

1 **BILL NO. S-22-09-21**

2 **SPECIAL ORDINANCE NO. S-_____**

3 **AN ORDINANCE** approving the awarding of
4 **PURCHASE OF DIESEL FUEL AT LASSUS STORES**
5 **FOR 2023 - \$160,000.00** by the City of Fort Wayne,
6 Indiana, by and through its Department of Purchasing
and LASSUS BROTHERS INC. for the FLEET
MAINTENANCE DEPARTMENT.

7 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF**
8 **THE CITY OF FORT WAYNE, INDIANA;**

9 **SECTION 1.** That PURCHASE OF DIESEL FUEL AT LASSUS STORES
10 FOR 2023 - \$160,000.00 between the City of Fort Wayne, by and through its
11 Department of Purchasing and LASSUS BROTHERS INC. for the FLEET
12 MAINTENANCE DEPARTMENT, respectfully for:

13
14 purchase of 50,000 GALLONS of diesel fuel at Lassus Stores for
15 2023. Fuel is utilized by the Public Safety/Fire Department and
Street Department;

16 involving a total cost of not to exceed ONE HUNDRED SIXTY-THOUSAND AND
17 00/100 DOLLARS - (\$160,000.00) all as more particularly set forth in said
18 CONTRACT – SALES PURCHASE AGREEMENT - which is on file in the Office of
19 the Department of Purchasing, and is by reference incorporated herein, made a
20 part hereof, and is hereby in all things ratified, confirmed and approved.

21
22 **SECTION 2.** That this Ordinance shall be in full force and effect from
23 and after its passage and any and all necessary approval by the Mayor.

24
25 _____
Council Member

26 APPROVED AS TO FORM AND LEGALITY

27
28 _____
29 Malak Heiny, City Attorney
30

LASSUS BROS. OIL, INC.
SALES PURCHASE AGREEMENT

PURCHASER'S NAME: City of Fort Wayne, Indiana Attn: Steve Gillette
PLEASE RETURN ACCEPTANCE BY FAX TO: Todd Lassus @ 260-407-1420
CUSTOMER'S ADDRESS: 200 E. Beery Street, STE 490 Fort Wayne IN 46802
CUSTOMER'S TELEPHONE NUMBER: 260-427-1155
CUSTOMER'S FAX NUMBER: 260-427-1393

REFERENCE: Communication between Todd Lassus, an employee of LASSUS BROS. OIL, INC., and Steve Gillette, City Purchase from City of Fort Wayne, Indiana, in September, 2022.

Subject to the terms and conditions contained in this Sales Purchase Agreement ("Agreement"), the City of Fort Wayne, Indiana ("Purchaser") agrees to purchase, and LASSUS BROS. OIL, INC. ("Seller") agrees to sell the following product at the price and in the quantities (to be pulled ratably throughout the delivery period) as set forth in this Agreement.

PRODUCT: #2 Ultra Low Sulfur Diesel

PRICE PER GALLON: 3.20

U.S.GALLONS: 50,000 gallons (approximately 4,166. gallons per month)

PURCHASE PERIOD: January 1st, 2023 through December 31st, 2023

RACK: No DELIVERED: No F.O.B.: Delivered

NET OR GROSS GALLONS: Gross DELIVERY FEES: Purchased at Lassus Stores

TAXES: Not Included

Price does not include taxes or fees. However, please note that Purchaser is responsible for all applicable taxes and fees and purchaser will be billed for all taxes and fees as a separate line item. Taxes being billed as separate line items are State Excise tax at .5500, Inspection Fee at .01, and LUST tax at .001. Seller will not be responsible for any taxes and fees associated with any changes or modification in Purchaser's tax status or tax rates. Purchaser acknowledges that taxes and fees are subject to change from time to time without notice and Purchaser shall be responsible for all taxes and fees whether existing at the time of execution of this Agreement or subsequently imposed.

FREIGHT IF BILLED SEPARATELY: Purchaser will be billed at Seller's freight cost. Freight rates are based on full transport loads of 7500 gallons minimum for diesel fuel and 8500 gallons minimum for gasoline. Prices per gallon will be adjusted as appropriate in cases where transport loads are less than the minimum gallon loads identified in this paragraph. In these cases, Purchaser will be billed the adjusted freight rate per gallon times the number of gross gallons received.

