arises after the Effective Date.

Notwithstanding any other provision in this Agreement to the contrary, either party to this Agreement may terminate this Agreement prior to the termination date set forth herein if notice is given in writing at least thirty (30) calendar days prior to the date upon which such termination becomes effective.

II. Product and Services to be Provided by the Contractor. The Contractor shall provide the Department with gasoline delivery services to the underground tank at the Livingston County Car Pool located at 3950 W. Grand River Avenue, Howell, Michigan 48855, on an as needed basis. The product and services to be provided by the Contractor are more fully set forth in the ITB Section 1.0 Scope of Work/Specifications and Bidder Instructions, pages 3-4, attached as **Exhibit A** and RFQ-LC-22-01 Gasoline Deliveries ADDENDUM #1, pages 1-2, (hereinafter referred to as "RFQ") attached as **Exhibit B**. **Exhibit A** and **Exhibit B** are incorporated by reference herein. The Contractor shall also provide wireless tank monitoring to allow for remote monitoring of tank levels as well as with assigned staff to determine the tank level minimum at which deliveries will be arranged by the Contractor. The termination or expiration of this Agreement shall not relieve the Contractor of any obligation to honor and/or fulfill any valid order pending as of the effective date of termination. In the event of a conflict between or among this Agreement, **Exhibit A**, and **Exhibit B**, this Agreement shall take precedence.

III. Statewide Cooperative Contract. The Contractor shall cooperate with the Michigan Association of Counties CoPro+ program, and other governmental entities, to market and extend this Agreement to other municipalities throughout the State of Michigan, enabling other municipalities and schools to purchase the Contractor's product and services from this competitively awarded Agreement. **All pricing submitted to the County and its participating entities shall include a 1.5% administrative/remittance fee to be remitted to CoPro+ by the Contractor on a quarterly basis. Administrative/remittance fees will be paid against actual sales volume for each quarter. It is the Contractor's responsibility to keep all pricing up to date and on file with the County and CoPro+. All price changes shall be presented to the County in writing for acceptance, using the same format as was accepted in the Exhibit C (defined below).**

Requests for services will be initiated by participating entities as specific needs arise. Participating entities will issue individual Purchase Orders or written agreement with change orders, and the Contractor shall respond directly to the requesting participating entity within the timeframe specified in the individual Purchase Order.

IV. Compensation and Invoicing. The Contractor shall be compensated for the product and services provided under this Agreement in accordance with ITB Appendix B: Pricing Form Delivery Costs Per Gallon, page 12, attached as **Exhibit C**. The Contractor shall submit detailed invoices on a monthly basis to the County for the product provided and services performed under this Agreement. Each bill shall be issued no later than the 5th day of each month, and set forth the product and services provided, the date provided, the charge therefore, and the total sum due and owing. Invoices shall be submitted via email to the address as the County may require upon notice to the Contractor. The County shall pay the invoices received from the Contractor in accordance with the County's procedure for payment of Accounts Payable.

It is expressly understood that with market emergencies and other circumstances outside of the Contractor's reasonable control, pricing for a twelve (12) month period may not be realistic. In the event of an uncustomary increase or decrease in the Contractor's cost to supply gasoline, the Contractor may propose, and the County may entertain, a price adjustment in accordance with the current Consumer Price Index for the previous twelve (12) month period or up to a maximum five percent (5%) increase on the current price, whichever is lower. For the purposes of this section, "Consumer Price Index" shall mean the Consumer Price Index - All Urban Consumers United States: Average- All Items (CPI-U), 1982-84=100-CUUR0000SAO, as published by the U. S. Department of Labor, Bureau of Labor Statistics. Any proposed price increases shall be submitted to the County's Fiscal Services-Procurement Division sixty (60) days prior to the next renewal period. The County reserves the right to accept or reject the request for a price increase for the next renewal period. If the price increase is approved, the price will remain firm for the renewal period.

If gasoline is unavailable due to supply chain disruptions or other circumstances outside of the Contractor's reasonable control, the Contractor shall notify the County in writing of substitution options and pricing at least fifteen (15) calendar days prior to delivery and the Contractor shall not be held in breach for its failure to supply due to such circumstances.

