

COUNTY OF KENDALL



Request for Bid and Specifications for:

BULK FUEL
BID NO. 2024-01

Kendall County Auditor
201 East San Antonio Avenue, Suite 113
Boerne, Texas 78006
(830) 249-9343

**KENDALL COUNTY, TEXAS
INVITATION TO BID
BULK FUEL**

KENDALL COUNTY AUDITOR'S OFFICE

201 E. San Antonio Ave, Suite 113
Boerne, Texas 78006
Telephone (830) 249-9343

Bid Request # 2024 -01
Page 1 of 21 Pages

Bids will be received by Corinna Speer, Kendall County Auditor at the Kendall County Courthouse, 201 E. San Antonio Ave, Suite 113, Boerne, Texas 78006 until **Tuesday, October 3, 2023 at 10:00 a.m.** at which time bids will be publicly opened and read aloud by Corinna Speer, Kendall County Auditor.

A. SCOPE OF BID

Bids are solicited for furnishing the merchandise, supplies, service, and/or equipment set forth in this bid request for a period beginning **October 10, 2023** and ending **September 30, 2024** in accordance with the following Conditions of Bidding.

B. CONDITIONS OF BIDDING

The following instructions apply to all bids and become a part of terms and conditions of any bid submitted to the Kendall County Purchasing Office, unless otherwise specified elsewhere in this bid request. All bidders are required to be informed of these Terms and Conditions and will be held responsible for having done so:

1. Definitions: In order to simplify the language throughout this bid, the following definitions shall apply:
 - a. **KENDALL COUNTY** - Same as County.
 - b. **COMMISSIONERS COURT** - The elected officials of Kendall County, Texas given the authority to exercise such powers and jurisdiction of all county business as conferred by the State Constitution and Laws.
 - c. **CONTRACT** - An agreement between the County and a Supplier to furnish supplies and/or services over a designated period of time during which repeated purchases are made of the commodity specified.
 - d. **CONTRACTOR** - The successful Bidder(s) of this bid request.
 - e. **COUNTY** - The government of Kendall County, Texas and its authorized representative.
 - f. **SUB-CONTRACTOR** - Any contractor hired by the Contractor or Supplier to furnish materials and services specified in this bid request.

- g. **SUPPLIER** - Same as Contractor.

- h. **TxDOT Specifications** – Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, November 2014.

C. NOTICE TO BIDDERS

Kendall County will receive sealed bids for the purchase of bulk gasoline and bulk diesel for the period of **October 10, 2023 to September 30, 2024**. Bids must be delivered to the Kendall County Auditor's Office located at 201 E. San Antonio Ave, Suite 113, Boerne, Texas 78006 by **10 a.m. CST, Tuesday, October 3, 2023**. All bids received after this specified time will be returned unopened. Bids will be publicly opened and read aloud by Corinna Speer, Kendall County Auditor, in the County Auditor's Office. The bids will then be tabulated and the contract awarded during the next scheduled Commissioner Court Meeting.

1. The acting purchasing agent is the County Auditor, Corinna Speer. The method of payment for this contract shall be from the Current Operating Funds in the 2023-2024 Budget.
2. Bidders shall prepare their bid using the bid sheet(s) contained in **Exhibit A** of this package. All entries shall be submitted in ink or typed. To allow for price fluctuations, bids will be based on a mark-up unit price for each fuel type, above a rack price from a source identified in **Exhibit A**. The mark-up unit price will remain the same throughout the term of the contract.
3. The mark-up unit price bid shall include costs that will be incurred by the vendor over and above the rack price, including all delivery, transportation charges, taxes, and fees that the County is not specifically exempt from paying (**see Exhibit B, Item 18**).
4. The County believes the bid documents to be complete and that they fully explain the scope of services to be provided by the Bidder. The bidder shall immediately notify the County of any error, omission, or ambiguity they discover and/or believe to exist in this package prior to submitting a bid in accordance with **Exhibit B**.
5. The County Auditor will issue addenda when and if appropriate as described in **Exhibit B**. Oral explanations and other discussions that occur during the bidding process are not binding. Only requirements included with this bid package and formal addenda are binding.
6. The County reserves the right to reject any or all bids.
7. The unit prices submitted by the Bidder will be compared in determining the lowest and best bid for this contract, along with past performance on Kendall County contracts, participation in submitting bids on previous

projects advertised by Kendall County, and geographic location that facilitates the delivery of products and services supplied under this contract.

