

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: September 14, 2021	<input checked="checked" type="checkbox"/> Consent	<input type="checkbox"/> Regular
	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Departments: Facilities Development & Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

A) Approve a sole source Agreement for Purchase and Delivery of Gasoline and Diesel Fuel (“Agreement”) between Palm Beach County and Saratoga Rack Marketing LLC (“Saratoga”) with an effective date of October 1, 2021 for a five (5) year term; and

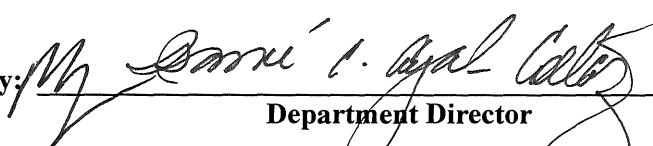
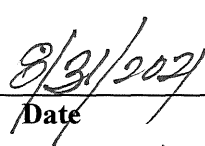
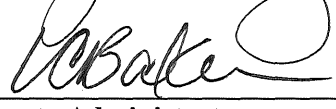
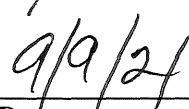
B) Authorize the County Administrator or designee, which in this case shall be the Director of Purchasing to execute the Agreement on behalf of the Board of County Commissioners (“Board”).

Summary: This Agreement sets forth the terms and conditions under which Saratoga will provide for the sale and delivery of fuel for the County (including Fire Rescue and PalmTran), the Sheriff’s Office and other County-owned equipment. The County is required to purchase no less than 85% of 466,000 gallons/month (5,600,000 gallons/year) of Ethanol gasoline and Ultra Low Sulfur diesel fuel throughout the term of the Agreement. The quantity of fuel purchased by the County has been very consistent over time with the expenditures being largely dependent on the price of fuel. It is because of this consistency, Staff can recommend a contract which requires a minimum purchase. The Agreement contains provisions for increased fuel allocations during declared emergencies such as hurricanes. The Agreement provides additional protections for the County in the event of an emergency such as a hurricane as it: 1) allows for the County to directly take delivery of fuel at the Port Everglades terminal; and 2) requires Saratoga to use good faith efforts to fulfill its allocation obligations to the County from one or more of its terminals in Florida if it cannot fulfill its obligations from Port Everglades. The Agreement has always contained the following provisions: 1) does not (and has never) contain the typical termination for convenience provision; 2) provides for liquidated damages in the event that the County becomes the defaulting party (i.e. does not purchase the monthly required product quantity of 85% of 466,000 gallons/month); 3) Saratoga warrants that the product meets specifications required by law, but disclaims all other warranties; 4) to the extent allowed by law and without waiving sovereign immunity, County will indemnify Seller for any unpaid sales or fuel taxes; 5) claims regarding errors in invoices must be brought within 1 year; 6) to the extent allowed by law and without waiving sovereign immunity, County will pay Seller’s costs (including attorney’s fees) of collection of unpaid invoices; 7) dispute resolution; 8) waiver of jury trial; 9) mutual waiver of special/consequential damages; 10) limitation of liability; and 11) to the extent allowed by law and without waiving sovereign immunity, mutual indemnification. Due to: 1) the very low risk of the County needing to terminate the Agreement for one of the most essential commodities that the County purchases; and 2) the benefits that this contract provides in terms of more certain access to fuel prior to and after a hurricane or other emergencies; Staff continues to recommend approval. As required by County policy, the Department’s Assistant County Attorney has reviewed and approved these provisions; and the County’s Risk Department has reviewed and approved the indemnification and limitation of liability provisions. This Agreement will commence on October 1, 2021 and extend for a period of five (5) years with one (1) five (5) year renewal option. On its commencement date of October 1, 2021, this Agreement will terminate the County’s existing fuel agreement with Saratoga RP East LLC (Saratoga East) since Saratoga East is transferring its fuel marketing business to its parent company Saratoga. The estimated expenditures (capacity of the Agreement) over the five (5) year term is \$95,000,000. Funding for this contract is budgeted in FDO/Fleet Management and Palm Tran’s operating budget. This contract as a sole source is exempt from the County’s Equal Business Opportunity Ordinance.
(FDO/Purchasing) Countywide (MWJ)

Background and Justification: Continued on Page 3

Attachments:

1. Agreement

Recommended By:		
	Department Director	Date
Approved By:		
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2024	2025
Capital Expenditures	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Operating Costs	<u>\$19,000,000</u>	<u>\$19,000,000</u>	<u>\$19,000,000</u>	<u>\$19,000,000</u>	<u>\$19,000,000</u>
External Revenues	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Program Income (County)	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
In-Kind Match (County)	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
NET FISCAL IMPACT	<u>\$19,000,000</u>	<u>\$19,000,000</u>	<u>\$19,000,000</u>	<u>\$19,000,000</u>	<u>\$19,000,000</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Is Item Included in Current Budget:	Yes	<u>XX</u>	No	<u> </u>	
Does this item include the use of federal funds	Yes	<u> </u>	No	<u>X</u>	

Budget Account No: Fund 5000 Dept 410 Unit 7220 Object 5214
 Fund 5000 Dept 410 Unit 7220 Object 5215
 Fund 1340 Dept 540 Unit 5140 Object 5214
 Fund 1340 Dept 540 Unit 5140 Object 5215

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: *[Signature]*

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

[Signature] 8/23/21
 OFMB (M...)
 8/23/21 8/23/21
[Signature] 9/11/21
 Contract Development and Control
 9-1-21 TW

B. Legal Sufficiency:

[Signature] 9/7/21
 Assistant County Attorney

C. Other Department Review:

[Signature]
 Department Director, Purchasing

This summary is not to be used as a basis for payment

Background and Justification Continued

Saratoga East, a wholly owned subsidiary of Saratoga, has been providing for the purchase and delivery of gasoline and diesel fuel services to the County pursuant to a substantially similar agreement since 2006 (R2006-1047, R2008-2270, R2010-1960) and most recently pursuant to an agreement approved by the Board on November 1, 2016 (Agenda Item 3H-8)(the “2017 Agreement”).

The County’s existing contract with Saratoga East (the 2017 Agreement) expires 12/31/21. This new Agreement with Saratoga will terminate and replace the 2017 Agreement as of 10/1/21, since Saratoga East is transferring its fuel marketing business to its parent company Saratoga. FDO recommends this 5 year sole source agreement with Saratoga so that the County will have a secure source of fuel and because Saratoga is the only Port Everglades company that can meet the County’s fuel requirements and is willing to enter into a long-term contract directly with the County. In 2006, the Purchasing Director and the FDO Director contacted all of the terminals at Port Everglades in order to identify a secure and reliable source of fuel to the County after the terrible hurricane season of 2005 when one of the County’s fuel vendors did not deliver as required during emergency circumstances. In 2008, 2010, 2016 and most recently in 2020, prior to entering into another contract with Saratoga East, the Purchasing Department on behalf of FDO sent Requests For Information (RFIs) to the fuel companies that had terminals at Port Everglades, but in each instance only one company, Saratoga East, was able to meet the County’s fuel requirements and agree to enter into a contract directly with the County. The County’s fuel requirements can be summarized as follows: the company must 1) be willing to enter into a contract directly with the County; 2) be able to supply 5.6 million gallons of product (diesel and gasoline) per year; 3) have fuel tanks (terminals) at Port Everglades; 4) have access to similar facilities at other ports in Florida; 5) have established contracts for purchasing fuel from refineries that deliver to Port Everglades via ships; 6) own the rack at the Port Everglades terminal for delivery of fuel to transport trucks; 7) be able to deliver fuel to County locations within 24 hours of receiving an order; 8) provide the County access to the fuel rack on a 24/7 basis for the fueling of County-owned tanker trucks; and 9) be capable of increasing the County’s weekly allocations during emergency events.

As in its prior agreements with Saratoga East, this contract with Saratoga provides that the price of fuel is the posted price for the specific product on the date of lifting at the Port Everglades Terminal plus the Index Adder and Carrier Adder. The Index Adder remains constant through the term of the Agreement and has remained the same since 2006. The Carrier Adder will remain constant until January 1, 2023. On January 1, 2023 and each January thereafter the Carrier Adder will be increased or decreased annually according to the change in weekly retail on-highway diesel prices as reported by the Department of Energy.

Product	Monthly Required Product Quantity	Index Adder	Carrier Adder
Ethanol Gasoline	225,000 gallons	<u>\$.0500</u>	<u>\$.0824</u>
Ultra Low Sulfur Diesel	241,000 gallons	<u>\$.0500</u>	<u>\$.0824</u>

If the County elects to purchase fuel and deliver with its own carrier (including carrying the fuel itself), the Total Adder will be equal to the Index Adder and the County shall be subject to the requirements of the carrier which are included in the Agreement as Attachment “D”.