DELIVERY ADDRESS: Various Fort Wayne area locations

Purchaser's Initials: _____

1. PURCHASER'S CREDIT TERMS: 30 days from *bulk delivery date*. And 30 days from *statement date for credit cards*. All payments shall be made in United States dollars.
2. DELIVERY LIMITATIONS BASED ON CREDIT LIMIT: During the Delivery Period of this Agreement, Purchaser may take or receive delivery of Product quantities when the amount anticipated to be invoiced for such delivery will not exceed the unused portion of Purchaser's credit limit ("Credit Limit") as determined by Seller in its sole discretion from time to time. The unused portion is Purchaser's Credit Limit less all amounts invoiced under this Agreement which amounts have not been paid and collected in immediately available funds.
3. PAYMENT TERMS: Prior to default, all invoices are payable 30 days from date of delivery of the Product. An EFT Agreement must be completed in order to enable us to draft your account for payment. (See paragraph #4 below if applicable).
4. PURCHASER'S ADDITIONAL CREDIT TERMS: If required, Purchaser further agrees to wire transfer Seller a deposit equal to \$0.00. The wire transfer must be completed within one business day of the execution of this contract. Deposit will be returned to Purchaser against future deliveries and may be applied to one or more invoices (exclusive of taxes) and invoices selected for application of the of the deposit are at the discretion of the Seller. Seller has the right to use this deposit to set off against any of the obligations of this Contract in the event Purchaser defaults, files bankruptcy or becomes insolvent.
5. DEFAULT AND REMEDIES: For purposes of this Agreement, Purchaser's default includes (I) the making of any false or inaccurate representation in this Agreement, and (II) the failure to observe or comply with any provision or covenant in this Agreement. In the event of Purchaser's default, Seller may seek all legal and equitable remedies including, without limitation, all rights provided by Article 2 of the Uniform Commercial Code. Seller may also seek its attorneys' fees, costs and expenses incurred in connection with Purchaser's default. In addition, in the event any invoice is not paid when due or Purchaser takes delivery in violation of Purchaser's Credit Limit, Seller, at its option, may suspend or condition further deliveries or may terminate this Agreement, without Notice or demand, and all unpaid balances shall become immediately due and payable. In the event Purchaser fails to take delivery of any portion of the Product during the Delivery Period, Including non-delivery as a result of Seller's termination for Purchaser's default, Purchaser agrees to immediately pay to Seller Seller's lost profits on the undelivered quantity of Product. All amounts not paid when due shall bear interest at 12.00 percent per annum and shall be payable with all costs of collection, including, without limitation, Seller's attorneys' fees. Upon the occurrence of any default, Seller may set off against the indebtedness any amounts owing by Seller to Purchaser whether or not those amounts are immediately payable. Seller shall have the right to require Purchaser to make available the Product, the right to take possession of the Product with or without demand and with or without process of law, and the right to sell and dispose of the Product.
6. SELECTION OF PRODUCTS: Determination of the suitability of any Product for the contemplated use is the sole responsibility of Purchaser and no liability shall be imposed upon Seller in connection therewith. Purchaser agrees to assume all risk and liability for, and indemnify and hold Seller harmless against, any and all loss, damage, or injury to persons or property, of Purchaser or others, arising out of the ownership, use, custody, control, or disposition of the Product by Purchaser, Purchaser's agents or employees, or by any third parties.

Purchaser's Initials: _____

7. **RISK OF LOSS AND TITLE:** Identification of the Product shall occur when the Agreement is effective. Risk of loss shall pass to Purchaser upon identification. Title to products shall remain with Seller until Purchaser receives physical possession of the Product.
8. **DISCLAIMER OF WARRANTIES:** Seller warrants that the Product delivered to Purchaser will conform to the description on the first page of this Agreement. This Is Seller's sole warranty. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH REGARD TO ANY ITEMS PURCHASED OR SERVICES SUPPLIED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED AND SPECIFICALLY EXCLUDED.
9. **LIMITATION OF LIABILITY:** SELLER DISCLAIMS, AND PURCHASER HOLDS SELLER HARMLESS FROM, ANY LIABILITY FOR CONSEQUENTIAL OR OTHER INCIDENTAL DAMAGES. PURCHASER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY CLAIMS OR LIABILITY ARISING FROM USE OF THE PRODUCT, WHETHER SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES. Seller shall not be liable for damages, whether arising from performance of Seller's obligations under this Agreement, tort (including negligence), or otherwise for loss of anticipated profits, loss by reasons of plant shutdown, non-operation or increased expense of operation, service interruption, claims of customers, cost of money, loss of use of capital or revenue, or for any special, incidental, or consequential loss or damage. Purchaser agrees to defend, indemnify and hold harmless Seller from and against any and liability, losses, damages, costs, claims, lawsuits, judgments, settlements and expenses, including, without limitation, attorneys' fees and court costs, arising from or related to this Agreement or Seller's performance under this Agreement.
10. **DEFECTS:** Purchaser shall, within two days after delivery of the Product, notify Seller of any alleged defect in the Product, or the failure of the Product to conform to any specifications. If, following such Notice, Seller and Purchaser agree that there exists such a defect or failure to conform due to the fault of Seller, then, at Seller's option, (I) the defective Product shall be returned, at Purchaser's expense, to Seller, properly safeguarded against normal transit hazards as Seller may require, for replacement by Seller, or (II) Purchaser and Seller shall negotiate an agreed amount to be deducted from the Agreement price, the payment of which shall operate as a full release of Seller. Purchaser's failure to notify Seller of any such claimed defect or failure to conform within the two-day period shall constitute Purchaser's complete waiver of any such claim with respect to defects or nonconformance, and Purchaser's release and covenant not to sue Seller with respect to such claim.
11. **JURY TRIAL:** Purchaser waives trial by jury as to any dispute, claim or cause of action arising under or relating to this Agreement.
12. **ACCEPTANCE:** Acceptance of delivery of the Product shall constitute irrefutable evidence of Purchaser's agreement to the terms and conditions contained in this Agreement.
13. **AUTHORITY OF SELLER'S AGENTS:** No agent, employee, or representative of Seller has any authority to bind Seller to any affirmation, representation, or warranty concerning the Product unless an affirmation, representation, or warranty made by an agent, employee, or representative is specifically included in writing in these terms and conditions.

