

FIRST AMENDMENT TO THE PETROLEUM TRANSFER FACILITIES LICENSE AGREEMENT
BETWEEN BROWARD COUNTY AND SOUTH FLORIDA PETROLEUM SERVICES LLC

This First Amendment to the Petroleum Transfer Facilities License Agreement ("First Amendment") between Broward County and South Florida Petroleum Services LLC is made and entered into by and between Broward County, a political subdivision of the state of Florida ("County"), and South Florida Petroleum Services LLC, a Florida limited liability company ("Licensee") (collectively referred to as the "Parties").

RECITALS

A. The Parties entered into that certain Petroleum Transfer Facilities License Agreement between Broward County and South Florida Petroleum Services LLC dated October 28, 2014 (the "Agreement"), for the use of Port property to install, maintain, operate, repair, replace, and remove Facilities (as defined in the Agreement) for the transportation, loading, and off-loading of Product (as defined in the Agreement).

B. The Parties desire to amend the Agreement to extend the term; provide for a simplified process to revise exhibits depicting the Premises to account for actual subsurface and obstacles encountered in the field during installation, maintenance, repair, replacement, or removal of Facilities; and provide for a simplified process to amend the Agreement relating to alternative licensed location(s) to accommodate Licensee during the implementation of the Petroleum Slip Expansion Project.

C. County has determined that this First Amendment is in the County's best interest.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

1. The above recitals are true and correct and are incorporated herein as if set forth in full hereunder.

2. Amendments made to the Agreement by this First Amendment are indicated by use of strikethroughs to indicate deletions and underlining to indicate additions, unless otherwise stated.

3. Section 3 of the Agreement is hereby amended to read as follows:

This Agreement shall commence on December 1, 2014 ("Commencement Date") and end on November 30, ~~2024~~ 2028 ("Term"), unless otherwise sooner terminated by COUNTY as provided herein.

4. Section 4 of the Agreement is hereby amended to read as follows:

LICENSEE shall maintain the Facilities in a good state of repair and maintain the underground pipeline(s) at their current depths as of the Commencement Date hereof. Any new or replacement underground Product pipelines installed by LICENSEE shall be laid so that there will be not less than thirty-six (36) covered inches between the top of the pipelines(s) and the surface of the land; and, thereafter, such replacement pipeline(s) shall be maintained in a good state of repair. All pipeline(s) installation(s) shall be performed and maintained in accordance with all applicable federal, state, and local laws, ordinances, and regulations now or hereafter imposed by all governmental bodies, agencies, or regulatory entities having jurisdiction over the Facilities.

Should any pavement or other improvement be damaged or removed during the installation, maintenance, repair, or replacement of the Facilities; or should any such pavement or other improvement subside or otherwise deteriorate after such installation, maintenance, repair, or replacement for reasons caused by work performed by LICENSEE, its agents, contractors, or employees, LICENSEE shall at its own expense, promptly replace, restore, or repair such pavement or other improvement to the condition at least equal to that existing immediately prior to such damage or removal.

During installation, maintenance, repair, replacement, or removal of Facilities, after considering actual subsurface conditions and obstacles encountered in the field, LICENSEE may request and be granted modifications to the placement and location of its Facilities as depicted in Exhibits "A," "B," "C," "D," and "E," subject to the prior written approval of COUNTY's Port Everglades Chief Executive/Port Director. In such cases, LICENSEE shall provide revised exhibits that will be automatically made a part of this Agreement upon prior written approval of COUNTY's Port Everglades Chief Executive/Port Director.

COUNTY expressly reserves the right to continue to use and allow third parties to use the surface of the Premises accommodating the license hereby granted; including the right to store cargo thereon, provided that such use will not unreasonably interfere with the uses granted LICENSEE hereunder.

...

LICENSEE is aware that the Port Everglades Master/Vision Plan envisions the redevelopment of existing petroleum piers, which would require relocation or removal of the Facilities by the LICENSEE at its own expense. Implementation of the Petroleum Slip Expansion Project contained in said Master/Vision Plan, which calls for redevelopment of Slip 1, will, at a minimum, require removal of the Facilities located on ~~or adjacent to~~ the Premises depicted in Exhibits "B," "D," "E," and "F." Facilities located on ~~or adjacent to~~ the Premises depicted in Exhibit "A" may also be impacted. Provided LICENSEE and COUNTY are able to agree on terms for developing and implementing both temporary, and alternative off-loading plans, facilities, and operations while Slip 1 is undergoing redevelopment and replacement of the Facilities at the newly developed Slip 1, COUNTY,

by and through its Port Everglades Chief Executive/Port Director, shall provide LICENSEE with an alternative licensed location~~(s)~~ to enable LICENSEE to continue its operations (during Slip 1 redevelopment). In such cases, the Premises as defined herein shall be redefined through an amendment to this Agreement and the Annual License Fee payable hereunder adjusted as necessary. The COUNTY's Port Everglades Chief Executive/Port Director is authorized to enter into any amendment addressed in this paragraph. Failure of LICENSEE and COUNTY to reach an agreement for an alternative licensed location~~(s)~~ may result in COUNTY exercising its right of termination under Section 26 of this License Agreement.