V. Tax Exempt Status. The Contractor agrees and understands that the County is exempt from Federal Excise and State Sales Tax. The County shall not pay any tax from which it is exempt. The Contractor agrees and understands it is required to pay all applicable taxes lawfully assessed in connection with its performance of this Agreement.

VI. Gifts and Gratuities. The Contractor understands and agrees that Elected Officials, Department Heads, and/or County Employees will not be offered or entitled to earn or receive personal gifts, gratuities, credits, or other benefits of economic value by reason of their official business.

VII. Advertising. The Contractor shall not advertise, issue a press release, or otherwise publish information concerning this ITB, RFQ, or Agreement without prior written consent from the County. The County shall not unreasonably withhold permission.

VIII. Conflicts of Interest. By its entry into this Agreement, the Contractor certifies to the County that it does not and shall not have, during this Agreement's term or any renewal

thereof, any interest which would conflict with the performance of the services required by this Agreement. It is understood and agreed that in the performance of the services required by this Agreement, except where permitted by laws of the State of Michigan, no officer, agent, or employee of the County, or a member of the County's Board of Commissioners may participate in any decision relating to this Agreement which affects their interest or the interest of any corporation, partnership, or association in which they are directly or indirectly interested or have any personal or pecuniary interest.

IX. Insurance. The Contractor, or any of its subcontractors, shall not commence work under this Agreement until they have obtained the insurance coverages required in this section and shall maintain said insurance as long as this Agreement remains in effect. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan and with insurance companies acceptable to the County that have a minimum A.M. Best Company's Insurance Reports rating of A or A- (Excellent). The insurance requirements set forth in this section shall not be interpreted to limit the liability of the Contractor. All deductibles and self-insured retentions (SIRs) shall be the responsibility of the Contractor. The insurance coverages required by this Agreement include the following:

- A. Worker's Compensation Insurance: including Employers Liability Coverage in accordance with all applicable Statutes of the State of Michigan.
- B. Commercial General Liability Insurance: on an "Occurrence Basis" with limits of liability not less than \$1,000,000.00 per occurrence and/or aggregate combined single limit. Coverage shall include the following: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Endorsement or Equivalent, and (E) Deletion of all Explosion, Collapse, and Underground (XCU) exclusion, if applicable.
- C. Automobile Liability Insurance: including Michigan No-Fault Coverage, with limits of liability of not less than \$1,000,000.00 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.
- D. Additional Insured: Commercial General Liability Insurance and Automobile Liability Insurance, as described above, shall include an endorsement stating the following shall be "Additional Insured": Livingston County, all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed by naming Livingston County as additional insured, coverage afforded is considered to be primary and any other insurance Livingston County may have in effect shall be considered secondary and/or excess.
- E. Cancellation Notice: All insurances described above shall include an endorsement stating the following: "It is understood and agreed that thirty (30) days, ten (10) days for non-payment of premium, advance written notice of cancellation, non-renewal, reduction and/or material change shall be sent to: Livingston County, Attn: Livingston County Fiscal Services-Procurement Division, 304 E. Grand River Ave., Suite 204, Howell, MI 48843."
- F. Proof of Insurance: The Contractor shall provide to the County at the time the contracts are returned by it for execution, a Certificate of Insurance as well as the required

endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice shall be provided. If so requested, certified copies of all policies will be furnished.

If any of the above coverages expire during the term of this Agreement, the Contractor shall deliver renewal certificates and/or policies to the County at least ten (10) days prior to the expiration date.

The required Certificate of Liability Insurance and endorsements must be submitted to the Livingston County Fiscal Services-Procurement Division when this Agreement is fully executed by the representatives of both parties. The Insurance Certificate and endorsements may be faxed or emailed to (517) 546-7266 or fs-procurement@livgov.com.

X. Indemnification and Hold Harmless. The Contractor shall, at its own expense, protect, defend, indemnify, save and hold harmless the County, its elected and appointed officers, employees, servants, and agents from all claims, damages, lawsuits, costs, and expenses, including, but not limited to, all costs from administrative proceedings, court costs and attorney fees, that they may incur as a result of any acts, omissions, or negligence of the Contractor or any of the Contractor's employees, servants, agents, or subcontractors that may arise out of this Agreement.

The Contractor shall hold the County, its officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any patent, copyright, or other proprietary right, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with this Agreement.