**CONTRACT CONDITIONS FOR PURCHASE AND DELIVERY OF
GASOLINE & DIESEL FUEL**

This Agreement for Purchase and Delivery of Gasoline & Diesel Fuel ("Agreement"), is made and entered into on _____, with an effective date of October 1, 2021 (the "Effective Date"), by and between Palm Beach County ("PBC," "County" or "Buyer"), a political subdivision of the State of Florida and Saratoga Rack Marketing LLC, 20 Greenway Plaza, Suite 200 Houston, TX 77046 ("Saratoga" or "Seller"), a Delaware limited liability company authorized to conduct business in the State of Florida. PBC and Seller are sometimes referred to collectively as "Parties" or individually as a "Party." The Agreement is based upon the following premises:

PREMISES

WHEREAS, the Seller's affiliate entity Saratoga RP East LLC, formerly TransMontaigne Product Services LLC has been providing for the purchase and delivery of gasoline and diesel fuel services to the County since 2006 under similar agreements (R2006-1047, R2008-2270, R2010-1960) and most recently under an agreement approved by the Palm Beach County Board of County Commissioners on November 1, 2016 (Agenda Item 3H-8)(the "2017 Agreement"); and

WHEREAS, PBC, Seller, and Saratoga RP East LLC have determined it to be beneficial to PBC and Saratoga RP East LLC to terminate the 2017 Agreement and replace it with this Agreement under which the County will purchase its requirements for gasoline and diesel fuel from Seller and for Seller to sell and deliver such gasoline and diesel fuel to PBC under this sole source contract; and

WHEREAS, PBC and Seller have the ability to lawfully enter into this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the Parties agree as follows:

PART I

PRODUCT(S). Seller will sell and deliver to PBC and PBC shall have the right to purchase the following products (the "Products"):

"Ultra Low Sulfur Diesel": No. 2 Ultra Low Sulfur, on road, clear, taxable diesel fuel per ASTM D 975-20 or most current version-

"Ethanol Gasoline": 10% Ethanol blended Gasoline per ASTM D 4814-20 specifications or most current version.

PAYMENT: Seller shall invoice PBC by fax and/or electronically within 24 hours of loading Product at the Terminal except for lifts on Saturday which will be billed on Monday. Within ten (10) days from receipt of such invoice, PBC shall pay all amounts shown on such invoice by wire transfer of immediately available United States dollars to the following account:

Regions Bank
ABA#: 062005690
Acct#: 0198554530
Account Name: Saratoga Rack Marketing LLC

TERM: This Agreement shall be effective and commence on October 1, 2021 and shall extend for a period of five (5) years (the "Initial Term"). This Agreement may be renewed for one (1) additional term of five (5)

years (the "Renewal Term"). At least ninety (90) days prior to the expiration of the Initial Term, either party may request to renew this Agreement. Such renewal will require the approval of both parties. The Initial Term and Renewal Term may be referred to herein collectively as the "Term".

Upon the Effective Date, this Agreement shall terminate and replace the 2017 Agreement.

PRICING FORMAT: PBC will be invoiced at the posted price for the specific Product on the date of lifting at the Terminal plus the Total Adder as outlined on the Monthly Required Product Quantity, attached as Attachment "A" and incorporated herein. Any applicable Local, State and Federal Taxes or fees will bill as separate line items. Any applicable rebate will be passed on to PBC and shown separately. Product will be invoiced based on a temperature-adjusted (net) gallon.

VOLUME: PBC's good faith requirements of each Product are estimated to equal a total of 2,700,000 gallons per year of Ethanol Gasoline and 2,900,000 gallons of Ultra Low Sulfur Diesel. Product is to be delivered ratably within each week during the Term of this Agreement.

During the Term of this Agreement, PBC will buy and take delivery of and Seller will sell and deliver each Month to the Buyer's storage tank sites identified on the Delivery Specifications, attached as Attachment "B" and incorporated herein, the Monthly Required Product Quantity as established in Attachment "A". Volume of Product will be delivered on a ratable basis and pricing includes supplied volume and delivery. This Agreement's ratable volume is equal to 100% of the weekly and monthly allocation. PBC's ratable volume will be allocated in each seven-day allocation period at the Terminal. The allocation period will start on Thursday and end on Wednesday. PBC may purchase no more than 250% of its daily ratable Required Product Quantity (equal to the Annual Required Estimated Product Quantity divided by the number of days in the year) on any given day. PBC will also be restricted to a ratable weekly and monthly allocation. PBC may purchase in excess of this daily ratable Required Product Quantity subject to Product availability. Product availability for additional volume must be confirmed by Seller prior to loading of Product at the Terminal.

After any national, state or local emergency declaration, PBC may notify Seller of its need for an "emergency allocation" of fuel. PBC shall notify Seller no later than 24 hours after the emergency declaration of its need for the "emergency allocation." For a five day period following PBC's notification to Seller of an emergency declaration, Seller shall increase PBC's weekly allocation of Ethanol Gasoline by 50,000 gallons and Ultra Low Sulfur Diesel fuel by 150,000 gallons, with the five day period starting within the first day after written or verbal notice is provided by PBC. If the notice is given during the last three days of the weekly allocation period, Seller shall increase the weekly allocation by 25,000 gallons of Ethanol Gasoline and 75,000 gallons of Ultra Low Sulfur Diesel.

If PBC purchases less than 85 percent of the Monthly Required Product Quantity as established in Attachment "A" or subsequent adjustments for any reason other than Force Majeure or Seller's inability to supply adequate product ratably to PBC, PBC will pay Product Volume Shortfall Liquidated Damages. "PBC Product Volume Shortfall Liquidated Damages" shall be equal to \$.05 per gallon of monthly volume shortfall below 100 percent of the Monthly Required Product Quantity as established in Attachment "A" or subsequent adjustments for such occurrences. The Parties agree that any failure by PBC to purchase the Monthly Required Product Quantity will cause damage to Seller in amounts that will be difficult or impossible to determine and that in light of the difficulty of determining such damage, the Product Volume Shortfall Liquidated Damages are a reasonable estimate of those damages.

If for any reason during the Term of this Agreement, Saratoga elects not to market some or all of the products in the Port Everglades market that it is obligated to deliver to PBC under the terms of this Agreement, Saratoga will notify PBC of this fact and both Parties will immediately commence negotiations in order to attempt to reach mutual agreement upon an alternative product(s) and contract price for such alternative product(s). If the Parties have not agreed to an alternative product(s) and contract price within 30 days of the effective date of Saratoga's notice to PBC, either Party may terminate this Agreement, effective at the end of said 30-day period, only with

the respect to those products that Saratoga will no longer market in the delivery location(s), by giving written notice to the other Party.

The Seller and Buyer may agree to increase the Monthly Required Product Quantity at any time during the Term of the Agreement pursuant to the same price terms as originally Bid.

At any time during the Term of the Agreement, Seller and Buyer may agree to substitute a blended bio-diesel product in lieu of Ultra Low Sulfur Diesel pursuant to any product specifications and price terms which are agreeable to both parties; however, neither the index nor carrier adder can be adjusted. Such substitution would be implemented by amendment to this Agreement.

The General Provisions for Petroleum Product Rack Sales ("General Terms and Conditions"), attached as Attachment "C" are hereby incorporated into this Agreement. Seller is required to have Carrier (as defined in Attachment "B") responsible for delivery of Products on behalf of Seller under this Agreement to agree to the terms and conditions of the Delivery Specifications included in Attachment "B." Any access by Buyer or any agent of Buyer shall be permitted only after Buyer or Buyer's agent has executed a Terminal Access Agreement in the form of Attachment "D."

Attachments:

- Monthly Required Product Quantity & Pricing
- Delivery Specifications
- General Terms and Conditions
- Terminal Access Agreement

IN WITNESS WHEREOF, the Director of Purchasing of Palm Beach County, Florida has made and executed this Contract upon approval by the Palm Beach County Board of County Commissioners on the day and year above written.

PALM BEACH COUNTY, FLORIDA FOR ITS
BOARD OF COUNTY COMMISSIONERS
BY KATHLEEN M. SCARLETT
DIRECTOR OF PURCHASING

By: _____
Kathleen M. Scarlett

APPROVED AS TO
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____
County Attorney

By: 
Dir., Facilities Development & Operations

ATTEST:

SARATOGA RACK MARKETING LLC

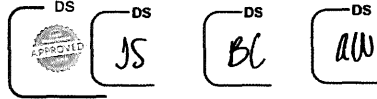
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Amberly Sheppard
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Witness Signature

DocuSigned by:
Brad Jenkins
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By: Signature

Amberly Sheppard 8/13/2021 | 2:02 PM EDT Brad Jenkins President

Witness Name Typed or Printed

(Name and Title Printed or Typed) 8/16/2021 | 12:27 PM EDT



CONSENT OF SARATOGA RP EAST LLC, FORMERLY TRANSMONTAIGNE PRODUCT SERVICES LLC, AS TO THE TERMINATION OF THE 2017 AGREEMENT:

SARATOGA RP EAST LLC

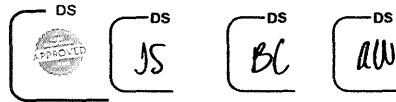
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Witness Signature

DocuSigned by:
Brad Jenkins
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By: Signature

Amberly Sheppard 8/13/2021 | 2:02 PM EDT Brad Jenkins President

Witness Name Typed or Printed

(Name and Title Printed or Typed) 8/16/2021 | 12:27 PM EDT



ATTACHMENT "A"
MONTHLY REQUIRED PRODUCT QUANTITY & PRICING

The Total Adder referenced in the pricing format of the Agreement is the total of the Saratoga Index Adder and the Carrier Adder, each as shown in the table below.

If PBC elects to purchase fuel and deliver with its own carrier (including carrying the fuel itself), the Total Adder will be equal to the Saratoga Index Adder and PBC's delivery shall be subject to the requirements of Attachment "D". Any fuel purchased by PBC's own carrier will be counted toward PBC's Monthly Required Product Quantity.