D. BID SUBMITTAL REQUIREMENTS

All required bid documents shall be placed in a sealed envelope marked on the outside with the project and bidders name in the lower left corner of the envelope. When submitting by mail or delivery service, this envelope shall be placed into another sealed envelope and addressed to the Kendall County Auditor, 201 E. San Antonio Ave, Suite 113, Boerne, Texas 78006.

1. To be accepted, the bid must be in the Kendall County Auditor's office by the time of closing as stated in this notice regardless of the method chosen for delivery. It is the Bidder's responsibility to ensure the sealed bid arrives at the location described on or before the time and date set for the bid closing.
2. Kendall County reserves the right to reject any and all incomplete bids. A bid that has one or more of the deficiencies listed below is considered incomplete.
 - a. **Exhibit A** is not completed and signed.
 - b. **Exhibit C** is not completed and signed.
 - c. The rack price Source is not identified on **Exhibit A**.
 - d. A sample copy of the document to be used intended for use by the company to establish the rack price is not provided at the time bids are received.
 - e. The Bidder does not acknowledge all addenda.
3. Corrections may be made to a bidder's submittal prior to submitting to the County. Corrections shall be in ink and must be initialed by a Company representative. Correction fluid or tape will be considered a change to the bid and requires the initials of the Bidder. The County will not revise a bid on behalf of a Bidder.
4. Bidders may withdraw their bid by submitting a written request to withdraw a bid before the time and date set for the opening. The County will not accept oral requests. A written request must be signed and submitted to the Kendall County Auditor with proof of identification. The request must be made by a person authorized to bind the Bidder or Bidders.

E. INVOICING REQUIREMENTS

The successful bidder will be required to furnish monthly invoices and statements to the County Auditor's office to substantiate all charges for the prior month. At a minimum, the successful bidder will be required to furnish acceptable ***evidence to substantiate the rack price charged with each invoice.***

1. The County is subject to the following: Federal LUST Tax, Federal Oil Spill Tax and Texas Load Fees on diesel and gasoline. The County is also subject to Texas State Excise Tax on gasoline.
2. The County is exempt from the collection of sales tax (see **Exhibit B, Item 18**).
3. The County is exempt from Federal Excise Tax on gasoline and diesel fuel. The successful bidder must apply for and secure exemption from Federal Excise Taxes on gasoline and diesel fuel to prevent the County from paying said tax.

F. PAYMENT OF INVOICES

The successful bidder may expect payment in accordance with **Exhibit C**.

G. SCOPE OF SERVICES

Gasoline and diesel fuel must be from a major refiner such as Chevron, Citgo, Exxon, Mobil, Shell, Texaco, Valero, or a refiner recognized by Kendall County via an addendum. This provision is in no way intended to limit competition but is intended to assure delivery of quality products for use by the County.

Fuel will be delivered to the Kendall County Road & Bridge office locations listed in **Table 1** on an as needed basis throughout the term of the contract. The County will buy only the actual quantity required and will neither be obligated to the purchase of nor limited to the estimated annual quantities shown in **Table 1**.

Table 1 – Contract Service Locations

Road & Bridge Facility	Address	Hours of Delivery	Type of Fuel	Tank Capacity	Estimated Annual Quantity Usage
Comfort Yard	#3 Old Comfort Rd Comfort, TX 78013	8:00 AM to 2:00 PM Mon thru Thurs	Gasoline	2,000 Gal	9,000 Gallons
			Diesel	2,000 Gal	28,000 Gallons
Kendalia Yard	1133 FM3351 N Kendalia, TX 78027	8:00 AM to 2:00 PM Mon thru Thurs	Gasoline	1,000 Gal	1,000 Gallons
			Diesel	1,000 Gal	1,500 Gallons

Delivery must be made within 48 hours after the order is placed. Orders made on Friday are shall be delivered on Monday.