The Contractor's indemnification responsibilities under this section shall include the sum of damages, costs, and expenses which are in excess of the sum of damages, costs, and expenses which are paid on behalf of or reimbursed to the County, its officers, employees, servants, and agents by the insurance coverage obtained and/or maintained by the Contractor pursuant to the requirements of this Agreement.

XI. Equal Employment Opportunity; Nondiscrimination. The Contractor shall adhere to all applicable Federal, State, and local laws, ordinances, rules, and regulations prohibiting discrimination regarding employees and applicants for employment which include, but is not limited to, the following:

- A. The Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended.
- B. The Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended.
- C. Section 504 of the Federal Rehabilitation Act of 1973, P.L. 93-112, 87 Stat 355, and regulations promulgated thereunder.
- D. The Americans with Disabilities Act of 1990, P.L. 101-336, 104 Stat 327 (42 USC §12101 *et seq.*), as amended, and regulations promulgated thereunder.

The Contractor and its subcontractors, as required by law, shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of

race, color, religion, national origin, age, sex, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. Breach of this section shall be regarded as a material breach of this Agreement.

The Contractor agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of the Contractor, will state that all qualified applicants will receive consideration for employment without regard to race, color, sex, national origin, disability, age, height, weight, marital status, and religion.

XII. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Michigan. In the event any actions arising under this Agreement are brought by or against the County, the venue for such actions shall be established in accordance with the statutes of the State of Michigan and/or Michigan Court Rules. In the event that any action is brought under this Agreement in or is moved to Federal Court, the venue for such action shall be the Federal Judicial District of Michigan, Eastern District, Southern Division.

XIII. Compliance with the Law. In providing the product and performing the services to be conducted under this Agreement, the Contractor and all its employees and subcontractors shall comply with all applicable Federal, State, and local laws, ordinances, rules and regulations, including, but not limited to meeting all applicable licensing requirements. This includes, but is not limited to, compliance with the Michigan Department of Transportation's Materials and Supplies More Than \$150,000 Form, which various certification requirements necessitated under 49 CFR part 20. The form is attached and incorporated herein as **Exhibit D.**

XIV. Independent Contractor. It is expressly understood and agreed that the Contractor is an independent contractor. The Contractor, its subcontractors, and any employees of the Contractor or a subcontractor shall in no way be deemed to be and shall not hold themselves out as an employee, servant or agent of the County and shall not be entitled to any fringe benefits of the County, such as but not limited to, health and accident insurance, life insurance, paid vacation or sick leave, or longevity. The Contractor shall be responsible for paying any vendors providing supplies which the Contractor utilizes in the performance of services under this Agreement. The Contractor shall also be responsible for paying any compensation due any persons in its employ or subcontractors for work performed under this Agreement and for withholding and payment of all applicable taxes, including, but not limited to, income and social security taxes to the proper Federal, State, and local governments.

XV. Waivers. No failure or delay on the part of either of the parties to this Agreement in exercising any right, power, or privilege thereunder shall operate as a waiver thereof, nor shall a single or partial exercise of any right, power, or privilege preclude any other or further exercise of any other right, power, or privilege.

XVI. Iran-Linked Business. The Contractor has certified to the County that neither it nor any of its successors, parent companies, subsidiaries, or companies under common ownership or control of the Contractor, are an "Iran Linked Business" engaged in investment activities of \$20,000,000.00 or more with the energy sector of Iran, within the meaning of

Michigan Public Act 517 of 2012. It is expressly understood and agreed that the Contractor shall not become an "Iran linked business" during the term of this Agreement.

NOTE: IF A PERSON OR ENTITY FALSELY CERTIFIES THAT IT IS NOT AN IRAN LINKED BUSINESS AS DEFINED BY PUBLIC ACT 517 OF 2012, IT WILL BE RESPONSIBLE FOR CIVIL PENALTIES OF NOT MORE THAN \$250,000.00 OR TWO (2) TIMES THE AMOUNT OF THE CONTRACT FOR WHICH THE FALSE CERTIFICATION WAS MADE, WHICHEVER IS GREATER, PLUS COSTS OF INVESTIGATION AND REASONABLE ATTORNEY FEES INCURRED, AS MORE FULLY SET FORTH IN SECTION 5 OF ACT NO. 517, PUBLIC ACTS OF 2012.