Saratoga's Index Adder shall remain constant throughout the Term of this Agreement. Carrier Adder shall remain constant until January 1, 2023. On January 1, 2023 and each January 1st thereafter, the Carrier Adder shall be evaluated for increase or decrease according to the change in weekly retail on-highway diesel prices as reported by the Department of Energy. *For example, if the weekly price of retail on-highway diesel has increased by 23% between 1/01/22 and 12/31/22 the Carrier Adder will be increased for the period between 1/01/23 and 12/31/23 by 23%. If the weekly price of the retail on-highway diesel decreases by 12% between 1/01/22 and 12/31/22 the Carrier Adder will be decreased for the period between 1/01/23 and 12/31/23 by 12%.*

Product	Monthly Required Product Quantity	Index Adder	Carrier Adder
Ethanol Gasoline	225,000 gallons	<u>\$.0500</u>	<u>\$.0824</u>
Ultra Low Sulfur Diesel	241,000 gallons	<u>\$.0500</u>	<u>\$.0824</u>

ATTACHMENT "B"
DELIVERY SPECIFICATIONS

For the purposes of this Agreement, the term Carrier shall mean the Seller or an independent contractor hired by the Seller for the delivery of fuel to the Buyer.

1. LEGAL REQUIREMENTS

A. COMPLIANCE WITH LAWS AND CODES: Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by Carrier shall in no way be a cause for relief from responsibility. The Carrier shall strictly comply with Federal, State and local building and safety codes. Equipment shall meet all State and Federal Safety regulations.

B. INDEPENDENT CONTRACTOR RELATIONSHIP: The Carrier is, and shall be, in the performance of all work, services, and activities under the Agreement, an Independent Contractor and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Carrier's sole direction, supervision, and control. The Carrier shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Carrier's relationship, and the relationship of its employees, to the County shall be that of an Independent Contractor and not as employees or agents of the County.

2. CERTIFICATIONS, LICENSES AND PERMITS:

Carrier shall provide a copy of all applicable Certificates of Competency issued by the State of Florida in the name of the Carrier. It shall also be the responsibility of the Carrier to submit, prior to commencement of work, a current Occupational License for PBC and all permits required to complete this contractual service at no additional cost to PBC. A Palm Beach County occupational license is required unless specifically exempted by law. In lieu of a Palm Beach County occupational license, the Carrier should include the current occupational license issued to the Carrier. It is the responsibility of the Carrier to ensure that all required certifications, licenses and permits are maintained in force and current throughout the Term of the Agreement.

3. CRIMINAL HISTORY RECORDS CHECK

This Agreement includes sites and/or buildings which have been designated as critical facilities ("Critical Facilities") or "criminal justice information facilities ("CJI Facilities") pursuant to the Palm Beach County Code, Section 2-371 – 2-377, the Palm Beach County Criminal History Records Check Ordinance ("Criminal History Records Check Ordinance") and Resolutions R-2013-1421 and R2015-0572, as may be amended. Therefore, as a condition precedent to the effectiveness of the Agreement, the Carrier must comply with all PBC requirements, i.e. Criminal History Records Check Ordinance. As an additional condition precedent to the effectiveness of the Agreement, the Carrier must also meet the requirements established by the Electronic Services and Security Division of the Facilities Development and Operations Department.

4. DELIVERY/RESPONSE TIME

A. Delivery shall be required within twenty-four (24) hours after receipt of an order delivered to Seller unless an alternate delivery date has been requested by Seller and approved in writing by the designated PBC representative. Absent a force majeure event, repeated failure of Seller to perform to the delivery requirement is sufficient cause for default and termination of the contract. Repeated failure shall mean more than two (2) failures in any six (6) month period.

B. Daily orders shall be placed by e-mail from a PBC representative to Seller by 10:00 AM, Monday through Saturday. Seller shall provide PBC with the appropriate e-mail address(es) and be responsible for updating PBC as necessary. The order shall specifically identify the lift date. If PBC directs Seller, in writing, to lift in excess of PBC's daily allocation, and the allocation is unavailable, then **PBC shall pay \$ 100.00 for the Carrier's unused trip to the Terminal.**

C. Deliveries shall be made within 24 hours of order placement unless PBC specifically requests otherwise as indicated on the order, in which case, requested delivery date and time shall become the required delivery time.

D. Orders placed on Saturday shall be delivered no later than 5:00 P.M. the following Monday, unless PBC specifically requests otherwise, in which case, requested delivery date and time shall become the required delivery time. PBC shall not require the Carrier to deliver on Sundays.

E. A transport load shall be defined as no less than 7,500 gallons of Ethanol blended gasoline or no less than 7,000 gallons of Ultra Low Sulfur Diesel.

F. PBC reserves the right to split any load between two delivery sites. PBC is entitled to split loads at no additional cost up to 80 times per year. Should PBC request split loads greater than eighty in one year, PBC shall pay \$ **50.00** for each split load thereafter.

G. If the Carrier is unable to meet the delivery requirements, it shall be the responsibility of the Carrier to notify PBC within 2 hours of the delay occurring so that PBC can determine if it needs to transfer fuel between its sites to cover delay.

H. At time of delivery, Carrier shall present a Delivery Ticket / Bill of Lading to a PBC representative, or, if requested, deliver document to a specified location. The Delivery Ticket / Bill of Lading shall include:

1. *Bill of Lading Number*
2. *Name of supplier and carrier.*
3. *Date and time of delivery.*
4. *Type of fuel delivered.*
5. *Gross Gallons and Net Gallons delivered.*
6. *Inches in fuel tank, before and after delivery.*
7. *Driver's signature.*
8. *Signature of Palm Beach County employee receiving delivery, unless otherwise indicated.*
9. *Delivery address.*

I. Carrier shall be adequately equipped, staffed, and supplied to, promptly, and efficiently, furnish, deliver, and dispense, all products that are submitted at various facilities.

Carrier shall have the ability to fill above-ground tanks.

Deliveries shall be made on the basis of quantities corrected to 60° Fahrenheit. Delivery ticket shall reflect net gallons delivered after temperature compensation.

Carrier shall be fully responsible for any and/or all actions of their employees' that require clean up or ground sterilization as the result of an "improper" delivery. Carrier shall have and shall maintain those types and quantities of materials necessary to contain spilled product(s). Carrier shall be responsible for prompt and thorough cleanup of all spillage, as per EPA Specifications, and for any agency fines or fees that result from contamination.

Discovery or occurrence of a spill, on overflow, excess water in the tank, suspected contamination of surrounding area, suspected tank failure, or any other indication of chemical release shall be immediately reported by the Carrier to PBC. Where the event is directly or indirectly the result of Carrier's actions, the Carrier shall also affect containment and initiate cleanup immediately.

The carrier must ensure fill port locks are properly secured following a delivery.

5. WORK SITE SAFETY/SECURITY

The Carrier shall at all times guard against damage or loss to the delivery site property, the Carrier's own property, and/or that of other contractors, and shall be held responsible for replacing or repairing any such loss or damage. When applicable, the Carrier shall provide fences, signs, barricades, flashing lights, etc. necessary to protect and secure the delivery site(s) and insure that all County, State of Florida, OSHA, and other applicable safety regulations are met. Additionally, Carrier shall provide for the prompt removal of all debris from delivery sites. PBC may withhold payment or make such deductions as deemed necessary to ensure reimbursement or replacement for loss or damage to property through negligence of the Carrier or its agents.

6. INSURANCE REQUIRED

Prior to execution of this Agreement, Carrier shall provide evidence of the following minimum amounts of insurance coverage to Palm Beach County, c/o Purchasing Department, Attention Insurance/Buyer Assistant, 50 South Military Trail, Suite 110, West Palm Beach, Florida 33415. During the Term of the Agreement and prior to each subsequent renewal thereof, the Carrier shall provide this evidence to PBC prior to the expiration date of each and every insurance required herein.

Commercial General Liability Insurance. Carrier shall maintain Commercial General Liability Insurance, or similar form, at a limit of liability not less than \$500,000 Each Occurrence for Bodily Injury, Personal Injury and Property Damage Liability. Coverage shall include Premises and/or Operations, Independent Contractors, Products and/or Completed Operations, Personal Injury/Advertising Liability, Contractual Liability and Broad Form Property Damage coverages.

Business Auto Policy, including the MCS-90 Motor Carrier Act Endorsement and/or CA 99 48 Pollution Liability – Broadened Coverage for Covered Autos – Business Auto, Motor Carrier and Truckers Coverage Forms Endorsement, at a minimum limit not less than \$1,000,000 per occurrence. The policy shall be endorsed to include "Palm Beach Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents as Additional Insured."

Workers' Compensation and Employer's Liability Insurance. The Carrier shall maintain Workers' Compensation & Employer's Liability Insurance in accordance with Florida Statute Chapter 440.

A signed Certificate or Certificates of Insurance, evidencing that required insurance coverages have been procured by the Carrier in the types and amounts required hereunder shall be transmitted to PBC via the Insurance Company/Agent by the effective date of this Agreement.

Except as to Workers' Compensation and Employer's Liability said Certificate(s) shall clearly confirm that coverage required by the contract has been endorsed to include "Palm Beach County, a political subdivision of the State of Florida, its officers, agents and employees", as an Additional Insured.

Further, said Certificate(s) shall unequivocally provide thirty (30) days (except 10 days for non-payment) written notice to PBC prior to any adverse change, cancellation or non-renewal of coverage there under.