The Supplier shall contact the Kendall County Road & Bridge Office at least 4 hour prior to delivery in order to ensure that a Road & Bridge employee is present to receive the fuel at the time of delivery. Fuel will not be delivered without a Road & Bridge employee present to accept delivery.

H. REFERENCES

Vendors shall provide a list of at least three (3) references, where work comparable in quality and scope to that specified has been performed within the past five (5) years. This list should include the names, phone number and email of the company/entity for which the prior work was performed to contact these references. A negative reference may be grounds for disqualification of bid.

Company/Entity: _____

Contact: _____

Phone: _____

Email: _____

Company/Entity: _____

Contact: _____

Phone: _____

Email: _____

Company/Entity: _____

Contact: _____

Phone: _____

Email: _____

EXHIBIT A - BID SUBMITTAL SHEET

	Mark-Up Price (per gallon)	Mark-Up Price (per gallon)
Gasoline, Unleaded (87 Octane)	\$ _____ (price in words)	\$ _____ (in numbers)
Diesel, Low Sulfur (On Road)	\$ _____ (price in words)	\$ _____ (in numbers)

Payment shall be made by the County for the Fuel as described in this Bid.

I have read the bid specifications and bid packet and shall carry out the requirements of the bid. This bid is submitted by:

 Company Name

 Signature

 Street, P.O. Box No.

 Printed Name Title

 City State Zip Code

 Phone Number

 E-Mail Address

 Rack Price Source

[END OF BID SUBMITTAL SHEET]

I. CERTIFICATION OF BID

The undersigned affirms that they are duly authorized to execute this contract, that this bid has not been prepared in collusion with any other vendor, and that the contents of this bid have not been communicated to any other vendor prior to the official opening of this bid.

Signed By: _____

Typed Name: _____ Title: _____

Company Name: _____

Phone: _____

Mailing Address: _____

P.O. Box or Street

City

State

Zip

Email Address: _____

Employer Identification Number: _____

CORPORATE SEAL IF SUBMITTED BY A CORPORATION

END OF BID REQUEST # 2024-01

By signing below, Kendall County agrees that this bid, 2024-01, will be awarded as dictated on the associated bid tabulation sheet, to the vendor whose name appears above and both parties agree to the terms and conditions contained herein.

By: _____

Kendall County Commissioner's Court: _____

Date: _____ Attest: _____

Kendall County Clerk: _____

EXHIBIT B - BID CONDITIONS

The following conditions shall apply to all bids submitted to the County for the Fuel described in the Bid Packet:

1. **Incorporation by Reference.** The contents of the above and foregoing Bid Packet, and all documents thereto attached, are incorporated by reference.
2. **Definitions.** As used in the Bid Packet, unless otherwise designated:
 - a. **"Bidder"** shall mean a person, business entity, or other entity who submits a bid to the County regarding the Fuel.
 - b. **"Contract"** shall mean the contract to be executed between the County and the successful Bidder for the Fuel pursuant to this competitive procurement procedure, in the form and scope described in the attached **Exhibit C** of the Bid Packet.
 - c. **"County"** shall mean Kendall County, Texas, by and through its governing body, same being the Kendall County Commissioners Court ("Commissioners Court"), and also shall include the elected and appointed officials, employees, and agents of the County.
 - d. **"County Auditor"** shall mean the County Auditor of Kendall County, Texas, as previously identified in this Bid Packet, or her successor.
 - e. **"Fuel"** shall mean the fuel described in the attached **Exhibit A** of the Bid Packet to be purchased by the County pursuant to this competitive procurement procedure.
 - f. Singular nouns and pronouns shall include the plural, and the masculine gender shall include the feminine gender, and vice versa, when necessary for a correct meaning.
3. **Purpose and Interpretation.** These conditions describe the minimum requirements in sufficient detail to secure accurate, sealed competitive bids delivered to the County regarding the Fuel. Each unit of the Fuel:
 - a. must be a new, unused model or current production item
 - b. must not be a prototype or discontinued model
 - c. shall include all related equipment and accessories considered as standard to the unit. Should the Bid Packet fail to include a necessary description or specification regarding the Fuel, the Bid Packet shall be construed to require the application of the best commercial practices regarding those matters as they pertain to the Fuel.