XVII. Amendments. Modifications, amendments or waivers of any provision of this Agreement may be made only by the written mutual consent of the authorized representatives of both the County and the Contractor.

XVIII. Subcontracting and Assignment. This Agreement shall not be subcontracted, or any part thereof assigned, without the express written approval of the County Procurement Coordinator. In no case, however, shall such approval relieve the Contractor from their obligations or change the terms of this Agreement. The Contractor shall not transfer or assign any Agreement funds or claims due or to become due without the advance written approval of the County Procurement Coordinator. The unauthorized transfer or assignment of the Agreement, in whole or in part, or any interest therein, which shall be due or are to become due the Contractor shall have no effect on the County and are null and void. The Contractor shall identify any and all contractors and subcontractors it intends to use in the performance of this Agreement. All such persons shall be subject to the prior written approval of the County.

XIX. Contracting with Others. It is expressly understood and agreed that the County and the Contractor are free to contract at any time with others to perform services similar to those to be provided under this Agreement.

XX. Disregarding Titles. The titles of the sections set forth in this Agreement are for reference only and shall be disregarded when construing or interpreting any of the provisions of this Agreement.

XXI. Complete Agreement. This Agreement and the attached Exhibits contains all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

XXII. Binding Effect of the Agreement. The covenants and conditions of this Agreement shall be binding upon and for the benefit of the heirs, administrators, executors, successors, and assigns of the parties hereto.

XXIII. Invalid/Unenforceable Provisions. If any provision of this Agreement is rendered invalid or unenforceable because of any State or Federal statute or regulation or ruling by any tribunal of competent jurisdiction, that provision shall be null and void, and shall be considered

to be deleted and the remainder of this Agreement shall not be affected thereby. Where the deletion of the invalid/unenforceable provision would result in the illegality and/or unenforceability of this Agreement, this Agreement shall be considered to have terminated as of the date in which the provision was declared invalid.

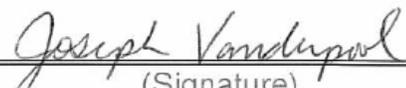
XXIV. Certification of Authority to Sign Agreement. The persons signing on behalf of the parties to this Agreement hereby certify by their signatures that they are duly authorized to sign this Agreement on behalf of the parties and that this Agreement has been authorized by the parties.

THE AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO HAVE FULLY EXECUTED THIS STATEWIDE COOPERATIVE AGREEMENT IN THE SPACES AND ON THE DATES SET FORTH BELOW.

COUNTY OF LIVINGSTON

PETROLEUM TRADERS CORPORATION

BY: 
WESLEY J. NAKAGIRI - CHAIRMAN
COUNTY BOARD OF COMMISSIONERS

BY: 
(Signature)

Dated: 5/12/2022

Name: Joseph Vanderpool
(Print or Type)

Title: Contract Sales Manager
(Print or Type)

Dated: 5/11/2022

APPROVED AS TO FORM FOR
COUNTY OF LIVINGSTON:
COHL, STOKER & TOSKEY, P.C.
BY: COURTNEY A. GABBARA - 4/21/2022

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Liv/Purchasing #22-001E

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Section 1.0: Scope of Work/Specifications and Bidder Instructions

1.1 Introduction

Livingston County is soliciting bids for gasoline deliveries for the Livingston County Car Pool. Through this process, it is the goal of Livingston County to competitively award a contract that will provide gasoline for the next five years. It is anticipated services will commence in March 2022 and end in February, 2027.

1.2 Scope of Work

The successful Bidder (Contractor) shall provide gasoline deliveries, on demand, as indicated herein. The deliveries shall be to the underground tank at the following address:

3950 W. Grand River Avenue
Howell, MI 48855

1.3 Specifications

The Contractor shall provide E10 Regular Octane Unleaded Gasoline that meets the following specifications:

- must comply with the most current ASTM international specifications; bidders are to provide documentation to support that the delivered fuel is per the most recent ASTM specifications
- must be free from water and suspended matter
- gasoline must meet seasonal specifications for the Livingston County Area, including distillation, RVP and vapor/liquid ration.