It is the responsibility of the Carrier to ensure that all required insurance coverage is maintained in force throughout the Term of the contract. Failure to maintain the required insurance shall be considered default of

contract. All insurance must be acceptable to and approved by PBC as to form, types of coverage and acceptability of the insurers providing coverage.

All insurance provided hereunder shall be endorsed to show that it is primary with respect to PBC.

7. ADDITION OF DELIVERY SITES

The Buyer shall be able to add delivery sites to any areas, which are capable of accepting a transport delivery, with 14 day notice to the Seller. The price for supply and delivery to the new site is subject to the same pricing as any other of the Buyer's sites in a particular area.

8. ATTACHMENT(S)

The following are included and are considered to be components of this Agreement:

Table "1" - DELIVERY LOCATIONS, SIZE OF FUEL TANKS, AND ACCESS CONDITIONS.

Table "2" – GENERATOR FUEL SITES – COUNTY

TABLE 1
DELIVERY LOCATIONS, SIZE OF FUEL TANKS, AND ACCESS CONDITIONS.

Hours of Operation	Location/Address	Fuel Type	Number/Capacity of Tanks	Total Capacity		Aboveground
				10% Ethanol blended	Diesel	
24 Hours	PBI 3700 Belvedere Road West Palm Beach	10% Ethanol blended	4 Tanks/12,000 Gal. Ea.	48,000		
		Diesel	2 Tanks/12,000 Gal. Ea.		24,000	
24 Hours	Criminal Justice Complex 3228 Gun Club Road West Palm Beach	10% Ethanol blended	2 Tanks/10,000 Gal. Ea.	20,000		
24 Hours	South County Gov't Center 345 South Congress Delray Beach	10% Ethanol blended	2 Tanks/10,000 Gal. Ea.	20,000		
		Diesel	1 Tank/ 5,000 Gal.		5,000	
24 Hours	North County 8130 Jog Road West Palm Beach	10% Ethanol blended	2 Tanks/10,000 Gal. Ea.	20,000		
		Diesel	1 Tank/10,000 Gal.		10,000	
24 Hours	Pahokee Complex 580 State Market Road Pahokee	10% Ethanol blended	1 Tank/12,000 Gal.	12,000		
		Diesel	1 Tank/12,000 Gal.		12,000	
24 Hours	Mosquito Control 9011 Lantana Road Lake Worth	10% Ethanol blended	1 Tank/12,000 Gal.	12,000		
6A-6P Weekdays	S. Regional Water Utilities 13026 Jog Road Delray Beach	10% Ethanol blended	1 Tank/12,000 Gal.	12,000		Aboveground
		Diesel	1 Tank/12,000 Gal.		12,000	Aboveground
24 Hours	Park Vista-PBSO 7894 S. Jog Road Lake Worth	10% Ethanol blended	1 Tank/12,000 Gal.	12,000		
24 Hours	PBSO Substation 17901 SR #7 Boca Raton	10% Ethanol blended	2 Tanks/10,000 Gal. Ea.	20,000		
24 Hours	Vista Center 2455 Vista Parkway West Palm Beach	10% Ethanol blended	1 Tank/20,000 Gal.	20,000		
		Diesel	1 Tank/20,000 Gal.		20,000	

24 Hours	West County Gov Centre 38951 James Wheeler Hwy. Belle Glade	10% Ethanol blended Diesel	1 Tank/ 25,000 Gal. 3 Tanks/ 25,000 Gal. Ea.	25,000 75,000	
6 AM - 6 PM Weekdays	Central Water Utilities 8100 Forest Hill Blvd. West Palm Beach	10% Ethanol blended Diesel	1 Tank/10,000 Gal. 1 Tank/20,000 Gal.	10,000 20,000	
7 AM - 3:30 PM Weekdays	John Prince Park 5020 S. Congress Ave. Lake Worth	10% Ethanol blended Diesel	1 Tank/12,000 Gal. 1 Tank/ 5,000 Gal.	12,000 5,000	
7 AM - 5 PM Weekdays	Jupiter (Inside SWA) 14185 N. Military Trail Jupiter	10% Ethanol blended	1 Tank/12,000 Gal.	12,000	
Storage Only	Kings' Academy 4215 Cherry Road West Palm Beach	Diesel	1 Tank/10,000 Gal.	10,000	Closed Feb 2019
Midnight- 3:00 PM	Palm Tran North 3201 Electronics Way West Palm Beach	10% Ethanol blended Diesel	1 Tank/10,000 Gal. 2 Tanks/20,000 Gal. Ea.	10,000 40,000	
Midnight- 3:00 PM	Palm Tran South 100 N. Congress Ave Delray Beach	Diesel	2 Tanks/12,000 Gal. Ea. 1 Tank/10,000 Gal.	24,000 10,000	

TABLE 2
Palm Beach County
FD&O, Fleet Management
Generator Fuel Sites – County

Hours of Operation	Location/Address	Fuel Type	Number/Capacity of Tanks	Total Capacity Diesel	Aboveground	Fuel Vendor DEP#
8:00 AM 2:00 PM	Water Plant #2 2956 Pinehurst Drive West Palm Beach	DIESEL	1 Tank @ 10,000 Gal. 1 Tank @ 5,200 Gal.	15,200	Aboveground	8841654
7:00 AM 2:00 PM	Water Plant #3 13026 Jog Road Delray Beach	DIESEL DIESEL	1 Tank @ 30,000 Gal. 3 Tanks @ 10,000 Gal.	60,000	Aboveground	8841658
7:00 AM 3:00 PM	Water Plant # 8 1500 Jog Road West Palm Beach	DIESEL	1 Tank @ 20,000 Gal.	20,000	Aboveground	8841650
8:00 AM 2:00 PM	Water Plant #9 22438 SW 7th Street Boca Raton	DIESEL DIESEL	1 Tank @ 6,000 Gal. 2 Tanks @ 10,000 Gal.	26,000	Aboveground Aboveground	8623200
7:00 AM 3:30 PM	North Region WTP 12500 40th Street Royal Palm Beach	DIESEL	1 Tank @ 20,000 Gal.	20,000		9810181
8:00 AM 2:00 PM	Southern Region Reclam.* 12751 Hagen Ranch Road Boynton Beach	DIESEL DIESEL DIESEL	2 tanks @ 20,000 Gal.	40,000		9101982
8:00 AM 2:00 PM	Repump Station # 5 9045 Jog Road Boynton Beach	DIESEL	1 Tank @ 6,000 Gal.	6,000	Aboveground	9101984
7:00 AM 2:00 PM	Lift Station # 5229 151 S. Haverhill Road West Palm Beach	DIESEL	1 Tank @ 12,000 Gal.	12,000		8841668
7:00 AM 2:00 PM	Pump Station # 5241 1915 Haverhill Road West Palm Beach	DIESEL	1 Tank @ 5,000 Gal.	5,000	Aboveground	8841648
8:00 AM 2:00 PM	Pump Station #4000(Mecca) 10160 Seminole Pratt Road Palm Beach Gardens	DIESEL	1 Tank @ 12,000 Gal.	12,000		9809060
7:30 AM 3:30 PM	Western Region WTP 39700 Hooker Hwy Belle Glade	DIESEL	2 Tanks @ 12,000 Gal.	24,000		9810180
7:00 AM 3:30 PM	Central Energy Plant 410 4th Street West Palm Beach	DIESEL	1 Tank @ 12,000 Gal.	12,000		9102375

7:30 AM 3:30 PM	Criminal Justice Complex 3228 Gun Club Road West Palm Beach	DIESEL	3 Tanks @ 8,000 Gal.	24,000		9202379
7:30 AM 3:30 PM	Dept of Airports/terminal PBC Airport Complex West Palm Beach	DIESEL	2 Tanks @ 10,000 Gal.	20,000		8736526
unmanned	PBC Fairgrounds Expo Ctr 9067 Southern Blvd West Palm Beach	DIESEL	1 Tank @ 6,000 Gal.	6,000	Aboveground	9803414
6:30A- 5:00P	PBC Fleet Mgt 2601 Vista Parkway West Palm Beach	Diesel	1 Tank @ 12,000 Gal.	12,000		9809212
7:30 AM 3:30 PM	Airports Parking Garage 3200 Belvedere Road West Palm Beach	DIESEL	1 Tank @ 8,000 Gal.	8,000	Aboveground	9809931
7:30 AM 3:30 PM	West County Courthouse 2920 FL HWY 15 Belle Glade	DIESEL	1 Tank @ 6,000 Gal.	6,000		8623180
6:30 AM 5:00 PM	ISS Data Center 2601 Vista Pkwy West Palm Beach	DIESEL	1 Tank @ 6,000 Gal	6,000	Aboveground	9809212
7:00 AM 3:30 PM	West Region WPT 2055 W. Canal St. S. Belle Glade	DIESEL	1 Tank @ 8,000 Gal	8,000		9400989

*Any diesel delivered to this site, must be delivered with the following language stated on the delivery ticket.
"This fuel complies with the 15ppm ultra low sulfur standard for motor vehicle diesel fuel."