Purchaser's Initials: _____

14. NOTICE: Any notice, designation, consent, delivery, approval, offer, acceptance, statement, request, or other communication required or allowed under this Agreement ("Notice" or in the verb form "Notify") shall be in writing. Any action required under this Agreement that is a term within the definition of "Notice" also shall be in writing. All notices required in this Agreement shall be deemed effective if made in writing and delivered to the recipient's address listed on the first page of this Agreement by any of the following means: (I) hand delivery, (II) registered or certified mail, postage prepaid, with return receipt requested, (III) first class or express mail, postage prepaid, or (IV) overnight courier service. Notice made in accordance with this paragraph shall be deemed delivered upon receipt if delivered by hand, on the third business day after mailing if mailed by first class, registered, or certified mail, or on the next business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier. Refusal by a party to accept a Notice shall not affect the giving of the Notice.
15. INTERPRETATION, MODIFICATION AND ADDITIONAL TERMS: Seller and Purchaser as a final expression of their agreement and also as a complete and exclusive statement of the terms of their agreement intend the terms and conditions contained in this Agreement. Acceptance or acquiescence in a course of performance rendered shall not be relevant to determine the meaning of these terms and conditions, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. These terms and conditions can be modified or rescinded only by a writing signed by duly authorized agents of both Seller and Purchaser. Notwithstanding any provisions therein to the contrary, any terms and conditions in Purchaser's purchase order, acknowledgement form, confirmation, or other document issued by Purchaser which conflict with these terms and conditions or increase Seller's obligations hereunder, are rejected and shall not be binding upon Seller unless specifically identified and accepted in writing by a duly authorized agent of Seller.
16. DELEGATIONS AND ASSIGNMENT: No delegation of any obligation owed by Purchaser, or of the performance of any obligation by Purchaser, shall be made without the written consent of Seller. Purchaser may not assign Purchaser's rights under this Agreement without Seller's written consent. Any delegation or assignment without Seller's written consent is void.
17. WAIVER: No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.
18. TAXES: Purchaser shall pay all federal, state, or local taxes or charges relating to the sale, delivery, or use of the Product. Purchaser shall be responsible for all taxes whether existing at the time of execution of this Agreement or subsequently imposed. In instances where Purchaser asserts exempt status from such taxes, Seller is under no obligation to verify such status and Purchaser shall indemnify Seller pursuant to paragraph 8 in the event that it is determined that Purchaser is or was not exempt from such taxes.
19. APPLICABLE LAW AND VENUE: This Agreement and the relationship between the parties shall be governed in all respects, whether as to validity, construction, capacity, performance, or otherwise, by the laws of the State of Indiana. The parties stipulate and agree that exclusive jurisdiction and venue for any cause of action arising between the parties shall be in the Indiana or Federal courts having subject matter jurisdiction and located In Allen County, Indiana.