1.4 Delivery

The Contractor will deliver within two (2) working days after receipt of an order, Monday through Friday between 8:00 a.m. and 4:00 p.m. The Livingston County location for deliveries is 3950 W. Grand River, Howell, MI 48855. The storage tank at this location has a volume of 12,000 gallons. It is anticipated that orders will typically be placed with 500 - 1,000 gallons remaining in the tank, and each order will be approximately 11,000 gallons. Contractor must deliver all contract activities F.O.B. destination, within the County premises with transportation and handling charges paid by Contractor.

The County is interested in wireless tank monitoring to allow for remote monitoring of tank levels. The successful contractor will work with assigned County staff to determine the tank level minimum at which deliveries will be arranged by the contractor.

The Contractor shall utilize vehicles equipped with metering devices that measure the exact amount of fuel at time of delivery at each site. For any vehicles without meters, a metered bill of lading must be submitted. All deliveries are to be accompanied by a delivery metered slip referencing the purchase order number, the exact amount of fuel delivered, and the name of your company. Any reference to fuel amounts shall be stated in U.S. gallons.

A variation in quantity ordered not to exceed, plus or minus, 1% is authorized. Billing and payment shall be based on the exact metered quantities received.

All delivered fuel must be in compliance with all Michigan laws pertaining to pollution which includes the Michigan Air Pollution Act, Act 348 of 1965 and Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). Additionally, all State of Michigan Fuel oils must comply with United States Environmental Protection Agency, Clean Air Act of 1990.

The Contractor will be required to review the specific needs of each buying entity prior to making initial shipments to ensure compliance with all State and Federal Laws. The Contractor will also be responsible for identification, containment, notification to authorize, cleanup, disposal, and damages associated with any leak or discharge up to and including the County's hose connection point.

Summer Deliveries - Deliveries to school participants through the CoPro+ Program that occur in the summer months (outside school operational calendars) must be coordinated with school customers. Many schools are closed during the summer. We suggest that, if schools do not include summer shipping directions, the vendor should contact them for clarification.

1.4.1 Spills

Accidental release or spillage during delivery of product by the contractor will result in the contractor being held responsible for all costs of cleanup and disposal of all contaminated soil. Cleanup and disposal must be conducted in accordance with state and federal EPA regulations and guidelines.

1.4.2 Damages

The contractor shall be held liable for any damages due to equipment malfunctions that may occur due to furnishing contaminated product, furnishing fuel other than specified, or failure to make deliveries when ordered.

1.5 Quantity

The County is not obligated to purchase in any specific quantity. However, the Contractor agrees to supply all that the County requires.

1.6 Pricing

Bidders shall provide delivery pricing by using Attachment A. The fuel price will be based on Oil Price Information Service (OPIS) Daily Contract Benchmark File report.

A copy of the OPIS price report applicable to the date of delivery must be submitted with each billing. Payment will not be made unless the OPIS price report is submitted. The prices are to be in U.S. dollar amount.

The continued payment of any charges due after September 30th of any fiscal year will be subject to the availability of an appropriation for this purpose.

1.7 Bidder Questions

Bidders may submit written questions regarding this ITB by e-mail to: saites@macservcorp.com. All questions must be received by 5:00 p.m. EDT (Eastern Daylight Time) no later than February 14, 2022. All questions, without identifying the submitting company, will be compiled with the appropriate answers and issued as an addendum to the ITB.

1.8 Changes and Addenda to Bid Documents

Each change or addendum issued in relation to this ITB will be posted online at <https://www.livgov.com/fiscal-services/Procurement/Pages/bid-q-and-a-comment.aspx> or BidNet via Michigan Inter-governmental Trade Network (MITN) <https://www.bidnetdirect.com/mitn> sites. It will be the bidder's responsibility to monitor for any addendums or amendments to this solicitation. It is the Vendor's responsibility to acquire knowledge of any changes, modifications or additions to the Authorized Version of the bid document. No award will be made to any vendor who fails to submit the Addendum Signature Page(s), if applicable.



LIVINGSTON COUNTY FISCAL SERVICES
 LIVINGSTON COUNTY, MICHIGAN
 304 E. Grand River Ave., Suite 204 | Howell, MI 48843
 Phone: 517.540.8740
 Fax: 517.546.7266

EXHIBIT



**RFQ-LC-22-01
 Gasoline Deliveries**

ADDENDUM #1

The purpose of this addendum is:

- to communicate questions received and provide answers.