ATTACHMENT "C"
**GENERAL PROVISIONS FOR PETROLEUM PRODUCT RACK SALES
AGREEMENTS
(October 1, 2021)**

1. SCOPE. These General Provisions are deemed incorporated in each purchase for credit of Seller's petroleum products from any of the truck rack delivery facilities located at Seller's product storage terminal or that of a third party where Seller's petroleum products are stored ("Delivery Locations") pursuant to either specific petroleum product sales agreements or a credit application pursuant to which credit is authorized for Buyer to purchase available petroleum products from Delivery Locations based upon Seller's posted Product prices, where each such agreement or application refers to the Saratoga Rack Marketing LLC General Provisions for Petroleum Product Rack Sales Agreements. Each such purchase transaction or agreement, together with these General Provisions, is referenced hereinafter as the "Agreement". In the case of any discrepancy between these General Provisions and the other written terms of the sales agreement, if any (such other written terms, being "Part I" of the Agreement), Part I of the Agreement will control. References to "Party" under these General Provisions means either Seller or Buyer and references to "Parties" means both Seller and Buyer. Capitalized terms not otherwise defined in these General Provisions have the meaning given to them in Part I of the Agreement.

2. SALE, DELIVERY AND MEASUREMENT.

2.1 During the Term of this Agreement, Seller will sell and deliver, and Buyer will purchase and accept delivery of, Product on the terms specified in the Agreement.

2.2 Product is delivered to Buyer when the Product passes the flange between the last permanent connection of the Delivery Location's delivery equipment and Buyer's truck or that of its carrier identified to Seller by Buyer. Title to and risk of loss of Product will pass from Seller to Buyer upon its delivery Free on Board at the Delivery Location.

2.3 Volumes delivered under this Agreement will be measured by meters located at or near the Delivery Location and such volumes will be set forth in the delivery tickets issued at the time of shipment of the Product. Such delivery tickets will be *prima facie* evidence of the volumes of Product delivered under the Agreement, absent obvious error or fraud. If meters are not available, volumes will be determined by weighing trucks on certified calibrated scales. Trucks receiving delivered Product must be properly calibrated and sealed by the operator at the Delivery Location. All volumes of delivered Product will be corrected for temperature to sixty (60) degrees Fahrenheit in accordance with the latest applicable American Petroleum Institute volume correction factors for such Product.

2.4 Seller may decline to load or permit loading of any transportation equipment that is reasonably determined to be contaminated, not suitable for carrying Product, or not in compliance with any governmental regulations or rules of the Delivery Location facility. The cost incurred by Buyer for such refusal to load will be for Buyer's account.

2.5 Deliveries will be made within the Delivery Location's usual business hours or, provided reasonable advance notice of such delivery has been given by Buyer, at such times as may be required by Buyer. Buyer will be bound by and will abide by all rules and regulations of the Delivery Location delivering the Product. Buyer will not enter upon or allow its agents, carriers

or employees to enter upon any Delivery Location without Buyer or its agents, carriers or employees having previously executed a terminal access agreement with the owner of such facility. Seller will furnish to Buyer bills of lading, measurement records, inspection reports or certificates of analysis, material safety data sheets, certificates of origin and such other documents as are customarily furnished in the industry.

2.6 Buyer has five days after receipt of the Product at its destination to inspect and either accept or reject it. If Buyer either (i) retains the Product in its possession for a period of five days after receipt at its destination without rejecting them or (ii) after delivery of the Product at the Delivery Location, uses or commingles it with other products of third parties, this will be regarded as irrevocable acceptance by it of the Product. If the Product is rejected, prompt notice must be given to Seller by telephone (followed by written confirmation) of the defect or nonconformity in the Product, fully specifying all claimed defects and nonconformity. All claims that the Product does not conform to the description set forth in the Agreement are waived unless made in writing by Buyer to Seller within 30 days after the Product is accepted in accordance with the foregoing. Buyer may not reject shipments that involve Product shortages of reasonably de minimus amounts that are acceptable under normal commercial practice. In the case of Product shortages in excess of those of reasonably de minimus amounts, that are acceptable under normal commercial practice, Buyer may accept them and Seller will accept a claim for such shortages only after Buyer promptly notifies Seller by telephone (followed by prompt written confirmation) of the Product shortage and obtains Seller's permission to unload and provides Seller with a sworn affidavit attesting to the shortage from the delivering carrier.

2.7 Time is of the essence under this Agreement and if Seller is authorized to deliver the total quantity of Product in separate lots, amounts or installments ("Installment") at different times during the Term of this Agreement and Buyer fails to take delivery of any such Installment, in whole or in part, at the time it is to be delivered, such default in taking timely delivery with respect to such Installment is deemed to impair the value of the whole Agreement and Seller may consider such default a breach of the entire Agreement upon notifying Buyer of such breach.

3. SPECIFICATIONS AND WARRANTIES.

3.1 Seller warrants that Product delivered under the Agreement shall meet the specifications for the Product, which are set forth in Part I of the Agreement or as otherwise required by law. Any conflict between the specifications set forth in Part I of the Agreement and under applicable law shall be resolved in favor of the latter. In the absence of any written specifications in Part I of the Agreement, Seller warrants that the Product described in its posting of availability for purchase meets the specifications for such Product as required by law.

3.2 Seller warrants title to the Product delivered under the Agreement, free and clear of all security interests, liens, claims, charges or encumbrances.

3.3 SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR THAT THE PRODUCT DELIVERED UNDER THE AGREEMENT IS FIT FOR A PARTICULAR PURPOSE, EVEN IF KNOWN TO SELLER.

4. TAXES.

4.1 Buyer is liable for all taxes imposed on or with respect to Product delivered under the Agreement at the time of or after its delivery to Buyer and all federal, state or local sales, use, gross receipts, consumption, environmental, spill fund, pollution, or other similar taxes, fees or charges that may arise from or be levied upon a sale or delivery of the Product under the Agreement, whether such taxes, fees or charges are in effect on the date of the Agreement or are made effective (or are increased) after the date of the Agreement, together with any applicable interest or penalties (collectively, "Taxes"). Seller is responsible for ensuring that taxes paid by Buyer to Seller are passed on to the appropriate taxing authority. To the extent within the limits of and permitted by Section 768.28, Florida Statutes, and without waiving sovereign immunity, Buyer will indemnify, defend and hold Seller harmless from and against the payment of or liability for any and all Taxes and that indemnification obligation will survive termination of the Agreement. Buyer will provide Seller with any exemption certificate and any other necessary information to allow Seller to make proper and timely payments and to file required returns.

4.2 Notwithstanding Section 4.1, Seller will be liable for the payment of all Taxes on Seller's income from the sales of Product under the Agreement.

4.3 During the Term of this Agreement Seller will not transfer renewable identification numbers (RINs) to Buyer, and Buyer acknowledges and agrees that Seller has no obligation for the transfer of renewable identification numbers (RINs). Product sold under this Agreement will not contain any previously associated renewable identification numbers (RINs).

5. PAYMENTS AND AUDIT.

5.1 Buyer will pay Seller for product delivered, without offset and counterclaim, in accordance with the instructions in Part I of the Agreement. From time to time, Seller will establish appropriate payment terms for Buyer based upon the financial information provided by Buyer to Seller pursuant to Section 6. In the absence of such instructions in Part I, Buyer must pay Seller for Product delivered under this Agreement within 10 days after the date of Seller's invoice and Buyer's payment must be made by electronic funds transfer by automated clearing house transfer system from Buyer's account and bank to Seller's account and bank, both as indicated on Seller's invoice, unless Seller agrees to alternative payment methods. Invoices may be sent by telephone facsimile.

5.2 Late payments will accrue interest from the due date until receipt of payment at a rate equal to the lesser of (i) 2% over the "Prime Rate" of interest for corporate loans posted for large U.S. banks, published under "Money Rates" by The Wall Street Journal on the applicable due date or (ii) the maximum lawful interest rate. Buyer will pay all of Seller's costs (including reasonable attorney's fees and court costs to the extent within the limits permitted by Section 768.28, Florida Statutes), and without waiving sovereign immunity, associated with collecting past due payments and late payment charges even if Buyer disputed, in good faith or otherwise, its obligation to pay the amounts that were due.

5.3 Within one year after Product is delivered under the Agreement, either Party may, at its own expense and upon not less than 14 days prior written notice, examine the other Party's books and records at such Party's place of business and during such Party's normal business hours, to the extent reasonably necessary to verify the accuracy of any invoice, charge, payment or computation made under the Agreement. No claim for error in an invoice may be made more than one year after the first day of the month in which such invoice was issued and all rights of a Party to commence any court action or proceeding with respect to this Agreement will terminate one year after the cause of action has accrued.

5.4 Without prejudice to any other rights of Seller, Seller may apply and offset, in satisfaction of any obligation owing under the Agreement by Buyer, any sums that may then be, or thereafter become, due and owing from Seller to Buyer under any other agreement between the Parties.

5.5 Unless otherwise provided in this Agreement, the price set forth in Part I of this Agreement or, in the absence of such price, Seller's price for the Product as posted for the Delivery Location on the date of delivery ("Contract Price") has been established based upon the assumption that the specifications for Product that are set forth under applicable federal, state or local laws and regulations will be the same on each delivery date as they were on the date on which this Agreement was entered into ("Existing Specifications"). If the Existing Specifications are changed by authority having jurisdiction over such specifications or under applicable law, so that they apply to all of the Product or a specific purpose for which the Product may be used (the applicability of which Buyer must notify Seller) and to which the changed specifications apply ("New Specifications"), then (i) the Product that Seller delivers and to which the New Specifications apply will conform to the New Specifications and (ii) the Contract Price for each such delivery of that Product will be adjusted by an amount that is determined under the following sentence. If the Product that conforms to Existing Specifications and Product that conforms to the New Specifications are (i) both generally traded on the date on which the New Specifications first become effective, the adjustment will be an amount that is equal to the difference between the fair market values of each of those Products at the Delivery Location on the date on which the New Specifications first become effective, or (ii) not both generally traded on the date on which the New Specifications first become effective, the adjustment will be an amount that it is determined in good faith by Seller, based upon, wherever possible, generally available published information that provides substantially for the difference in the market value of the Product that conforms to the Existing Specifications immediately before the New Specifications first became effective and the Product that conforms to the New Specifications immediately after the New Specifications become effective.