Purchaser's Initials: _____

20. **RESPONSIBILITY TO WARN AND REPORT:** Purchaser assumes all responsibility for warning Purchaser's personnel and any third parties on the premises of all hazards to persons and property. Purchaser also assumes the responsibility to warn and protect Purchaser's employees and others exposed to hazards posed by Purchaser's storage and use of the Product. It is the responsibility of Purchaser to comply with all relevant reporting obligations under the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. §§ 11001-11049 (EPCRA, also known as Title 111 of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title 111)) resulting from the presence of the chemicals supplied under this Agreement.
21. **FORCE MAJEURE:** If, by reason of acts of God, floods, storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, state or local law, order, rule, or regulation, Seller is prevented from complying with any obligation, covenant, or condition in this Agreement, then, while so prevented, the condition shall be suspended or the obligation or covenant shall be extended, the Seller shall be relieved of the obligation to comply with such obligation or covenant, and the Seller shall not be liable for damages for failure to so comply.
22. **INSURANCE:** Purchaser shall carry and maintain comprehensive general public liability insurance, including contractual liability, bodily injury and property damage, workmen's compensation, and employer's liability insurance throughout the term of this Agreement and any extension of this Agreement.
23. **MISCELLANEOUS:**
- a. **Binding Agreement:** This Agreement shall bind and inure to the benefit of the parties and their respective legal representatives, heirs, successors, and assigns.
 - b. **Invalid Provision/Severability:** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of it. This Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.
 - c. **Amendments:** No amendments, modifications, alterations, or additions to this Agreement shall be binding unless made in writing and signed by the parties.
 - d. **Attorneys' Fees:** In the event of any litigation regarding the construction, enforcement, or validity of this Agreement, in addition to any other relief, the prevailing party shall be entitled to recover its reasonable costs incurred, including attorneys' fees.
 - e. **Rule of Construction:** The judicial rule of construction requiring or allowing a document to be construed to the detriment or against the interests of the document's maker or drafter shall not apply to this Agreement.
 - f. **Headings:** The section headings in this Agreement are included solely for convenience, and shall in no event affect or be used in connection with the interpretation of this Agreement.
 - g. **Counterparts:** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but together the counterparts shall constitute one and the same document.
 - h. **Entire Agreement:** This Agreement constitutes the entire agreement of the parties, all prior negotiations and agreements, whether written or oral, having been merged into this Agreement.

Purchaser's Initials: _____

- i. Time of Essence: Time is of the essence in this Agreement. The parties shall have the right to treat all time deadlines contained in this Agreement as material and to terminate this Agreement or exercise such other remedies as may be provided in this Agreement in the event such time deadlines are not met.
- j. Computation of Time: In computing a time period prescribed in this Agreement, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday.
- k. Authority to Sign: Each person signing this Agreement in a representative capacity on behalf of a party warrants and represents to each other party that (I) he has the actual authority and power to so sign, and to bind his principal to the provisions of this Agreement, and (II) all entity action necessary for the making of this Agreement has been duly taken. Purchaser represents and warrants that Purchaser has complied with all rules, regulations and laws relating to the authority of Purchaser to execute and perform the obligations under this Agreement.
- l. Execution By Facsimile: The parties agree that they may transmit this Agreement for execution by electronic facsimile transmission. The parties intend that facsimile signatures on this Agreement shall be binding on them. However, if a Notice is transmitted by facsimile, the Notice shall not be deemed given in accordance with paragraph 13.

The parties have executed this Agreement as of _____, _____

Company

Lassus Bros. Oil, Inc.

By Name / Title – Please Print

Account Executive's Signature

Authorized Signature

Approved By Corporate Officer

"Signer is authorized to bind Purchaser to this Agreement"

Date

Date

Purchaser's Initials: _____

COUNCIL DIGEST SHEET

Enclosed with this introduction form is a tab sheet and related material from the vendor(s) who submitted bid(s). Purchasing Department is providing this information to Council as an overview of this award.

RFPs, BIDS, OTHER PROJECTS

Bid/RFP#/Name of Project	2023 On Road Diesel at Lassus Stores
Awarded To	Lassus Bros, Inc.
Amount	Not to exceed \$160,000 (plus applicable taxes) for 50,000 gallons
Conflict of interest on file?	☒ Yes ☐ No
Number of Registrants	
Number of Bidders	NA
Required Attachments	Draft contract

EXTENSIONS

Date Last Bid Out	
# Extensions Granted To Date	

SPECIAL PROCUREMENT

Contract #/ID (State, Federal, Piggyback--Authority)	
Sole Source/ Compatibility Justification	Unique opportunity for savings IC 5-22-10-5

BID CRITERIA *(Take Buy Indiana requirements into consideration.)*

Most Responsible, Responsive Lowest	☐ Yes ☐ No <i>If no, explain below</i>
If not lowest, explain	

COUNCIL DIGEST SHEET

COST COMPARISON

<i>Increase/decrease amount from prior years For annual purchase (if available).</i>	Purchased at market price in previous years
--	---

DESCRIPTION OF PROJECT / NEED

<i>Identify need for project & describe project; attach supporting documents as necessary.</i>	Supply of bulk diesel fuel for 2023 budget year for on road diesel fuel purchased at Lassus Stores mainly by the Street Dept and Fire Dept. Purchased at \$3.20/gal which is a slightly better rate than the bulk diesel lock several weeks ago

REQUEST FOR PRIOR APPROVAL

<i>Provide justification if prior approval is being requested.</i>	

FUNDING SOURCE

<i>Account Information.</i>	Fleet Maintenance budget line