QUESTIONS	ANSWERS
<p>What is the anticipated annual volume of this bid?</p>	<p>Currently LETS uses about 20,000 gallons. However, it is expected that other departments will utilize this fuel as well. This would be a shift from current process, and we estimate volume to be 100,000 gallons annually.</p> <p>The County is not obligated to purchase in any specific quantity. However, the contractor must supply all that the County requires.</p>
<p>It is noted that summer deliveries are explained. Are the primary users of this agreement education facilities that are different delivery points than the one identified in this bid?</p>	<p>No. The primary users of this agreement will be Livingston County departments (i.e., Car Pool, LETS Transportation, EMS), and all the departments will be fueling from this one delivery point. The resulting contract will be available to other local units of government, school districts, colleges and universities throughout Michigan, but we have no way of knowing what other entities might utilize the contract, if any.</p>
<p>Are any other agencies or government entities currently piggybacking this agreement? If so, will they continue, where are they located and what is the annual volume estimations?</p>	<p>No. There is not currently an agreement in place.</p>
<p>Is the location for delivery currently in good working condition with no outstanding spills or cleanups ongoing?</p>	<p>Yes, the equipment is in good working condition and there are no spills or cleanups ongoing. Moreover, the County is currently in the process of changing over the tank and pump from diesel to gas, and much of the plumbing that the vendor will connect to will be brand new.</p>
<p>Are all participants, including the host of this bid subject to the 1.5% CoPro+ fee?</p>	<p>Yes.</p>

Please provide the calculation of the 1.5% CoPro+fee. For example, is the fee based on the fuel and delivery costs or the invoice cost with taxes and fees included?	The fee is calculated based on total invoice cost.
Please confirm that other participating entities and locations are subject to pricing modifications due to freight and supply terminal differences within the state.	Yes, that is correct.

The bid due date remains February 28, 2022 by 2:00 p.m. EST.

ACCEPTANCE/ACKNOWLEDGEMENT OF ADDENDUM #1

**RFQ-LC-22-01
Gasoline Deliveries**

To be signed and returned with proposal submission.

Company:	Date:
Authorized Signature:	
Printed:	



**APPENDIX B: PRICING FORM
DELIVERY COSTS PER GALLON**

Regular Unleaded Gasoline	
\$	+ .0253

*This is to be priced on the Opus, Detroit, Average posting on the day of delivery

**MATERIALS AND SUPPLIES
MORE THAN \$150,000****LOBBYING**

Applicability – construction/architectural and engineering/acquisition of rolling stock/professional service contract/operational service contract/turnkey contracts over \$150,000. Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104- 65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 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.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CONTRACTOR / COMPANY NAME Petroleum Traders Corporation
--

NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

TYPE OR PRINT NAME Linda Stephens	TITLE Vice President
SIGNATURE 	DATE 2/25/2022

BUY AMERICA CERTIFICATION (STEEL AND MANUFACTURED PRODUCTS)

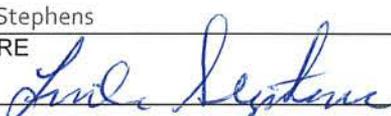
Applicability – construction contracts and acquisition of goods or rolling stock (valued at more than \$150,000) Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating or planning funds. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certificate of Compliance with Buy America Requirements.

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j) (1), and the applicable regulations in 49 CFR part 661.

CONTRACTOR / COMPANY NAME Petroleum Traders Corporation
--

NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

TYPE OR PRINT NAME Linda Stephens	TITLE Vice President
SIGNATURE 	DATE 2/25/2022

Only sign either Certificate of **Compliance** or Certificate of **Non-Compliance**.

Certificate of **Non-Compliance** with Buy America Steel or Manufactured Products Requirements The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

CONTRACTOR / COMPANY NAME

NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

TYPE OR PRINT NAME	TITLE
SIGNATURE	DATE

GOVERNMENT WIDE DEBARMENT AND SUSPENSION (NON PROCUREMENT)

Applicability – all contracts more than \$25,000.

The Recipient agrees to the following:

- (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200.
- (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

CONTRACTOR / COMPANY NAME
Petroleum Traders Corporation

NAME, TITLE AND SIGNATURE OF CONTRACTOR'S AUTHORIZED OFFICIAL:

TYPE OR PRINT NAME	TITLE
Linda Stephens	Vice President
SIGNATURE	DATE
	2/25/2022

BREACHES AND DISPUTE RESOLUTION

Applicability – all contracts more than \$150,000.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729. Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State. Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

CLEAN AIR

Applicability – all contracts more than \$150,000.

1. Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
2. Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

CLEAN WATER

Applicability – all contracts and Subcontracts more than \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

FLY AMERICA REQUIREMENTS

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US 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 US 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 shall include the requirements of this section in all subcontracts that may involve international air transportation.

CARGO PREFERENCE

Applicability – all contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall:

- a. Use privately owned US-Flag commercial vessels to ship at least 50% 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 US flag commercial vessels;
- b. Furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.);
- c. Include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

ENERGY CONSERVATION

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

ACCESS TO RECORDS AND REPORTS

Applicability – as shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a sub grantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a sub grantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a) (1), which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a sub grantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a purchaser which is an FTA recipient or a sub grantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a) (1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) 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 the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i) (11). FTA does not require the inclusion of these requirements in subcontracts.

FEDERAL CHANGES

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

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

RECYCLED PRODUCTS

Applicability – all contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The 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.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

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

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

1. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 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 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, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

2. If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n) (1) on contractor, to the extent the US Government deems appropriate.
3. Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

TERMINATION

Applicability – all contracts more than \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000.

- a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
- b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to

comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

- g. Termination for Default (Transportation Services) if contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:
 - I. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
 - II. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.
- i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall:
 - I. Immediately discontinue all services affected (unless the notice directs otherwise), and
 - II. Deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill

contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

- j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract closeout costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

Applicability – when a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

CIVIL RIGHTS REQUIREMENTS

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The following requirements apply to the underlying contract: The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines

otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,
- c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,
- d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: (1) Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 implement a DBE program approved by FTA, and 3 establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that

it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

- e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,
- g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with

Disabilities,” 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 C.F.R. part 1194, and (j) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

- h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,
- i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, “DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (LEP) Persons,” 70 Fed. Reg. 74087, December 14, 2005,
- j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.
- k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

DISADVANTAGED BUSINESS ENTERPRISE

Applicability – contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs:

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient’s overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the 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 the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The 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 the contractor’s receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor’s work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor’s work by the recipient and contractor’s receipt of the partial retainage payment related to the subcontractor’s work.
- f. The contractor must promptly notify the recipient 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. The contractor

may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

PROMPT PAYMENT

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

Applicability – all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000).

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, 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. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

RESOLUTION

NO: 2024-04-042

LIVINGSTON COUNTY

DATE: April 22, 2024

Resolution Amending Resolution 2022-04-052 to Add Diesel Fuel to the Statewide Cooperative Agreement for Gasoline Delivery Services with Petroleum Traders Corporation – Car Pool

WHEREAS, Livingston County Car Pool solicited bids for gasoline delivery services in partnership with CoPro+, and a statewide cooperative agreement was subsequently awarded to Petroleum Traders Corporation authorized by resolution 2022-04-052; and

WHEREAS, the agreement does not include diesel fuel in the scope of services as the County’s current diesel needs are minimal, but CoPro+ is recommending the addition of diesel to expand marketability of the statewide cooperative and increase the potential to generate revenue for the County; and

WHEREAS, a contract amendment will be required to add diesel fuel to the scope of services, and all other agreement terms will remain unchanged.

THEREFORE, BE IT RESOLVED that the Livingston County Board of Commissioners hereby authorizes an amendment to the Statewide Cooperative Agreement for Gasoline Delivery Services with Petroleum Traders Corporation to add diesel fuel delivery to the scope of services .

BE IT FURTHER RESOLVED that the Chair of the Livingston County Board of Commissioners is authorized to sign all forms, assurances, contracts/agreements, renewals and future amendments for monetary and contract language adjustments upon review and/or preparation by civil counsel.