6. CREDIT.

6.1 From time to time, Seller may establish and adjust, in its sole discretion, any dollar amount of credit that Seller is willing to extend to Buyer (the "Credit Limit"). Seller may, in its sole discretion, for any reason or no reason at all, change or eliminate the Credit Limit, if any, at any time and notify Buyer of any such change, provided that the change in the Credit Limit will be effective immediately upon any change made by Seller regardless of the time at which Seller notifies Buyer or Buyer otherwise becomes aware of the change. Buyer will provide Seller with such financial information as Seller reasonably may request from time to time to permit Seller to evaluate Buyer's financial condition for the purpose of establishing or changing the Credit Limit or the Payment Terms established for Buyer in Part I of the Agreement.

6.2 If at any time Buyer's Outstanding Indebtedness (as defined below) exceeds the Credit Limit then in effect for Buyer, Buyer must, upon the request of Seller, do any one, or any combination, of the following as requested by Seller in its sole discretion and within the timeframe determined by Seller to be appropriate, in Seller's sole discretion, under the circumstances:

(a) pay to Seller an amount to be held by the Seller as a cash deposit that is at least equal to the amount by which the Outstanding Indebtedness exceeds the Credit Limit then in effect;

(b) provide to Seller a letter of credit in a form and from a bank both reasonably satisfactory to Seller under which Seller will be permitted to draw an amount that is not less than the amount by which the Outstanding Indebtedness exceeds the Credit Limit then in effect; or

(c) provide to Seller another form of security or adequate assurance determined by Seller, in its sole discretion, to be acceptable to Seller in an amount at least equal to the amount by which the Outstanding Indebtedness exceeds the Credit Limit then in effect. The parties acknowledge that the County as a government entity is not able to give Seller a security interest in County real or personal property.

6.3 For the purposes of this Section 6, "Outstanding Indebtedness" means (a) all amounts due to Seller under all agreements, including, without limitation, this Agreement, plus (b) all amounts that will become due to Seller under all agreements where delivery of, but no payment for, Product has been made, including, without limitation, this Agreement, plus (c) the sum of the Current Exposure, if any, for all agreements, including, without limitation, this Agreement. "Current Exposure" means the dollar amount, calculated by Seller in good faith, determined pursuant to the following formula, provided that if the formula yields a negative number with respect to any agreement, then the Current Exposure related to that agreement shall be \$0:

$RV \times (CP - MP)$, *wherein*:

RV is the remaining quantity of Product that Buyer is obligated to purchase pursuant to this Agreement;

CP is equal to the Contract Price (as defined below); and

MP is equal to the Market Price (as defined below).

6.4 If Buyer has failed to (a) pay Seller for any amount that is due (whether or not such failure has subsequently been cured), (b) provide Seller with the financial information it has requested, or (c) otherwise comply with the terms of this Section 6, then Buyer shall be deemed to be a Defaulting Party and Seller shall have the rights of the Liquidating Party set forth in Section 8. The exercise by Seller of any right under this Section 6 or Section 8 is without prejudice to any claim for damages or any other right Seller may have under this agreement or relevant law.

7. FORCE MAJEURE.

7.1 If an event of *force majeure* renders performance of either Party's obligations under the Agreement (other than the obligation to make payments when due) impossible or commercially unreasonable, in whole or in part, such Party may give the other Party prompt written notice of the *force majeure* with reasonably full particulars concerning it, whereupon, the obligations of the Parties, so far as they are affected by the *force majeure*, will be suspended during, but no longer than, the continuance of the *force majeure*. The affected Party must use all possible diligence to remove the *force majeure* as quickly as possible and must notify the other Party promptly in writing when the *force majeure* event has terminated.

7.2 Buyer acknowledges that events of *force majeure* can cause disruptions in the supply of Product to Seller that would make it commercially reasonable for Seller to reduce the volume of Product that it sells to Buyer and other customers. Notwithstanding any other provision of the Agreement, if such an event of *force majeure* occurs, Seller may reduce the volume of Product that Seller is obligated to deliver to Buyer. When the Seller is unable to carry out its obligations at Port Everglades due to *force majeure*, the Seller will use its best effort to fulfill its allocation obligations to Buyer from one or more of Seller's other terminals in Florida at a price comprised of that terminal's local posted market price plus the Seller Index Adder identified in Attachment "A" if transport is provided to Buyer.

7.3 The term *force majeure* as used in this Agreement means (a) hurricanes, floods, earthquakes, storms or other major events of nature; (b) orders, rules, legislation or regulations of any government or agency of such government; (c) compliance with any order, request or

directive of any governmental authority or person purporting to act for such government; (d) interruption in, or unavailability or inadequacy of any labor or facility necessary for the production, manufacture, storage, transportation, distribution or delivery of products contemplated by either Party; (e) riots, acts of war or the public enemy, (f) strikes, lockouts or other labor disturbances, (g) fire, explosion or destruction from any involuntary cause (h) or any other cause, either similar or dissimilar to the foregoing, which is beyond the control of the Party failing to perform. Neither Party shall be required to settle any labor dispute against its will.

7.4 Either Party may terminate the Agreement upon notice to the other Party if the event of *force majeure* continues for a period of 90 days or more and exercise its remedies under Section 8. The excuse for performance provided to either Party under this Section is in addition to and not in lieu of the excuse for performance that may be provided to either Party under Section 2-615 of the Uniform Commercial Code, as enacted in the State of the applicable law under Section 12.

8. EARLY TERMINATION AND LIQUIDATION OF CONTRACTS.

8.1 The Parties acknowledge that this Agreement is a "Forward Contract" as defined in the Bankruptcy Code (11 U.S.C. Sec. 101(25)). The occurrence of any of the following events with respect to a Party (such Party, the "Defaulting Party") shall constitute a "Default" under this Agreement:

(a) such Party either (i) becomes the subject of bankruptcy or other insolvency proceedings or proceedings for the appointment of a receiver, trustee or similar official, (ii) becomes insolvent or generally unable to pay its debts as they become due, or (iii) makes a general assignment for the benefit of creditors; or

(b) such Party fails to perform any material term of this Agreement or any other similar agreement or Forward Contract (each a "Commodity Transaction") between the Parties within ten (10) days following receipt of notice of such default from the other Party.

8.2 Upon a Default by either Party (the "Defaulting Party"), the other Party (the "Liquidating Party") may:

(a) withhold additional deliveries related to any Commodity Transaction without notice,

(b) terminate this Agreement and all other Commodity Transactions,

(c) offset any payments or deliveries due the Liquidating Party under this or any other Commodity Transaction; and

(d) close out and liquidate this and other Commodity Transactions by calculating the "Settlement Amount" as determined below.

8.3 Upon termination under this Section 8, the Parties have no further rights or obligations with respect to this Agreement, except for the payment by Buyer for all amounts due to Seller under any agreement, including, without limitation, this Agreement at the time of termination, payment by Buyer for all amounts that will become due to Seller under all agreements where delivery of, but no payment for, Product has been made, including, without limitation, this Agreement, and the payment by the Defaulting Party of the Settlement Amount related to each Commodity Transaction.

8.4 On or as soon as reasonably practicable following a termination of this Agreement under Section 8.2 (the "Termination Date"), the Liquidating Party shall provide a written notice (a "Liquidation Notice") of its determination of, with respect to each Commodity Transaction, (a) the "Market Value," obtained by multiplying the Market Price of the products by the respective quantity

specified in the Commodity Transaction, (b) the "Contract Value," obtained by multiplying the Contract Price of the products by the respective quantity specified in the Commodity Transaction, and (c) the "Settlement Amount," obtained by calculating the difference between the Market Value and the Contract Value. The Settlement Amount for a Commodity Transaction shall be due to the buyer under such Commodity Transaction if the Market Value exceeds the Contract Value and to the seller under such Commodity Transaction if the Contract Value exceeds the Market Value. The "Market Price" of Product under any Commodity Transaction is as the Liquidating Party determines in a commercially reasonable manner by reference to publicly available industry market prices or those quoted by a bona fide third party offer, and the "Contract Price" of Product under any Commodity Transaction is the price set forth in the relevant Commodity Transaction. If (x) the Market Price equals the Contract Price in a Commodity Transaction, (y) the Seller is the Liquidating Party and the Market Price exceeds the Contract Price, or (z) the Buyer is the Liquidating Party and the Contract Price exceeds the Market Price, then in the case of (x), (y), or (z), no Settlement Amount shall be due with respect to the related Commodity Transaction. If this Agreement provides for more than one Commodity Transaction, or if Settlement Amounts are due under other Commodity Transactions terminated by the Liquidating Party, the Settlement Amounts due to each Party for such Commodity Transactions will be netted to a single sum.

8.5 If the Party determined to owe a Settlement Amount is the Defaulting Party, such Party must pay the net amount to the Liquidating Party in immediately available funds within ten (10) days after the Termination Date. For clarification, in no event shall the Liquidating Party be required to pay any Settlement Amount to the Defaulting Party.

