



**REQUIREMENTS AGREEMENT  
C-19-184a-11-05**

**THIS AGREEMENT** (the "Agreement") is entered into effective the 5 day of November 2019 by and between **Kolkhorst Petroleum Co.**, ("Seller") and **HIDALGO COUNTY** ("Buyer").

**WHEREAS**, Buyer has solicited bids for the supply of required “ **Lubricants(Grease, Oil, Hydraulic Fluids)& Anti-Freeze Products**” for Hidalgo County (on an as needed basis) (the “**Products**”), as further described in the Request for Bid (RFB) Procurement Packet, which is attached hereto as Exhibit “A” and incorporated herein by reference for all purposes (the "RFB"; and

**WHEREAS**, Seller has submitted a proposal to supply Buyer's requirements in accordance with the specifications as bid, a copy of Request for Bids (RFB) Procurement Packet and Proposal being attached hereto as Exhibits “A” and “B” respectively, and incorporated herein for all purposes (the “Specifications”); and

**WHEREAS**, in recognition of and in consideration of Company's agreement to perform the Services in accordance with the terms and conditions of the Proposal Packet, the Commissioners Court of County awarded the contract bid to Company.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Buyer agrees to purchase from Seller, and Seller agrees to sell and deliver to Buyer, all of the Products

in the area of **HIDALGO COUNTY** for a period of one (1) year, commencing November 11, 2019 and ending November 10, 2020, and may be extended with the County’s sole discretion for an additional one (1) year one (1) period, and the remainder of this Agreement shall be under the same rates, terms and conditions, and it is agreed that the Products will meet the specifications set forth in Exhibit "A" hereto. Buyer reserves the right to continue this bid for an additional sixty (60) day grace period, under the same rates, terms, and conditions for the unforeseen delay in award of new bid for the next contract term.

2. Company hereby promises and agrees to render and provide, during the term of this Contract, and shall be obligated to render and provide the Services as a **Primary** provider of the Services. When Buyer determines that it needs a quantity of the Products to be it will, according to its Purchasing Policies, complete and submit to Seller a Purchase Order describing the type and quantity of the Products required. The Products are to be delivered by Seller to the location in Hidalgo County specified by Buyer in its Purchase Order. Company agrees in performing the Services that it will use proper professional standards, comply with any and all appropriate laws and regulations in providing the Services, and devote such time as is necessary to safely and efficiently provide the Services. County will award service contracts to a “Primary” and “Secondary” vendor for services to be rendered through effective period of this Contract. Company agrees in situations when the “Primary” Service Provider does not and/or not adequately perform

in accordance with comply with the specifications, requirements, terms, conditions, obligations contained within this Contract, Hidalgo County reserves the right to seek the Services from the "Secondary" Service Provider. In such event, County shall charge the "Primary" Service Provider the difference for any additional cost of Services.

3. Buyer agrees to pay Seller for each Purchase Order based on the prices set out in Exhibit "B". Seller shall render invoices for each Purchase Order, and the invoices shall be paid by Buyer in accordance with the Texas Prompt Payment Act, Tex. Govt. Code Ch. 2251.

4. Seller represents that it is licensed by the State of Texas and qualified to perform and execute the services provided above. If such license is suspended or revoked, this Contract shall automatically be terminated and Seller shall immediately notify the County Judge of Hidalgo.

5. Seller must comply with all applicable laws and regulations of the State of Texas, and County policies. Notwithstanding the foregoing sentence, Seller represents and maintains that Seller is an independent Contractor and is not an employee of the County, or any agency thereof, and represents and warrants that Seller does not desire or request any fringe benefits provided to employees of County, and/or any agency of the County, including but not limited to benefits associated with Hidalgo County's Civil Service Program. Seller agrees to be responsible for any federal income tax, withholding or social security tax liability that might arise from payments received hereunder. Seller will incur no financial obligation on behalf of the County without prior written approval of the County. Seller will be responsible for all personal and professional expenses, including, but not limited to, membership fees and dues and expenses of attending conventions and meetings.

