

FUEL DELIVERY SERVICES AGREEMENT

THIS AGREEMENT is entered into this 1st day of January 2015, between the CITY OF STOCKTON, a municipal corporation ("City"), and _____, a corporation ("Contractor"), whose address is _____.

RECITALS

WHEREAS, City is in need of petroleum products for its annual fuel requirements for the period of January 1, 2015 through December 31, 2020; and

WHEREAS, Contractor is qualified and experienced in supplying fuel for the purposes specified in this Agreement; and

WHEREAS, Contractor has agreed to perform said services in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Contractor agree as follows:

SECTION 1

SCOPE OF SERVICES

Contractor, for the benefit of and at the direction of City, shall perform the scope of services set forth in Exhibit "A," which is attached to this Agreement and incorporated by reference.

Contractor acknowledges that the quantities reflected in the bid form are approximate, that City does not guarantee a minimum quantity, and that City reserves the right to increase or decrease quantities as required in Exhibit "B," which is attached to this Agreement and incorporated by reference. The fuel tanks shall be maintained on a "keep full" basis. For purposes of this Agreement, "keep full" shall mean that the storage tanks always retain sufficient inventory to satisfy City's needs and never go dry. To ensure sufficient inventory, the Contractor shall monitor the fuel in the tanks and maintain the fuel level in a "full condition" or "nearly full" condition as is practical and reasonable under the circumstances. Generally, City requires that tank levels remain at 60% of capacity or above before refueling occurs.

Contractor warrants that the products provided and services performed pursuant to this Agreement, either by Contractor or at its direction, shall be rendered in accordance with the accepted practices and standards of Contractor's profession.

SECTION 2

TERM

This Agreement shall commence on January 1, 2015. The term of this Agreement is for three (3) years, under the same contractual terms and conditions and at the same mark-up and price-basis. City has the option to annually extend this Agreement for another two (2) years.

SECTION 3

COMPENSATION

City shall pay Contractor for fuel delivered pursuant to this Agreement as provided in Exhibit A.

The initial pre-payment deposit of \$100,000 (an estimated one month's worth of fuel) shall be retained by _____ for the duration of the Agreement, according to the terms and conditions of the Security Deposit Agreement (Exhibit E). Thereafter, payments to current invoices shall be made via the Automated Clearing House ("ACH") net 10 business days upon City's receipt and approval of Contractor's weekly statements. (Submissions will also include, invoices, applicable daily OPIS, Contractor/City-signed and -quantified delivery ticket/bill of lading.)

Should the Contractor at any time during the life of this Agreement provide fuel under similar quantity and delivery conditions to another customer at prices below those quoted to the City, such lower prices will be immediately extended to the City.

SECTION 4

PRODUCT PRICING

The City shall pay the daily Unbranded rack price obtained from the Oil Price Information System ("OPIS")- [Stockton average] available at time of pick-up from the Stockton Rack, for each product supplied, plus the Mark-Up and applicable taxes as submitted by Contractor and described more fully in Exhibit D, which is attached to this Agreement and incorporated by reference.

a. Taxes

1. California State Sales Tax and all other applicable taxes shall be added to the Contractor's invoice at the time of delivery.
2. City is exempt from Federal Excise Tax.
3. California Excise Tax, California Oil Spill Surcharge, Leaking Underground Storage Tank Tax, Federal Oil Spill Fee, and Lead Poison Prevention Fee shall be set out as separate items on the invoice.
4. A detailed breakdown of all taxes included in the prices will be shown on the invoices.

b. Facilities Locations and Capabilities

1. Contractor agrees that the price includes all freight and handling charges as well as delivery to City facilities as described in Exhibit B.
2. City reserves the right to add or delete delivery locations as required.

c. Response Time

1. Contractor agrees that delivery will be made within 24 hours after receipt of notification of product requirement by City or per the requirements stated in the Special Refueling Requirements section of the bid.
2. Contractor agrees to be available during the hours of 7 am – 5 pm, Pacific Standard Time.

SECTION 5

PRICE VERIFICATION

During the contract period, Contractor will be required to provide price verification. Contractor will be required to submit copies of the daily Unbranded OPIS (Stockton average) rack price, with their bill of lading for each tank/truck/trailer load of unleaded or ultra low sulfur clear diesel.