4. **Fuel Description and Payment.** The Fuel made the subject of this competitive procurement procedure is specifically described in the attached **Exhibit A** of the Bid Packet by type, quality, and quantity. The Fuel shall be delivered by the successful Bidder to the County, and resulting payment made by the County, in the form and manner described in the Bid Packet and Contract.
5. **Contract and Addenda.** The successful Bidder shall enter into the Contract for the sale of the Fuel to the County in the form and scope of the Contract described in the attached **Exhibit C** to the Bid.
6. **Packet.** The Contract shall include or reference all requirements and conditions of the Bid Packet. The Bid Packet and Contract shall be governed and interpreted pursuant to the law of the State of Texas. Addenda to the Bid Packet, if any, issued by the County during the time allowed for the preparation and submittal of bids, shall be:
 - a. addressed and followed by the Bidder in the bid delivery
 - b. included or referenced in the Contract between the County and successful Bidder.
7. **Bidder Knowledge.** By delivering a bid to the County for the Fuel, the Bidder acknowledges and confirms it read and fully understands all contents of the Bid Packet. Should the Bidder believe that a conflict, error, ambiguity, or discrepancy exists regarding the content of, or any document attached or related to, the Bid Packet, the Bidder promptly and in writing shall notify the County Auditor.
8. **Waiver of Formalities.** Regarding this competitive procurement procedure, and to the extent permitted by law, the County, using its sole discretion and best business judgment, may:
 - a. reschedule, extend, or cancel said procedure at any time
 - b. reject any or all bids, or a part of any bid, submitted to the County
 - c. waive any formality or irregularity regarding said procedure.

The County shall rely on all protections afforded it by law regarding this competitive procurement procedure.

9. **Bidder Inquiry:** The County may answer written questions regarding this sealed competitive procurement procedure or the Bid Packet, but is not obligated to do so. County responses to written questions will be delivered by email; therefore, written inquiries should contain the name and e-mail address of the person to whom the County response should be sent. This provision shall not limit the County's right to:

- a. issue addenda to the Bid Packet prior to the opening of the sealed bid proposals
- b. delay the date and/or time of said opening in order to ensure that that actual and prospective Bidders are aware of and have sufficient time to consider the addenda.

Written questions regarding this competitive procurement procedure or Bid Packet must be timely delivered to the County as described in this Bid Packet.

10. **Bid Delivery.** A bid delivered to the County regarding the Fuel shall include the following information:

- a. the Bidder's business name, principal business address, e-mail address, and telephone numbers (voice and fax)
- b. the name of the individual representing the Bidder with regard to the submitted bid, and that person's title, telephone numbers (voice and fax), and e-mail address.

11. **All other information required by the Bid Packet.** All bids shall be sealed and submitted to the County in a timely manner and correct form, as described in the Bid Packet.

12. **Bid Presentation and Award.** The bids delivered to the County regarding the Fuel shall be:

- a. opened, read aloud, and tabulated by the County Auditor as described in this Bid Packet
- b. thereafter presented by the County Auditor for consideration/action to the Commissioners Court during its public meeting described in the Bid Packet, and thereafter (at the same or a subsequent public meeting), the Commissioners Court may make a bid award for the Contract for the County's procurement of the Fuel, as allowed by law, to the responsible Bidder who submits the best bid.

Should the Contract be terminated or cancelled, the County may award a new contract to the next best Bidder for the Fuel if the Commissioners Court, using its sole discretion and best business judgment, determines that to do so is in the best interests of the County. After the Contract award, but before the Contract is signed, the County may negotiate and approve a modification of the Contract if the modification is in the best interests of the County and does not:

- a. change the scope of the Contract
- b. cause the Contract amount to exceed the next lowest bid.

13. **Waiver and Indemnity.** A bid delivered/submitted to the County for the Fuel conspicuously shall contain the following Bidder statement: The undersigned Bidder, to the extent permitted by law, does hereby waive and release Kendall County, Texas ("County," including its elected officials, appointed officials, employees, agents, and representatives), and further, shall indemnify, defend, and hold harmless the County, regarding all claims, causes of action, suits, judgments, and damages of any kind or character that:
 - a. said Bidder may have against the County, now or in the future, regarding, arising from, or directly or proximately caused by the competitive procurement procedure conducted by the County for the Fuel
 - b. a Third-Party may have against County, now or in the future, regarding, arising from, or directly or proximately caused by the competitive procurement procedure conducted by the County for the Fuel.