6. Buyer may terminate this agreement upon thirty (30) days written notice at any time for any reason or no reason at all.

7. **Indemnification: Seller will indemnify and hold Buyer harmless from any and all claims, actions, liability, and expenses (including costs of judgments, settlements, court costs, and attorneys' fees, regardless of the outcome of such claim or action) caused by, resulting from, or alleging negligent or intentional acts or omissions or any failure to perform any obligation undertaken or any covenant in this Contract, whether such act, omission, or failure was the Seller's or that of any person providing services hereunder through or for the Seller. Upon written notice from the Buyer, the Seller will resist and defend at its own expense, and by counsel reasonably satisfactory to Buyer, any such claim or action. The Seller will carry proper insurance with the Buyer as an additional named insured.**

8. General Provisions.

**a. Conflict with Applicable Law.** Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and whenever there is any conflict between any provision of this Agreement and any present or future law, ordinance or administrative, executive or judicial regulation, order or decree, or amendment thereof, contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event the affected

provision or provisions of this Agreement shall be modified only to the extent necessary to bring them within the legal requirements and only during the time such conflict exists.

**b. No Waiver.** No waiver by Buyer of any breach of any provision of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision hereof.

**c. Entire Agreement.** This Agreement contains the entire contract between the parties hereto, and each party acknowledges that neither has made (either directly or through any agent or representative) any representations or agreements in connection with this Agreement not specifically set forth herein. This Agreement may be modified or amended only by an agreement in writing executed by Buyer and Seller, and not otherwise.

**d. Texas Law to Apply.** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

**e. Notice.** Except as may be otherwise specifically provided in this Agreement, all notices, demands, requests or communications required or permitted hereunder shall be in writing and shall either be (i) personally delivered against a written receipt, or (ii) sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the parties at the addresses set forth below, or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to Buyer:                   Hidalgo County  
  Attention: County Judge  
  100 E. Closner  
  Edinburg, Texas 78539

If to Seller:                   **Kolkhorst Petroleum Company**  
  **5001 E. Harrison**  
  **Harlingen, TX 78550**

Each notice, demand, request or communication which shall be delivered or mailed in the manner described above shall be deemed sufficiently given for all purposes at such time as it is personally delivered to the addressee or, if mailed, at such time as it is deposited in the United States mail.

**f. Termination.** County may terminate this agreement at any time for any reason or no reason at all upon giving thirty (30) days written notice.

**g. Additional Documents.** The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the terms of this Agreement.

**h. Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

**i. Assignment.** This Agreement shall not be assignable.

**j. Headings.** The headings and captions contained in this Agreement are solely for convenient reference and shall not be deemed to affect the meaning or interpretation of any provision or paragraph hereof.

**k. Gender and Number.** All pronouns used in this Agreement shall include the other gender, whether used in the masculine, feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

**l. Authority to Execute.** The execution and performance of this Agreement by Buyer and Seller have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of Buyer and Seller in accordance with its terms.

**m. Insurance:** Consistent with its status as an independent contractor and at its sole expense, Company agrees that throughout the duration of the work under this contract and any extension hereof, it shall provide and maintain any and all insurances and abide by any requirements which are specified in the Procurement Packet/Specifications and/or which may be necessary in providing Services or are otherwise required by law. Insurance policies shall cover, but are not limited to, Bidder's activities and all persons, vehicles, equipment and property connected with providing Services, to include theft and loss. The amount of insurance required shall be in accordance with amounts specified by the County or as prescribed by law, but in no event shall any amount be less than the minimum amounts prescribed by law, including, but not limited to the Texas Tort Claims Act. These requirements do not establish limits of Company's liability. Any and all applicable insurance requirements and amounts are incorporated herein by reference for all purposes. Company is responsible for ensuring all required insurance policies are valid for the duration of the contract. All insurance policies are to be issued by an insurance company authorized to do business in the State of Texas and acceptable to County. Company shall cause all subcontractors utilized by Company to also comply with these specifications. Company shall furnish to County certificate(s) of coverage, and all renewals throughout the duration of the Project, issued by the insurer that such insurance is in full force and effect. (See Exhibit "C" attached hereto and incorporated herein for all purposes). For each applicable policy, Company shall name the County as an additional insured. Company shall notify County a minimum of thirty (30) days in advance of cancellation of all or part of a policy. Company shall make any other insurance documentation available to County upon request.