The Contractor hereby agrees to furnish petroleum products in accordance with the specifications listed and for the prices indicated in Exhibit D based on the average Unbranded Stockton rack price available at time of pick up from Stockton Rack, for each product supplied, plus mark-up and applicable taxes per location/delivery.

Price differences between deliveries will be reflected in submitted OPIS and price verification with the corresponding invoice(s).

SECTION 6

INVOICES AND STATEMENTS

Completed invoices and delivery ticket(s)/bills of lading shall be emailed with the weekly statements to Purchasing and Fleet staff at the following email addresses: fuel@stocktongov.com.

Delivery ticket(s)/bills of lading must include location and quantity-delivered-verification signatures of both City staff and Contractor delivery staff.

Invoices must reference delivery date, quantity, type of fuel delivered and delivery location. Invoices must also include pricing rate, breakdown of taxes and amount due. A separate invoice will be submitted per delivery location.

Every week, Contractor will submit a statement listing all invoices and outstanding amounts.

SECTION 7

CITY ASSISTANCE, FACILITIES, EQUIPMENT, AND CLERICAL SUPPORT

Contractor shall, at its sole cost and expense, furnish all facilities and equipment that may be required for supplying fuel pursuant to this Agreement. City shall furnish to Contractor only the facilities and equipment listed in Exhibit A according to the terms and conditions set forth in Exhibit A.

City shall ensure availability of staff for quantity verification and signature and will ensure that no significant delays in providing quantity verification and signature are caused. Contractor agrees to provide a delivery schedule should it be different from the schedule below:

Tuesdays – Main PD and locations requiring deliveries twice a week

Thursdays – Municipal Service Center (Corp Yard) requiring deliveries every two weeks

Fridays – Municipal Utilities, Main PD and locations requiring deliveries twice a week

SECTION 8

QUALITY

Only products of new manufacture or distillation will be accepted. No recycled or reclaimed products will be accepted. Products shall be seasonal blended with appropriate vapor pressures.

SECTION 9

CHANGES

The City's Representative has the authority to review and recommend or reject change orders and cost proposals submitted by the Contractor, pursuant to the adopted City of Stockton Standard Specifications.

SECTION 10

CANCELLATION

City may terminate this Agreement at any time by mailing a notice in writing to Contractor. The Agreement shall then be deemed terminated and no further deliveries shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for the fuel actually delivered through the time the notice of termination is received. Contractor may terminate this Agreement with a 60-day advance written notice of cancellation submitted to City.

NOTE: Any one violation of the “keep full basis” requirement shall be just cause for termination.

SECTION 11

FUNDING

Any contract which results from this bid will terminate without penalty at the end of the fiscal year in the event funds are not appropriated for the next fiscal year. If funds are appropriated for a portion of the fiscal year, this contract will terminate without penalty, at the end of the term for which funds are appropriated

SECTION 12

NON-ASSIGNABILITY

Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of City, and then only upon such terms and conditions as City may set forth in writing. Contractor shall be solely responsible for reimbursing subcontractors.

Any contract resulting from this process and any amendments or supplements thereto shall not be assignable by successful Company either voluntarily or by operation of law without the written approval of the City, and shall not become an asset in any bankruptcy receivership or guardianship proceeding. Such contract shall extend to and be binding upon and inure to the benefits of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

SECTION 13

INDEMNIFICATION

Contractor agrees to indemnify, save, hold harmless, and at City's request, defend the City, its officers, agents, and employees from any and all costs and expenses (including attorney and legal fees), damages, liabilities, claims, and losses occurring or resulting to the City in connection with the performance, or failure to perform, by Contractor, its officers, agents, sub-contractors, employees, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable under this Agreement, and from any and all costs and expenses (including attorney and legal fees), damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of Contractor, its officers, agents, or employees under this Agreement. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

SECTION 14

NO PERSONAL LIABILITY

No official or employee of City shall be personally liable to Contractor in the event of any default or breach by the City or for any amount due Contractor.

SECTION 15
INSURANCE

During the term of this Agreement, Contractor shall maintain in full force and effect, at its own cost and expense, the insurance coverage set forth in Exhibit F, which is attached to this Agreement and incorporated by reference, and shall otherwise comply with all other provisions contained in Exhibit F.