14. **Conflict Disclosure.** Prior to the delivery of a bid to the County regarding the Fuel, the Bidder shall timely file with the appropriate government office and officer all applicable conflict disclosure statements, disclosure and certificates of interested parties, or other documents required for a vendor by:
 - a. Chapter 176 of the Texas Local Government Code
 - b. Section 2252.908 of the Texas Government Code
 - c. Title 1, Sections 46.1, 46.3, and 46.5, of the Texas Administrative Code. The Bidder shall include true and correct copies of said documents in the bid delivered to the County for the Fuel. www.ethics.state.tx.us reference Form CIQ and Form 1295.

15. **Safety Record of Bidder.** When considering a bid submitted to the County for the Fuel, the Commissioners Court may consider the safety record of the Bidder, including:
 - a. any firm, corporation, partnership, or institution represented by the Bidder
 - b. anyone acting for said firm, corporation, partnership, or institution.

16. **No Reimbursement.** The County shall not reimburse a Bidder for any costs incurred as a result of Bidder participation in this competitive procurement procedure, including but not limited to travel, office expenses, or attorney or other consultant fees.

17. **Payment.** Payment shall be made by the County for the Fuel as described in the Bid Packet (see attached **Exhibits A** and **C**) upon the:
 - a. timely receipt and acceptance of the Fuel by the County

- b. timely submission to the County Auditor of a valid and proper billing invoice for the Fuel
 - c. approval of said billing invoice by the Commissioners Court.
18. **Sales Tax.** The County is exempt from the collection of sales tax pursuant to Texas law. Upon written request to the County Auditor, a sales tax exemption form will be provided to the successful Bidder.
19. **Equal Opportunity Statement.** The County is an equal opportunity employer and encourages the submission of bids regarding this competitive procurement procedure from any business entity or individual regardless of race, national origin, age, religion, gender, marital status, veteran status, medical condition, disability, or any other legally protected status recognized by federal or Texas law.
20. **County Appropriations.** Pursuant to the Contract, the County's obligation to make monetary payment to a successful Bidder for the Fuel is:
- a. an obligation to make payment from the County's current revenues
 - b. subject to the appropriation and budget action by the Commissioners Court to appropriate current revenues sufficient to pay that and any other monetary obligation of the County under the Contract. Pursuant to Section 271.903 of the Texas Local Government Code and other authority, the County shall retain the right to terminate the Contract at the expiration of each County budget period, and furthermore, the Contract shall be conditioned on a best effort attempt by the County to obtain and appropriate funds for the payment of any monetary obligation of the County under the Contract. A termination of the Contract under the circumstances described in this paragraph is required by law, and shall not constitute a default under the Contract.

[END OF BID CONDITIONS]

EXHIBIT C – BULK FUEL PROCUREMENT CONTRACT
(Kendall County Bid No. 2024-01)

THIS BULK FUEL PROCUREMENT CONTRACT ("Contract") is made on its Effective Date by Kendall County, Texas ("County"), acting by and through its governing body, the Kendall County Commissioners Court ("Commissioners Court"), and by _____ ("Seller"), and the contracting Parties do hereby agree as follows:

A. PRELIMINARY RECITALS

WHEREAS, Kendall County conducted a competitive procurement procedure, as Authorized by law, for the purchase of the fuel ("Fuel") pursuant to the procedure described in the following documents: bid packet, bid submission, and commissioners court minutes, the contents of which are Incorporated by Reference, and WHEREAS, Kendall County made a bid award to Seller, the successful bidder, pursuant to said competitive procurement procedure, and the Parties now desire to confirm and implement county's purchase of the Fuel from Seller in accordance with this Contract.