**n. Commitment of Current Revenues Only.** In the event that, during any term hereof, the Commissioners Court does not appropriate sufficient funds to meet the obligations of County under this Contract, County may terminate this Contract upon sixty (60) days written notice to Company. County agrees, however, to use reasonable efforts to secure funds necessary for the

continued performance of this Contract. The parties intend this provision to be a continuing right to terminate this Contract at the expiration of each budget period of County. *Agreements for the acquisition, including lease of real or personal property under Tex. Loc. Govt. Code §271.903*: In the event that, during any term hereof, the Commissioner's Court does not appropriate sufficient funds to meet the obligations of County under this Agreement, County may terminate this Agreement upon sixty (60) days written notice to Company, County agrees, however, to use a best efforts attempt to obtain and appropriate funds for payment of the Agreement. The parties intend this provision, if applicable, to be a continuing right to terminate this Agreement at the expiration of each budget period of County in accordance with Tex. Loc. Govt. Code §271.903 (Vernon Supp. 1996).

**o. Immunities.** Nothing in this Agreement is intended to and Buyer does not hereby waive, release or relinquish any right to assert any of the defenses Buyer enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to Buyer as to any claim or action of any person, entity, or individual against Buyer.

**p. Purchasing Ethics.** Seller represents and warrants it has not, during the process of being awarded this contract violated the following ethical standards of Buyer and, upon and after the execution of this Agreement, agrees to abide by the following ethical standards of Buyer:

(1) It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of Buyer, or for any elected official, department head or employee or former elected official, department head or employee of Buyer, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an office of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor pending before any department or agency of Buyer.

(2) It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Buyer, or any person associated therewith, as an inducement for the award of a subcontract or order.

**q. Nondiscrimination:** Company, including subcontractors, assignees and successors in interest, ensures that no person shall on the grounds of race, religion, color, national origin, sex, age, or disability, or any other protected class under law, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination or retaliation in any federally or non- federally funded program or activity when providing any services described herein under this contract/agreement. Applicable nondiscrimination statements and provisions of Title VI of the Civil Rights Act of 1964, as amended, were provided as part of the initial procurement packet

and are incorporated herein and made part of this agreement for all purposes.

r. **Required Contract Provision for Contracts Subject to Federal Award (if applicable):** Pursuant to 2 CFR 200.326, a non-federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR 200-Contract Provisions for non-Federal Entity Contracts under Federal Awards. Additionally, County contracts under Federal award which are subject to assistance from the Federal Emergency Management Agency (FEMA) are also required to contain additional contract clauses. The applicable required contract clauses were provided as part of the initial procurement packet and are incorporated herein and made part of this agreement for all purposes.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED effective as of the day and year first above written.

Buyer: HIDALGO COUNTY

By: Richard F. Cortez  
Hon. Richard F. Cortez, County Judge

APPROVED BY  
COMMISSIONERS COURT

Seller: Kolkhorst Petroleum Co. 11/5/19

By: Oscar Esquivel - Oscar Esquivel  
Printed Name: Oscar Esquivel  
Title: Sales Representative



ATTEST  
By: Arturo Guajardo, Jr.  
Hon. Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:  
Office of the Criminal District Attorney,  
Ricardo Rodriguez, Jr.

By: Robert Viña, III  
Robert Viña, III, Assistant District Attorney

Approved by Commissioners Court on: 11/5/19