SECTION 16
NOTICES

All notices required under this Agreement shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Contractor: _____

To City Fleet Manager
City of Stockton
1465 Lincoln St
Stockton, CA 95206

SECTION 17
APPLICABLE LAWS

Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex, or religion of such person.

All material, equipment, handling, or labor submitted under this proposal by Contractor shall meet the required standards of OSHA 1970 and Cal OSHA 1973 as last revised, and orders or requirements issued under DOT (hazardous materials transportation). Contractor warrants that the described material, equipment or labor meets all appropriate OSHA safety and health requirements. Further, it warrants that the said material or equipment will not produce or discharge in any manner or form, directly or indirectly, chemicals or toxic substance that could pose a hazard to the health or safety of anyone who may use the material or equipment or come into contact with the material or equipment, and if so, mitigation is in place in accordance with OSHA standards. The current Material Safety Data Sheet (MSDS) for the above referenced materials must be distributed to the City receiver of such material prior to or at the time of delivery.

The Contractor shall be in compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (41 USC 1857(h)), Section 508 of the Clean Water Act (33 USC, 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15) which prohibits the use under nonexempt federal contracts, grants, and loans of facilities included on the EPA List of

Violating Facilities. The Contractor shall report violations to the applicable federal agency and the US EPA Assistant Administrator for enforcement. The Contractor shall be in compliance with all applicable standards, and Cal EPA, ARB, and Prop. 65, including required postings, notices, and controls

SECTION 18

LICENSES, CERTIFICATIONS, AND PERMITS

Prior to City's execution of this Agreement and prior to Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor asserts and acknowledges that it has obtained all certificates, licenses, permits, and the like required to perform the services described under this Agreement.

SECTION 19

RECORDS AND AUDITS

Contractor shall maintain all records regarding this Agreement and the services performed herein for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to City for inspection and audit. Reasonable advanced notification will be given prior to inspection and audit.

SECTION 20

CONFIDENTIALITY

Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information, or conclusions.

SECTION 21

CONFLICTS OF INTEREST

Contractor asserts and acknowledges the following:

- a) Other than this Agreement, Contractor has no financial interest with any official, employee, or other representative of City;
- b) Contractor and its principals do not have any financial interest in real property, sources of income, or investment that would be affected in any manner of degree by the performance of Contractor's services under this Agreement; and
- c) If such an interest should arise during the term of the Agreement, Contractor will notify City within a reasonable period of time.

SECTION 22

WAIVER

In the event either City or Contractor waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition, or obligation contained within the Agreement.

SECTION 23

GOVERNING LAW

California law shall govern any legal action pursuant to this Agreement and the venue for all claims shall be the Superior Court of the County of San Joaquin, Stockton Branch, or, where applicable, in the Federal District Court of California, Eastern District, Sacramento Division.

SECTION 24

CAPTIONS

The captions of the sections of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or intent.

SECTION 25

INDEPENDENT CONTRACTOR

Nothing in this Agreement shall be interpreted so as to cause Contractor to be considered an employee of City. Contractor is employed solely as an independent contractor to render a professional service and is responsible for all obligations consistent with that status.

Subcontractors shall not be recognized as having any direct contractual relationship with City. The persons engaged in the work, including employees of subcontractors and suppliers will be considered employees of Contractor. Contractor shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Agreement. Contractor is responsible to City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

SECTION 26

EXHIBITS

All exhibits referenced herein are attached hereto and are by this reference incorporated herewith. Additionally, Exhibit G, which is a copy of the original bid package, is also attached hereto and incorporated by reference.

SECTION 27

INTEGRATION AND MODIFICATION

This Agreement represents the entire integrated agreement between Contractor and City and supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties. This Agreement may be amended only by written instrument signed by both parties.

SECTION 28

SEVERABILITY

The provisions of this Agreement are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

SECTION 29

AUTHORITY

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day first written above.