B. TERMS AND PROVISIONS

NOW THEREFORE, in consideration of the terms, provisions, obligations, warranties, conditions, and consideration described in the Contract, the sufficiency of which is hereby acknowledged, the Parties agree to Kendall County's purchase of the Fuel from Seller as follows:

1. **Definitions.** Unless otherwise designated in this Contract:
 - a. "**Contract**" shall mean this Contract and all attached documents.
 - b. "**County**" shall mean Kendall County, Texas, a signatory Party to this Contract, acting by and through the Kendall County Commissioners Court ("Commissioners Court"), its governing body.
 - c. "**County Auditor**" shall mean the County Auditor of Kendall County, Texas, located at the Kendall County Courthouse, 201 E. San Antonio Ave, Suite 113, Boerne, Texas 78006, telephone (830) 249-9343, ext. 240, fax (830) 249-2813, and e-mail corinna.speer@co.kendall.tx.us.
 - d. "**Effective Date**" shall mean the date on which the last Party signs this Contract.
 - e. "**Fuel**" shall mean the Fuel made the subject of this Contract as described in the attached **Exhibit A** and otherwise in this Contract.
 - f. "**Party**" shall mean a signatory Party to this Contract, including the elected officials, appointed officials, directors, officers, partners, members, managers, employees, agents, successors, and permitted assigns.

- g. "Purchase Price" shall mean the compensation to be paid by County for the purchase of the Fuel as described in the attached **Exhibit A** and otherwise by this Contract.
 - h. "Seller" shall mean the Seller named above, a signatory Party to this Contract.
 - i. "Term" shall mean the term of this Contract described in Paragraph 2.
 - j. Singular nouns and pronouns shall include the plural, and the masculine gender shall include the feminine gender, and vice versa, where necessary for a correct meaning in this Contract.
2. **Term.** The term of this Contract shall commence October 10, 2023 and end September 30, 2024.
3. **Interpretation.** All statements made in the caption, preamble, and preliminary recitals of this Contract, and all attached documents, are incorporated by reference. This Contract is the entire agreement of the Parties regarding the subject matter herein described, and no oral representations, warranties, agreements, or promises exist pertaining to the subject matter of this Contract. Should a conflict exist between a term or provision of a competitive procurement procedure document described in the Preliminary Recitals, and a term or provision of this Contract, this Contract shall control and be fully operative. No amendment, modification, or revision of this Contract may be made except through a written instrument signed by the Parties.
4. **Fuel.** The Fuel made the subject of this Contract is more particularly described with specifications in the attached **Exhibit A** and otherwise in this Contract.
5. **Delivery of Fuel.** The Fuel shall be delivered to the County by Seller pursuant to the requirements described in the attached **Exhibit A** and otherwise in this Contract.
6. **Payment.** The Purchase Price for the Fuel shall be paid by the County to Seller as described in **Exhibit A** and otherwise in this Contract. The Parties agree that payment of the Purchase Price shall be conditioned upon the:
- a. timely delivery of the Fuel by Seller
 - b. timely receipt and acceptance of the Fuel by County
 - c. timely submission by Seller to the County Auditor of a valid and proper billing invoice for the Fuel
 - d. approval of the billing invoice by the Commissioners Court.

7. **No Agent, Joint Venture, or Third-Party Beneficiary.** Neither Party is an agent, servant, or employee of the other Party. This Project is not a joint venture or enterprise. The Parties do not intend to create any third-party beneficiaries of the rights or obligations described in this Contract. No person who is not a signatory Party to this Contract may enforce any right or obligation of the Contract as a third-party beneficiary.
8. **Immunity.** This Contract is subject to all protections afforded the County pursuant to a proper application of the doctrine of governmental immunity. This Contract may not be interpreted to waive the immunity protection of the County.
9. **Waiver, Release, and Indemnity.** Seller, to the extent permitted by law, does hereby waive and release Kendall County, Texas ("County," including its elected officials, appointed officials, employees, agents, and representatives), and further, shall indemnify, defend, and hold harmless the County, regarding all claims, causes of action, suits, judgments, and damages of any kind or character that:
 - a. Seller may have against the County, now or in the future, regarding, arising from, or directly or proximately caused by the competitive procurement procedure conducted by the County for the Fuel
 - b. a Third-Party may have against the County, now or in the future, regarding, arising from, or directly or proximately caused by the
 1. competitive procurement procedure conducted by County for the Fuel
 2. the Fuel being unfit for the intended County purpose.
10. **Disputes, Venue, and Mediation.** This Contract shall be governed by, construed, and enforced pursuant to the laws of the State of Texas. This Contract is performable in Kendall County, Texas. Each Party has a duty to mitigate damages. Proper venue regarding all suits, actions, or judicial proceedings regarding this Contract shall be in a court of competent jurisdiction in Kendall County, Texas or the appropriate federal court designated for said county. No suit shall be filed by a Party regarding a dispute arising under or related to this Contract unless the Parties first submit the dispute to mediation.