5. Section 12 of the Agreement is hereby amended to read as follows:

A. LICENSEE and COUNTY acknowledge the designation of LICENSEE-owned Facilities listed in Exhibit "F" attached hereto, as Critical Infrastructure in the Port-Wide Strategic Risk Management Plan approved by the Federal Emergency Management Agency ("FEMA") on May 29, 2009. In order to address potential damage to the Facilities by fire and resultant interruption of regional commerce, COUNTY and LICENSEE are in agreement that an enhanced fixed fire suppression system must be installed on and in proximity to the Facilities. LICENSEE, at the request of COUNTY, has previously undertaken an engineering study to design and engineer an enhanced fire suppression system covering licensed petroleum transfer areas at Berths 7, 9, and 13, including development of an engineering estimate and permit ready construction plans and specifications as summarized in Exhibit "F."

1) COUNTY has reviewed the plans and specifications for the enhanced fire suppression system and is desirous of having LICENSEE construct, maintain, and operate the fire suppression system to enhance protection of the Facilities as well as COUNTY and petroleum industry assets. To this end, COUNTY will reimburse LICENSEE for its costs and expenses as herein provided for constructing, installing, and testing the fire suppression system, for a total amount not-to-exceed Two Million Two Hundred Thousand Dollars (\$2,200,000.00). LICENSEE shall provide COUNTY's Port Everglades Chief Executive/Port Director with copies of all its construction bid documents and bid results for his/her review, comments, and approval prior to LICENSEE's finalization of same. The exact total amount to be paid by COUNTY to LICENSEE shall be based on LICENSEE's actual "Capital Expenditure" as verified by a certified statement and supported by sufficiently detailed invoices and documentation as required by COUNTY's Port Everglades Chief Executive/Port Director.

2) "Capital Expenditure" is defined as the costs and expenses paid for services rendered and materials furnished in connection with the work and improvements for the fire suppression system. Payments made by LICENSEE to independent contractors for construction and testing services in connection therewith shall be included.

3) The exact total amount to be paid by COUNTY to LICENSEE shall only include its third-party costs, which are substantiated by LICENSEE at its sole expense, and shall not include any finance or interest expenses or administration, supervisory, overhead, or internal costs of LICENSEE.

4) Within thirty (30) calendar days of COUNTY's receipt of the certified statement and the supporting documentation and invoices from LICENSEE as required by COUNTY's Port Everglades Chief Executive/Port Director, the COUNTY's Port Everglades Chief Executive/Port Director shall review same and provide LICENSEE with a writing, ~~which~~ that contains the final reimbursable amount. The undisputed reimbursable amounts shall be provided to LICENSEE within thirty (30) calendar days after the certified statement and supporting document is provided. In the event that any dispute arises between the Parties in relation to the final reimbursable amount, the Parties agree to submit the dispute to mediation. The Parties further agree that their participation in mediation is a condition precedent to any Party pursuing any other available remedy in relation to the dispute. Any Party to the dispute may send written notice to the other Party of its desire to commence mediation, and a mediation session must take place within thirty (30) calendar days after the date that such notice is sent. The Parties must jointly appoint a mutually acceptable mediator. If the Parties hereto are unable to agree upon the appointment of a mediator within fourteen (14) calendar days after a Party has sent notice of its desire to mediate the final reimbursable amount dispute, any Party may apply to the American Arbitration Association, or such other organization or person agreed to by the Parties in writing, for appointment of a mediator. It is the intent of the Parties hereto, that the mediation session be conducted within the thirty (30) calendar day period hereinabove provided. The Parties further agree to bear their own respective costs and expenses of the mediation, including costs incurred by a Party for representation by legal counsel at the mediation. The cost of the mediator shall be borne equally by the Parties. Mediation shall be held in Broward County, Florida.

B. COUNTY will be deemed to own the fire suppression system following final completion as evidenced by a final Certificate of Use issued by the applicable governmental authorities and LICENSEE will maintain, repair, exercise, and operate the fire suppression system during the Term of this Agreement. It is the intent of COUNTY to recover its costs related to the fire suppression system over a two-year period, via a Port Everglades Tariff charge imbedded within the Fire Protection Service Fee, as set forth in Port Everglades Tariff No. 12, Item 1057 effective October 1, 2014.

C. LICENSEE shall be responsible, at its own cost and expense, for any relocation of the fire suppression system, which relocation is subject to the prior written

review and prior written approval of COUNTY's Port Everglades Chief Executive/Port Director.

6. Section 26, COUNTY'S RIGHT OF TERMINATION, subsection C of the Agreement is hereby amended to read as follows:

C. In the event COUNTY should elect to terminate this Agreement as to only a portion of the Premises, then the Premises as defined herein shall be redefined through an amendment to this Agreement and the Annual License Fee payable hereunder adjusted as necessary. ~~An amendment pursuant to this subsection shall be approved and executed by~~ The COUNTY's Port Everglades Chief Executive/Port Director and LICENSEE is authorized to enter into any amendment addressed in this subsection.