**CITY OF STOCKTON,
a municipal corporation**

a corporation

By: _____
Kurt Wilson
Interim City Manager
"City"

By: _____

"Contractor"

ATTEST:

By: _____
Bonnie Paige
City Clerk of the City of Stockton

APPROVED AS TO FORM:
JOHN M. LUEBBERKE
CITY ATTORNEY

By: _____
GUY PETZHOLD
Deputy City Attorney

EXHIBIT A

FACILITY LOCATIONS AND CAPABILITIES

Contractor agrees that price is inclusive of all freight and handling charges and includes delivery to the City of Stockton facilities as shown on Exhibit B. City reserves the right to add or delete delivery locations as required.

The following facilities are to receive fuel (Diesel and/or Unleaded) twice each week on a keep full basis:

- Fire Co. #2, 110 West Sonora Street
- Fire Co. #4, 5525 Pacific Avenue
- Fire Co. #7, 1767 Hammer Lane
- Police Department, 22 East Market Street
- Regional Wastewater Control, 2500 Navy Drive

The following fourteen facilities are to receive fuel (Diesel and/or Unleaded) once each week on a keep full basis:

- Fire Co. #1, 1815 Fresno Avenue (currently closed – no deliveries until further notice)
- Fire Co. #5, 3499 Manthey Road
- Fire Co. #6, 1501 Picardy Drive
- Fire Co. #9, 550 East Harding Way
- Fire Co. #10, 2903 West March Lane
- Fire Co. #11, 1211 East Swain Road
- Fire Co. #12, 4010 East Main Street
- Fire Co. #13, 3606 Hendrix
- Fire Co. #14, 3019 McNabb Place

The following facilities are to receive Diesel on an as needed basis:

- Municipal Service Center, 1465 South Lincoln Street
- Billy Hebert Field
- Bianchi & Calaveras Storm Station, 104 E Bianchi Road
- Don Avenue & Mosher Slough Storm Station, 8676 Don Avenue
- El Dorado & Mosher Storm Station, 8477 N El Dorado St
- Royal Oaks & Bear Creek Storm Station, SE corner of Dentoni Park
- Spanos Park West Storm Station, Back of Michael Faklis Park
- Yarmouth & Mosher Storm Station, 8572 Yarmouth Drive
- Brookside Estates Sanitary Pump Station, March Lane & Buckley Cove Way
- Swenson Park & 5 mile Creek Sanitary Pump Station, North Pump Station, Swenson Golf Course
- Smith Canal Sanitary Pump Station, 2144 Fontana Avenue
- Westside Interim Sanitary Pump Station, 14 mile Slough, Old North Plant
- DWSP, 11373 N Lower Sac Road, Lodi
- Intake Center, 10001 Correia Road, Stockton

Contractor agrees that delivery will be made within 24 hours after receipt of notification of product requirement by the City of Stockton or per the requirements stated in the refueling requirements listed.

EXHIBIT B

LOCATIONS and CAPACITY

<u>Diesel # 2 Clear Ultra Low Sulfur</u>	<u>GALLONS</u>
Fire Co. #1, 1818 Fresno Avenue	550
Fire Co. #2, 110 West Sonora Street	1,000
Fire Co. #3, 1116 East First Street	500
Fire Co. #4, 5525 Pacific Avenue	500
Fire Co. #5, 3499 Manthey Road	1,000
Fire Co. #6, 1501 Picardy Drive	500
Fire Co. #7, 1767 Hammer Lane	500
Fire Co. #9, 550 East Harding Way	500
Fire Co. #10, 2903 West March Lane	500
Fire Co. #11, 1211 East Swain Road	550
Fire Co. #12, 4010 East Main Street	550
Fire Co. #13, 3606 Hendrix	500
Fire Co. #14, 3019 McNabb Place	500
Oak Park, Billy Hebert Field	500
Regional Wastewater Control, 2500 Navy Drive	2,000
Municipal Service Center, 1465 South Lincoln Street	12,000
Bianchi & Calaveras Storm Station, 104 E Bianchi Road	500 & 2 each 10
Don Avenue & Mosher Slough Storm Station, 8676 Don Avenue	500 & 25
El Dorado & Mosher Storm Station, 8477 N El Dorado Street	1,000
Royal Oaks & Bear Creek Storm Station, SE corner of Dentoni Park	1,000
Spanos Park West Storm Station, Back of Michael Faklis Park	2,500
Yarmouth & Mosher Storm Station, 8572 Yarmouth Drive	154
DWSP, 11373 N Lower Sac Road, Lodi	3,500
Intake Center, 10001 Correia Road	3,500
 <u>Unleaded Gasoline</u>	
Van Buskirk, French Camp Turnpike and Houston Avenue	500
Fire Co. #2, 110 West Sonora Street	1,000
Regional Wastewater Control, 2500 Navy Drive	4,000
Police Department, 22 East Market Street	6,000
Municipal Service Center, 1465 South Lincoln Street	12,000