8.6 Except for any indemnification obligations under Section 14 of this Agreement, the payment of a Settlement Amount is considered the payment of liquidated damages to the Liquidating Party by the Defaulting Party and is in full and final settlement of all of the Liquidating Party's claims against the Defaulting Party arising from the Defaulting Party's breach of this Agreement and other Forward Contracts terminated and thereafter, Defaulting Party will have no obligation to the Liquidating Party and Liquidating Party releases the Defaulting Party with regard to such claims. Both Parties acknowledge that it would be impractical or difficult to determine the actual amount of damages that would arise out of the Defaulting Party's breach of this Agreement and the other Forward Contracts and that the liquidated damages are a reasonable estimate of what such damages would be and are not a penalty.

9. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR, AND EACH OF THE PARTIES WAIVES THE RIGHT TO SEEK, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND. EXCEPT AS SET FORTH IN SECTION 14 BELOW OR AS OTHERWISE SET FORTH IN THIS AGREEMENT, A PARTY'S EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES RESULTING FROM THE SALE OF DELIVERED PRODUCT UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY ALLEGATION OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR STRICT LIABILITY, IS LIMITED TO THE REPLACEMENT OF THE PARTICULAR PRODUCT FOR WHICH A CLAIM IS PROVIDED. IF SELLER FAILS TO DELIVER PRODUCT, BUYER'S EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES UNDER THIS AGREEMENT IS LIMITED TO PAYMENT OF THE AMOUNT THAT THE MARKET VALUE OF THE PRODUCTS WHEN THEY WERE TO BE DELIVERED, AS REASONABLY DETERMINED BY SELLER, EXCEED THE CONTRACT PRICE.

10. NOTICES. All notices and communications under the Agreement must be in writing, must be made to the addresses specified in Part I of the Agreement, or as otherwise specified in writing by a Party from time to time, and will be deemed given to a Party, (i) if delivered by hand or sent

by commercial overnight courier service, on the day of delivery, (ii) if sent by registered or certified mail return receipt requested, on the date of receipt, or (iii) if transmitted by telex or facsimile, at the time of transmission, as evidenced by confirmed receipt

11. DISPUTE RESOLUTION.

11.1 Covered Disputes. Any dispute, controversy or claim (whether sounding in contract, tort or otherwise) arising out of or relating to this Agreement, including without limitation the meaning of its provisions, or the proper performance of any of its terms by either Party, its breach, termination or invalidity, except any proceeding initiated by or other claim by Seller to collect money due under this Agreement, ("Dispute") will be resolved in accordance with the procedures specified in this Section, which will be the sole and exclusive procedure for the resolution of any such Dispute, except that a Party, without prejudice to the following procedures, may file a complaint to seek preliminary injunctive or other provisional judicial relief, if in its sole judgment, that action is necessary to avoid irreparable damage or to preserve the status quo. Despite that action the Parties will continue, subject to Section 11.6, to participate in good faith in the procedures specified in this Section.

11.2 Initiation of Procedures. Either Party wishing to initiate the dispute resolution procedures set forth in this Section with respect to a Dispute not resolved in the ordinary course of business must give written notice of the Dispute to the other Party ("Dispute Notice"). The Dispute Notice will include (i) a statement of that Party's position and a summary of arguments supporting that position, and (ii) the name and title of the executive who will represent that Party, and of any other person who will accompany the executive, in the negotiations under the next subsection.

11.3 Negotiation Between Executives. If one Party has given a Dispute Notice under the preceding subparagraph, the Parties will attempt in good faith to resolve the Dispute within 45 calendar days of the notice by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement or the matter in Dispute. Within 15 calendar days after delivery of the Dispute Notice, the receiving Party will submit to the other a written response. The response will include (i) a statement of that Party's position and a summary of arguments supporting that position, and (ii) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within 45 calendar days after delivery of the Dispute Notice, the executives of both Parties will meet at a mutually acceptable time and place, and thereafter, as often as they reasonably deem necessary, to attempt to resolve the Dispute.

12. GOVERNING LAW. The Agreement will be governed and construed in accordance with the laws of the state in which delivery of the Product is made, unless the Product is delivered in multiple states or the State of Louisiana, in which case the law of the State of Texas will govern, without regard to choice of laws of any such state that would require the laws of another jurisdiction to govern. **THE PARTIES IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).**

13. ASSIGNMENT. Neither Party may assign its rights or delegate its performance under the Agreement without the prior written consent of the other Party, which consent will not be

unreasonably withheld or delayed. Any assignment made without obtaining such prior approval will be void. The other Party's consent is not required for the assigning party to transfer its interest in the Agreement to a parent or affiliate by assignment, merger or otherwise. Upon any transfer and assumption, the transferor is not relieved of or discharged from any obligations under the Agreement unless the assignee or transferee (i) has assumed in writing all of the obligations of the transferor and (ii) provides to the consenting Party evidence of financial responsibility at least equal to that of the transferor.

14. INDEMNIFICATION.

14.1 To the extent and within the limits permitted by Florida Statutes, Section 768.28, Florida Statutes, and without waiving sovereign immunity, each Party (the "Indemnitor") will defend and indemnify the other Party (the "Indemnitee") from and against any liabilities, claims, expenses (including reasonable attorney's fees and costs of defense), losses and damages, involving injury to or death of any person or loss or damage to any property other than the Products ("Claims"), caused by the negligence or willful misconduct of the Indemnitor in the course of its performance of the Agreement, except to the extent any such Claims are caused by the negligence or willful act or omission of the Indemnitee.

14.2 If either Party causes the spill of Product in the course of its performance of this Agreement, then that Party has the authority, and assumes full and complete responsibility, for on-site clean up at its expense.

15. MISCELLANEOUS.

15.1 Severability. If any provision of this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination will not invalidate, void, or make unenforceable any other provision, agreement or covenant of the Agreement.

15.2 Waiver. No waiver of any breach of or performance required by the Agreement will be held to be a waiver of any other or subsequent breach or required performance.

15.3 Amendment. No amendment, modification, waiver or change of any of the terms of the Agreement will be enforceable unless reduced to writing and executed by both Parties.

15.4 Compliance with Law. Each Party will take steps to assure that it and all of its employees, agents and independent contractors comply with all laws, ordinances, rules and regulations of any government or agency applicable to its performance under this Agreement including, without limitation, those pertaining to "Ried Vapor Pressure" and reformulated gasoline compliance and documentation, octane rating and fuel oil compliance, environmental protection and safety. Following the enactment by a governmental agency of a state of emergency, in the event Seller determines in its sole discretion that the Product pricing set forth under this Agreement may violate applicable laws, ordinances, rules or regulations in effect during such state of emergency, Seller may suspend performance under this Agreement until the state of emergency expires or Seller determines that the Product pricing is in compliance with such laws, if earlier.

15.5 Entire Agreement. This Agreement supersedes any and all prior and existing representations by or discussions and agreements, whether oral or in writing, between the Parties with respect to the subject matter of this Agreement and each of the Parties represents and warrants to the other that this Agreement constitutes the entire and exclusive agreement among the Parties relating to the transactions contemplated by it.

16. Office of the Inspector General. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Seller, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

17. Public Entity Crimes. As provided in Section 287.131-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Seller certified that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the effective date hereof. This notice is required by Section 287.133(3)(a), F.S.

18. Non Discrimination. The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the Seller warrants and represents that throughout the term of the Contract, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Failure to meet this requirement shall be considered default of the Contract.

19. No Third Party Rights. Nothing in this Agreement, express or implied, is intended to nor shall confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or Seller.

20. Non-Appropriation. If no funds or insufficient funds are appropriated and budgeted in any fiscal period, the County will notify the Seller in writing of that occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payment for work completed to the date of the notification will be made to the Seller. No payments will be made or due to the Seller under this Agreement beyond those amounts appropriated and budgeted by the County to fund payments under this Agreement.

21. Scrutinized Companies.

A. As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the Seller certifies to the best of its knowledge and belief that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725. Pursuant to F.S. 287.135(3)(b), if Seller is found to have been placed on the

Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, this Contract may be terminated at the option of the County.

- B. **When contract value is greater than \$1 million:** As provided in F.S. 287.135, by entering into this Contract or performing any work in furtherance hereof, the Seller certifies to the best of its knowledge and belief that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the County determines, using credible information available to the public, that a false certification has been submitted by Seller, this Contract may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Contract shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of Contract renewal, if applicable.

22. Public Records.

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Seller: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Seller shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Seller is specifically required to:

- A. Keep and maintain public records required by the County to perform services as provided under this Contract.
- B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Seller further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Contract, if the Seller does not transfer the records to the public agency.
- D. Upon completion of the Contract the Seller shall transfer, at no cost to the County, all public records in possession of the Seller unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Seller transfers all public records to the County upon completion of the Contract, the Seller shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Seller keeps and maintains public records upon completion of the Contract, the Seller

shall meet all applicable requirements for retaining public records. All records stored electronically by the Seller must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Seller to comply with the requirements of this article shall be a material breach of this Contract. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Seller acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE SELLER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SELLER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

23. E-Verify - Employment Eligibility.

Seller warrants and represents that it is in compliance with Section 448.095, Florida Statutes, as may be amended, and that it: (1) is registered with the E-Verify System (E-Verify.gov), and beginning January 1, 2021, uses the E-Verify System to electronically verify the employment eligibility of all newly hired workers; and (2) has verified that all of the Seller's subcontractors performing any duties and obligations of this Contract are registered with the E-Verify System, and beginning January 1, 2021, use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

Seller shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. Seller shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Contract which requires a longer retention period.