Pursuant to Chapter 2009 of the Texas Government Code and Chapter 154 of the Texas Civil Practice and Remedies Code. Notwithstanding anything stated to the contrary in this Contract, however, a Party may file suit solely for injunction or mandamus relief regarding a dispute arising under or related to this Contract without first submitting the dispute to mediation. Mediation regarding a dispute arising under or related to this Contract shall be held in Kendall County, Texas, unless otherwise agreed in writing by the Parties or required by this Agreement. Each Party shall pay its own expenses incurred for

the mediation, including attorney fees, mediator fees, and travel expenses. The mediator shall be selected by the Parties' agreement; however, should they fail to agree on a mediator, the dispute shall be submitted to the following public institution for assignment of a mediator and the holding of the mediation at that institution: Center for Public Policy Dispute Resolution, School of Law, University of Texas at Austin, 727 East Dean Keeton Street, Austin, Texas 78705.

11. **Force Majeure.** Neither Party shall be deemed to be in default for any delay or failure in performance under this Contract resulting, directly or indirectly, from acts of God, civil or military authority, labor disputes, shortages of suitable supplies or fuels, or any similar cause beyond the reasonable control of the Parties.
12. **Notice.** All notices to a Party required by this Contract shall be delivered by certified mail of the United States Postal Service (postage prepaid, properly addressed, and return-receipt requested), or by electronic email to address provided in, or hand-delivery to the recipient Party at the following addresses:
 - a. if to the County: County Judge, Kendall County, Texas, 201 E. San Antonio, Suite 122, Boerne, Texas 78006
 - b. if to Seller: Unless otherwise provided in this Contract, all notices shall be deemed delivered on the: (1) date of delivery, if notice occurs by an aforesaid courier or hand-delivery; or (2) third day after the notice was deposited in the mail with the United States Postal Service, unless the actual delivery date is established by a document of the United States Postal Service. A Party may change its notice address by sending written notice of the change to the other Party.
13. **Assignment.** This Contract shall inure to, be for the benefit of, and obligate, the Parties, including their respective successors in interest, executors, heirs, beneficiaries and permitted assigns; however, this Contract is not assignable without the express, mutual, written consent of the Parties.
14. **Attorney Fees.** The prevailing Party in litigation filed regarding this Contract shall be entitled to recover, to the extent permitted by law, all reasonable and necessary attorney's fees, costs, interest, and other expenses incurred in the litigation.
15. **No Waiver.** The failure of a Party in one or more instances to insist upon the performance of any term or provision of this Contract shall not be construed as a waiver of rights with respect to any continuing or subsequent breach of that or any other term or provision of this Contract, and the same shall remain in full force and effect.

16. **Representations and Warranties.** The Parties warrant and represent as follows:
- a. Each Party carefully reviewed and understands this Contract.
 - b. Each Party consulted with its respective attorney concerning this Contract or chose to enter this Contract without legal advice. Any question a Party may have pertaining to this Contract has been fully answered and explained by counsel, if any.
 - c. Each Party's decision to execute this Contract was not based on any statement or representation by any other person, other than those contained in this Contract.
 - d. No understandings, statements, promises, or inducements (written or oral) exist that are contrary to this Contract, and it supersedes all prior agreements between the Parties relating to its subject matter.
 - e. Each Party's signing representative has full authority to execute this Contract and bind his Party to this Contract.
 - f. Seller expressly warrants and represents that:
 1. the Fuel is fit for the intended as stated on **Exhibit A**
 2. Seller is the sole and lawful owner of the Fuel
 3. the Fuel is not subject to any final, active, or threatened claim, judgment, lien, security interest, dispute, or litigation that would prevent, impair, or threaten the transfer of good and complete title of the Fuel to the County now or upon Fuel delivery to the County
 4. no unpaid or existing liens, claims, or demands exist by any subcontractors, mechanics, laborers, or other persons or entities regarding the Fuel
 5. Seller included true and correct copies of said documents in the bid submitted to the County for the Fuel, and further, the contents of said documents remain true and correct at the time of Contract execution by the Parties.
 6. by submitting a bid to the County for the Fuels, Seller acknowledges and confirms it read and fully understood all contents of County's Bid Packet for the Fuels.
 - g. Any other representations or warranties made by the Parties in this Contract are incorporated by reference.
17. **Captions and Counterparts.** The captions of paragraphs or other parts of this Contract are inserted for reference only and shall not be deemed to modify or