EXHIBIT C

ESTIMATED NUMBER OF DELIVERIES FOR 12 MONTHS

<u>Unleaded Fuel</u>	<u>No. of Deliveries</u>
1-500 gallons	136
500 -1,000 gallons	25
1,000 – 5,000 gallons	111
> 5,000 gallons	14

Diesel #2 Clear Ultra Low Sulfur

1- 500 gallons	610
500 - 1,000 gallons	20
1,000 – 5,000 gallons	4
> 5,000 gallons	4

The above is provided as information only and is no guarantee of future purchases.

EXHIBIT D

PRICING

SAMPLE

EXHIBIT E

SECURITY DEPOSIT AGREEMENT

SAMPLE

EXHIBIT F

INSURANCE REQUIREMENTS
FUEL SUPPLIER VENDOR

VENDOR shall procure and maintain for the duration of the Agreement, insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the VENDOR, its agents, representatives, volunteers, or employees.

1. **INSURANCE** Throughout the life of this Contract, the Vendor shall pay for and maintain in full force and effect with an insurance company admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:
- A. **COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 each occurrence.
 - B. **WORKERS' COMPENSATION** insurance as required under the California Labor Code and Employers Liability Insurance with limits not less than \$1,000,000 per accident/injury/disease.
 - C. **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY AND MISCELLANEOUS SUPPLEMENTARY INSURANCE;**

FOR **ADDITIONAL** REQUIREMENT(S):

- (i) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverage's, Bodily Injury and Property Damage Liability insurance with combined single limits of not less than \$5,000,000 per occurrence, and \$10,000,000 Aggregate limit. City may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground (XCU), fire legal liability or any other liability insurance deemed necessary because of the nature of this contract
- (ii) **ENVIRONMENTAL IMPAIRMENT/POLLUTION LIABILITY**, to include liability for Groundwater contamination, Explosion, Sudden and Accidental and Environmental cleanup, etc. Same minimum limits as Commercial General Liability.

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the CITY.

The Policy(s) shall also provide the following:

- 1 The Commercial General Liability insurance shall be written on ISO approved

EXHIBIT F

occurrence form with additional insured endorsement naming: *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds.*

2. All insurance required by this Agreement shall be with a company acceptable to the CITY and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date VENDOR completes its performance of services under this Agreement.
3. For any claims related to services or products provided under this contract, the Vendor's insurance coverage shall be primary insurance as respects the City of Stockton its officers, agents, and employees. Any coverage maintained by the CITY shall be excess of the Vendor's insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.
4. Each insurance policy required by this clause shall have a provision that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, or non-payment of premium, which shall permit ten (10) days advance notice. The insurer and/or the contractor and/or the contractor's insurance agent shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.
5. Regardless of these contract minimum insurance requirements, the Vendor and its insurer shall agree to commit the Vendor's full policy limits and these minimum requirements shall not restrict the Vendor's liability or coverage limit obligations.
6. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.
7. The Company shall furnish the City of Stockton with the Certificates and Endorsement for all required insurance, prior to the CITY's execution of the Agreement and start of work.
8. Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
Attention: Risk Services
425 N. El Dorado Street
Stockton, CA 95202

EXHIBIT F

9. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Vendor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY's Risk Manager (209) 937-8617 and the fax is (209) 937-8558.

If at any time during the life of the Contract or any extension, the Vendor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

Contractors shall not assign, sublet, or transfer the Agreement or any interest or obligation in the Agreement without prior written consent of the City of Stockton. If the Vendor should subcontract all or any portion of the work to be performed in this contract, the Vendor may be considered non-compliant and may be subject to immediate cancellation

EXHIBIT G

ORIGINAL BID DOCUMENT