#

MOVED: D. Domas

SECONDED: R. Deaton

CARRIED: Yes (8): D. Helzerman, D. Domas, F. Sample, W. Nakagiri, J. Drick, R. Deaton, N. Fiani, and J. Gross; No (0): None; Absent (1): M. Smith



LIVINGSTON COUNTY, MICHIGAN
CAR POOL DEPARTMENT

3950 W. Grand River, Howell, MI 48855
Phone 517-540-7847 Fax 517-546-5088
Web Site: www.livgov.com/lets

Memorandum

To: Livingston County Board of Commissioners
From: Greg Kellogg, Transportation Director
Date: 04/10/2024
Re: Resolution Amending Resolution 2022-04-052 to Add Diesel Fuel to the Statewide Cooperative Agreement for Gasoline Delivery Services with Petroleum Traders Corporation – Car Pool

Livingston County Car Pool solicited bids for gasoline delivery services in partnership with CoPro+ to prepare for the planned conversion of the underground storage tank at the Transportation Complex from diesel fuel to gasoline in summer 2022. A statewide cooperative agreement was subsequently awarded to Petroleum Traders Corporation, authorized by resolution 2022-04-052.

The changeover from diesel to gasoline was precipitated by years of declining diesel usage by County departments due to the phase-out of diesel ambulances and buses over the last decade, and as a result the solicitation did not include diesel fuel in the scope of services. While the County's need for diesel fuel is expected to remain minimal, CoPro+ is recommending the addition of diesel to expand marketability of the statewide cooperative and increase the potential to generate revenue for the County.

A contract amendment will be required to add diesel fuel to the scope of services, and all other agreement terms will remain unchanged.

Please do not hesitate to contact me at 517-540-7843 if you have any questions.

AMENDMENT NO. 1
TO
STATEWIDE COOPERATIVE AGREEMENT
FOR
GASOLINE DELIVERIES

THIS AMENDMENT NO. 1 made and entered into by and between the **COUNTY OF LIVINGSTON**, a municipal corporation and political subdivision of the State of Michigan (hereinafter referred to as the “County”), acting on behalf of the **LIVINGSTON COUNTY FISCAL SERVICES / PROCUREMENT DIVISION**, with offices at 304 E. Grand River Avenue, Suite 204, Howell, Michigan 48843 (hereinafter referred to as the “Department”), and **PETROLEUM TRADERS CORPORATION**, with offices located at 7120 Pointe Inverness Way, P.O. Box 2357, Fort Wayne, Indiana 46801-2357. (hereinafter referred to as the “Contractor”).

1. Section II Product and Services to be Provided by the Contractor, of the above stated Agreement to read as follows:

“The Contractor shall provide the Department with gasoline and diesel fuel delivery services to the underground tank at the Livingston County Car Pool located at 3950 W. Grand River Avenue, Howell, Michigan 48855, on an as needed basis. The product and services to be provided by the Contractor are more fully set forth in the ITB Section 1.0 Scope of Work/Specifications and Bidder Instructions, pages 3-4, attached as **Exhibit A** and RFQ-LC-22-01 Gasoline Deliveries ADDENDUM #1, pages 1-2, (hereinafter referred to as “RFQ”) attached as **Exhibit B**. **Exhibit A** and **Exhibit B** are incorporated by reference herein. The termination or expiration of this Agreement shall not relieve the Contractor of any obligation to honor and/or fulfill any valid order pending as of the effective date of termination. In the event of a conflict between or among this Agreement, **Exhibit A**, and **Exhibit B**, this Agreement shall take precedence.

Contact vendor for delivered price, which may vary dependent on delivery location, order quantities, tank specifications, and other factors.”

2. All other terms and conditions contained in the above-stated Agreement shall remain in full force and effect except as modified herein. This Amendment shall become effective on **December 15, 2023**.

3. The people signing this Amendment on behalf of the parties to the Agreement certify by their signatures that they are duly authorized to sign this Amendment.

THE AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO HAVE FULLY EXECUTED THIS AMENDMENT NO. 1 TO THE AGREEMENT FOR GASOLINE DELIVERY ON THE DATES AND IN THE SPACES SET FORTH BELOW.

COUNTY OF LIVINGSTON

BY: Jay R. Drick
JAY R. DRICK - CHAIRMAN
COUNTY BOARD OF COMMISSIONERS
Dated: 4/25/2024

PETROLEUM TRADERS CORPORATION

BY: Joseph Vanderpool
(Signature)
Name: Joseph Vanderpool
(Print or Type)
Title: Contract Sales Manager
(Print or Type)
Dated: 4/26/2024

APPROVED AS TO FORM FOR
COUNTY OF LIVINGSTON:
COHL, STOKER & TOSKEY, P.C.
By: JENNIFER L. BLISS 3/13/2024

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