otherwise affect the provisions of this Contract. This Contract may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. Electronic signatures and copies of signatures to this Contract are effective as original signatures.

18. **Time.** Time is of the essence. Unless otherwise specified, all references in this Contract to "days" shall mean calendar days. Business days, if used in this Contract, shall exclude Saturdays, Sundays, and legal public holidays as then recognized and observed by County. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday as then recognized and observed by County, the date for performance will be the next following regular business day.
19. **County Appropriations.** County's obligation to make monetary payment to Seller for the Fuel is:
 - a. an obligation to make payment from the County's current revenues
 - b. subject to the appropriation and budget action by the Commissioners Court to appropriate current revenues sufficient to pay that and any other monetary obligation of County under the Contract. Pursuant to Section 271.903 of the Texas Local Government Code and other authority, County shall retain the right to terminate the Contract at the expiration of each County budget period, and furthermore, the Contract shall be conditioned on a best effort attempt by County to obtain and appropriate funds for the payment of any monetary obligation of County under the Contract. A termination of the Contract under the circumstances described in this Paragraph 20 is required by law, and shall not constitute a default under the Contract.
20. **Termination.** This Contract may be terminated:
 - a. automatically upon the expiration of the Contract Term
 - b. by the express, mutual, written consent of the Parties
 - c. unilaterally by County due to non-appropriation of funds, as described in Paragraph 19
 - d. unilaterally by a Party if a Contract default is committed by the other Party and not timely cured, as described in Paragraph 22.
21. **Default and Cure Procedure.** Should a Party by its conduct, act, or omission commit a default of this Contract (including a breach of warranty), written notice of the default shall be given by the non-defaulting Party to the defaulting Party. The defaulting Party shall have 10 business days from receipt of the default

notice to cure the default; however, the cure period may be extended by the mutual, written consent of the Parties. If the default is not timely cured, the non-defaulting Party may immediately terminate this Contract by giving written notice to the defaulting Party, in which event any cost, reasonable expense or damage incurred by the non-defaulting Party because of the default shall be paid by the defaulting Party unless otherwise provided in this Contract.

22. **Remedies.** This Contract shall not be construed as specifying the exclusive remedy for any default, and all remedies existing at law and in equity may be pursued by a Party to the Contract and shall be cumulative in nature, unless otherwise provided in this Contract. Notwithstanding anything to the contrary, however, stated in this Contract:
- a. should a Party default in the performance of any obligation, representation, or warranty in this Contract that default event any related default claim, and this provision, shall survive the termination of the Contract and can be asserted in litigation against the defaulting Party
 - b. County shall not reimburse Seller for any costs incurred as a result of Seller's participation in the competitive procurement procedure for the Fuel, including but not limited to travel, office expenses, or attorney or other consultant fees
 - c. each Party hereby waives and releases all suits, claims, and causes of action, now or in the future, to recover litigation damages from the other, defaulting Party that are in the nature of special, consequential, punitive, or exemplary damages arising from a default or breach of this Contract.

EXECUTED on the Effective Date by the Parties to this Agreement.

Honorable Shane Stolarczyk
County Judge, Kendall County, Texas

Date: _____

Seller/Company:

Name & Title:

Address:

Email:

Signature:

Date: _____

[END BULK FUEL PROCUREMENT CONTRACT]