7. Section 28, MISCELLANEOUS, subsection N of the Agreement is hereby amended to read as follows (original underlining omitted):

N. PUBLIC RECORDS, AUDIT RIGHTS, AND RETENTION OF RECORDS

1) ~~COUNTY is a public agency subject to Chapter 119, Florida Statutes. As required by Chapter 119, Florida Statutes, LICENSEE and all its subconsultants and subcontractors shall comply with Florida's Public Records Law. To the extent LICENSEE is a contractor acting on behalf of the COUNTY pursuant to as stated in Section 119.0701, Florida Statutes, LICENSEE and its subconsultants and subcontractors shall:~~

~~ia) Keep and maintain public records that ordinarily and necessarily would be required by COUNTY in order to perform the service under this Agreement;~~

~~ii)b) Provide the public with access to such public records on the same terms and conditions that COUNTY would provide the records Upon request from COUNTY, provide COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;~~

~~iii)c) Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to COUNTY; and~~

~~iv)d) Meet all requirements for retaining public records and Upon completion or termination of this Agreement, transfer to COUNTY,~~

at no cost, all public records in its possession of LICENSEE upon termination of the applicable contract and or keep and maintain public records required by COUNTY to perform the services. If LICENSEE transfers the records to COUNTY, LICENSEE shall destroy any duplicate public records that are exempt or confidential and exempt. If LICENSEE keeps and maintains the public records, LICENSEE shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY upon request in a format that is compatible with the information technology systems of COUNTY.

A request for public records regarding this Agreement must be made directly to COUNTY, who will be responsible for responding to any such public records requests. LICENSEE will provide any requested records to COUNTY to enable COUNTY to respond to the public records request.

Any material submitted to COUNTY that LICENSEE contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, LICENSEE must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. In the event that a third party submits a request to COUNTY for records designated by LICENSEE as Trade Secret Materials, COUNTY shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by LICENSEE. LICENSEE shall indemnify and defend COUNTY and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 468-3501, JORHERNANDEZ@BROWARD.ORG, 1850 ELLER DRIVE, SUITE 603, FORT LAUDERDALE, FLORIDA 33316.

2) The failure of LICENSEE to comply with the provisions set forth in this ~~Section~~ subsection shall constitute a default and breach of this Agreement,

and COUNTY shall enforce the default in accordance with the provisions set forth in Section 24.

...

8. Section 28, MISCELLANEOUS, is hereby amended to add the following new subsection to read as follows:

Q. SECURITY

1) LICENSEE, at its sole cost, shall comply with Section 311.12, Florida Statutes, Seaport Security Standards, and Section 311.125, Florida Statutes, Uniform Port Access Credential System, as same may be amended from time to time, relating to security regulations for seaports, and shall obtain all necessary security clearances, including criminal background checks for LICENSEE's employees, agents, contractors, or subcontractors, that may be required pursuant to COUNTY's security plan for the Port.

2) In addition, LICENSEE and COUNTY acknowledge that security measures at the Port may be increased and that such efforts will likely impact the Premises. In this regard, LICENSEE agrees to cooperate with COUNTY's efforts to increase security and agrees to comply with all security rules and regulations, whether imposed by federal agencies, including, but not limited to, the United States Custom and Border Protection, the United States Coast Guard, the state of Florida, or COUNTY. LICENSEE, at its sole cost, shall be responsible for complying with all security-related measures that impact the Premises, LICENSEE and its employees, agents, contractors, guests, and invitees.

9. Preparation of this First Amendment has been a joint effort of County and Licensee, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

10. Except as expressly modified herein, all other terms and conditions of the Agreement remain in full force and effect.

11. This First Amendment shall be effective upon execution by the Parties.

12. This First Amendment may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, will constitute one and the same document.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties have made and executed this First Amendment to the Agreement: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ___ day of _____, _____, and South Florida Petroleum Services LLC, signing by and through its _____, duly authorized to execute same.

County

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Port Everglades Department
1850 Eller Drive, Suite 502
Fort Lauderdale, Florida 33316
Telephone: (954) 523-3404
Telecopier: (954) 468-3690

By _____
Al A DiCalvo (Date)
Assistant County Attorney

Russell J. Morrison (Date)
Senior Assistant County Attorney

AAD/cr
SFPS (PetroTransfer Facilities)-1st Amd_v5Final-2018-1120
11/20/18
#14-3029-03

FIRST AMENDMENT TO THE PETROLEUM TRANSFER FACILITIES LICENSE AGREEMENT BETWEEN
BROWARD COUNTY AND SOUTH FLORIDA PETROLEUM SERVICES LLC

Licensee

ATTEST:

SOUTH FLORIDA PETROLEUM SERVICES LLC
By: South Florida Materials Corp., its
Managing Member

Secretary

By _____
President or Vice-President

(Print/Type Name)

(Print Name and Title)

(Seal)

____ day of _____, 20 ____.

OR

WITNESSES:

Signature

Print/Type Name

Signature

Print/Type Name