County shall terminate this Contract without liability if it has a good faith belief that Seller has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If County has a good faith belief that Seller's subcontractor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, County shall notify Seller to terminate its contract with the subcontractor and Seller shall immediately terminate its contract with the subcontractor. If County terminates this Contract pursuant to the above, Seller shall be barred from being awarded a future contract by County for a period of one (1) year from the date on which this Contract was terminated. In the event of such contract termination, Seller shall also be liable for any additional costs incurred by County as a result of the termination.

END OF GENERAL PROVISIONS

ATTACHMENT D
TERMINAL ACCESS AGREEMENT ("Agreement")
(For Access to Owned or Operated Facilities)

In consideration of the privilege of access to any terminal owned or operated by TransMontaigne Partners LLC, ("Company"), which privilege is, or may be hereafter, granted by Company to the undersigned or any subsidiary, or affiliated or associated entity ("User"), sometimes referred to collectively as "Parties" and individually as "Party," for the purpose of loading or causing to be loaded, various liquid or petroleum products ("Products") into transport trucks or trailers and driving, or causing to be driven, the same to or from the terminals, or for any other purpose agreed to by the Parties, User agrees as follows:

1. Until further notice, User and such of its employees, agents, customers and carriers as it designates from time to time ("Agents") are granted access to such Products terminals as Company may designate from time to time ("Terminal") for the sole purpose of loading Products into transport trucks or trailers and driving the same to and from the Terminal. Each person designated by User to have the privilege of access to the Terminal will be deemed for all purposes under this Agreement to be the Agent of User. User is absolutely responsible for its Agents, their actions, and for their compliance or non-compliance with the terms and conditions of this Agreement. The Terminal's automation or other equipment may require the use of keys or cards ("Cards") for access to the Terminal or to actuate a system that controls the Terminal's entry and exit gates, truck loading racks and automated accounting equipment. Following User's execution of this Agreement, such cards will be issued to User or its Agents at those Terminals where such Cards are required, and User agrees to accept such Cards subject to the following terms and conditions:

(a) The custody, control and use of all Cards issued pursuant to this Agreement are User's sole responsibility. It is User's responsibility to assure Cards are used only by the individual to whom issued. Cards issued to User's Agents shall be deemed to have been issued to User. If any of such Cards become lost or stolen, User must notify Company and the Terminal manager immediately by telephone and confirm such telephone notification by confirmed telephone facsimile or by letter mailed by Certified Mail, Return Receipt Requested, within forty-eight (48) hours of such telephone notification. Upon receipt of such written confirmation, the verbal telephonic notification will become effective. Written notification should be to TransMontaigne Partners LLC, 1670 Broadway, Suite 3100, Denver, CO 80202 or to facsimile number 303-626-8228 to the attention of the President, TransMontaigne Partners LLC with a copy to the General Counsel and to the appropriate Terminal Manager.

(b) Unless and until notification is effective as provided above, all Products loaded at the Terminal by use of one of the Cards issued pursuant to this Agreement will constitute delivery of such Product to User, and User will be obligated for payment accordingly.

(c) All Cards issued pursuant to this Agreement remain the property of the Terminal owner or operator. Such Cards may not be duplicated. It is User's responsibility to return all Cards to Company immediately upon the termination of this Agreement.

(d) User will give immediate written notice to the Terminal manager of the identity of all User employees and Agents to whom User allows, or discontinues allowance of, access to any Card for purposes of exercising any rights granted in this Agreement.

2 (a) User agrees to comply with all rules and regulations promulgated with respect to the use of the Terminal, including, as applicable, vehicle load release number verification. Copies of such rules and regulations are available to User and its employees and Agents at all reasonable times at the Terminal. User represents and warrants that its employees and Agents will be fully aware of and knowledgeable in respect to such rules and regulations and in those Terminals where Cards are used, User will request access to the Terminal by only those employees and Agents physically capable of handling loading equipment and properly instructed in the characteristics and safe handling and loading methods associated with any Product to be hauled. User will be solely responsible for the proper training and education of its employees and Agents. User will further ensure that only those employees who are aware of the obligations undertaken in this Agreement will have access to the Terminal. Terminal rules and regulations may be changed, amended or modified at any time, without notice to User, and will become binding on User and its Agents.

(b) User will use only transportation equipment and drivers that comply with all applicable U.S. Department of Transportation regulations, as well as any and all other applicable federal, state or local laws and regulations.

(c) User will assure that all newly carded drivers are adequately trained to safely and efficiently use the loading equipment at the Terminal. A driver's access to the Terminal may be suspended for any reason or no reason at all, including the Terminal manager's, or his or her appointee's, dissatisfaction with a driver's loading methods. If a driver's access to the Terminal is suspended, User will be notified by Company and User must immediately obtain from said driver all Cards in his or her possession.

(d) Each newly carded driver will be required to sign a Driver Certification and Card Agreement.

3. The granting by Company of the aforesaid privilege of access to the Terminal constitutes a bare, non-assignable license and the same may be revoked by Company at any time, in its sole discretion, without prior notice, and thereupon all Cards must be returned by User to Company.

4. **User is aware of and acknowledges the risks associated with and inherent in loading, transporting and otherwise handling the Products and with the loading equipment at the Terminal.**

5. User is financially responsible for any Products withdrawn from the Terminal by use of any Card delivered by Company to User or any Agent of User, provided, however, that User will not be financially responsible for any such Product which is withdrawn after Company has received verbal notice from User, properly confirmed in writing, of the loss or theft of any of the Cards. User will reimburse Company for any and all costs reasonably incurred by Company to replace any Cards and to secure the Terminal that may arise from or are caused by the loss or theft of any Cards.

6. Without waiving the right to sovereign immunity as provided by Florida Statute, Section 768.28, the User acknowledges to be self-insured for General Liability and Automobile Liability under Florida's sovereign immunity statute with monetary waiver limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such limits that may change and set forth by the legislature.

The User acknowledges to be self-insured for Workers Compensation & Employer's Liability Insurance in accordance with Florida Statute, Chapter 440.

When requested, the User agrees to provide a Certificate of Insurance evidencing self-insurance and/or sovereign immunity status, which the Company agrees to recognize as acceptable for the above mentioned coverages.

7. Prior to transporting any Products received at the Terminal under this Agreement and if User is loading Products in a Terminal that uses Cards, User or User's driver must include the following certification on the Company's bill of lading: **"This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation."**

8. The terms, provisions and conditions of this Agreement extend to, are binding upon and inure to the benefit of the Parties and their approved successors and assigns; provided, however, User may not assign any of its privileges, duties or obligations under this Agreement without the prior written consent of Company, which consent will not be unreasonably withheld or delayed. Any assignment made without obtaining such prior approval will be deemed to be void.

9. Nothing in this Agreement will be construed to deny or otherwise limit Company's right to refuse entry to, or to remove immediately from the Terminal, any person or equipment.

10. In the exercise of the privileges granted in this Agreement, User and its Agents will not in any event or for any purpose whatsoever be deemed to be the agent, servant or employee of Company.

11. This instrument and any other instruments executed in conjunction with it contain the entire agreement between the Parties with respect to User's loading privileges at the Terminal and no other or prior agreement in respect of it, written or verbal, will have any force or effect unless embodied in this instrument. Any modification to this Agreement must be in writing signed by both Parties.

12. User hereby affirms that all of User's underground storage tank systems and tanks are lawful under and have been upgraded to meet all applicable federal and state requirements.

13. If at any time, any portion of User's tanks or underground storage tank systems become non-compliant with applicable state or federal laws, rules or regulations or otherwise unlawful under such laws, rules or regulations, User will immediately cease to store any petroleum or other products in such tanks or systems until they are again fully compliant and lawful.

14. Upon transfer of Product from the rack loading spout to User, User shall be deemed to have custody of the Product. Upon transfer of custody, User shall be solely responsible for the Product's quality should it differ from the quality of the sample taken from the tank delivering the Product to the rack loading spout.

15. (a) User will pay, or cause the owner of the Products or other "position holder" (as that term is defined by Federal Treasury Regulations) to pay, all applicable taxes and charges ("Taxes") levied by any governmental authority on or in any way applicable to the receipt, delivery, storage, or removal of Products delivered into or from or otherwise contained in the Terminal on

User's behalf. User agrees to report and pay such Taxes directly to the proper taxing authorities.

(b) User will indemnify Company against any Taxes that are applicable to Products as and when delivered under this Agreement. If the User is the County, this indemnity is to the extent and within the limits of and as permitted by Section 768.28, Florida Statutes, and without waiving sovereign immunity,

16. Each provision of this Agreement, or sub-part, is deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion of this Agreement will not affect the validity or enforceability of any other provision of it.

17. This document is deemed to have been made under and is governed by the laws of (i) the state where the Terminal is located and if this Agreement applies to Terminals in more than one state, (ii) the State of Colorado in all respects, including without limitations, matters of construction, validity, and performance, except the choice of law rules of that State that would require the law of another jurisdiction to apply.

18. The failure of Company to insist upon the complete performance of any provisions of this Agreement will not be construed as a waiver of Company's right to at any time thereafter enforce such provision completely.

[SIGNATURE ON FOLLOWING PAGE]

EXECUTED by User this _____ day of _____, 20____.

USER: _____

By: _____

Name: _____

Title: _____

Contact Name: _____

Contact Address: _____

Contact Phone: _____

Contact E-Mail Address: _____

User SCAC: _____

User FEIN: _____