



COUNTY OF ORANGE

MASTER AGREEMENT

COUNTY PROCUREMENT OFFICE

ATTACHMENT #2

DISTRIBUTE TO VENDOR.

CONTRACT INFORMATION	
MASTER AGREEMENT NUMBER: MA-017-13010843	NOT TO EXCEED AMOUNT: \$999,999,999,999.00
Begin Date: 01/09/2013 Expiration Date: 01/08/2016 Board-Award Date: Board Award Number: Modification Date: 11/13/2012 Contract Type: Hybrid Cited Authority: Contract Policy Manual Thresholds Allow	Record Date: 11/13/2012 Procurement Folder: M559061 Procurement Type: Request for Bids - RFB Replaces Award Document: Replaced by Award Document: Version Number: 1

COUNTY CONTACTS		
REQUESTOR: Gipson, Melva 000-000-0000	ISSUER: GRACE SCOTT GRACE.SCOTT@OCGOV.COM	BUYER: GRACE SCOTT GRACE.SCOTT@OCGOV.COM

CONTRACT DESCRIPTION
<p>Diesel Fuel - RCA</p> <p>This is competitively bid Regional Cooperative Agreement (RCA) for Diesel Fuel. This Contract is available for use in accordance with the attached pricing, terms and conditions, and scope of work. Public entities utilizing this agreement should make their own determination whether the OCPA program is consistent with their procurement policies and regulations.</p> <p>FOR COUNTY INTERNAL USE - County Deputy Purchasing Agents (DPA's) are required to: 1) Agencies/Departments may issue a DO directly against the RCA; or MA-DO, CT, PO (one time purchase only) referencing the RCA number in the Extended Description field of the CAPS+ document. 2) Provide delivery location and invoicing instructions to the vendor. The Diesel Fuel Delivery Log Template is available for download in BidSync . 3) SEE ATTACHMENT for CONTACT SUMMARY and MODIFICATION HISTORY.</p>

VENDOR INFORMATION	
Name /Address: VC0000010303: MOBIL DELIVERY SERVICE INC DBA DIAMOND OIL SERVICE 1553 S BLUFF RD MONTEBELLO, CA 90640-6601	Contact: JIM REAGAN 310-372-7944 JIM@DIAMONDOILSERVICE.COM

COMMODITY / SERVICE INFORMATION									
Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Tax Amount	Line Total
1	0.00		\$0.00	\$0.00			\$0.00	\$0.00	\$0.00
Commodity Code: 40509 - Fuel Oil, Diesel (Use 405-02 for Biodiesel)									
CARB #2 Diesel - Clear									
Commodity Code: 40509 - Fuel Oil, Diesel (Use 405-02 for Biodiesel)									
CARB #2 Diesel - Red									

COMMODITY / SERVICE INFORMATION									
Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Tax Amount	Line Total
2	0.00		\$0.00	\$0.00			\$0.00	\$0.00	\$0.00
Commodity Code: 96379 - Surcharges and Taxes (To Include Fuel Surcharges and Taxes)									
Applicable Delivery, Service Rate, Fuel Surcharges & Taxes									

AUTHORIZED FUNDING SOURCES		
Department	No Limit	Spending Limit
ALL	YES	\$0.00

APPROVALS				
Date	Approver	Approval Level	Status Before	Status After
11/13/2012 11:26:37 AM	vu.karen1	4	Pending	Rejected

APPROVALS				
Date	Approver	Approval Level	Status Before	Status After
11/13/2012 01:45:31 PM	vu.karen1	4	Pending	Approved

**RCA ADDITIONAL TEXT
MA-017-13010843
DBA Diamond Oil Service**

CONTACT INFORMATION:

VENDOR CONTACT: JIM REAGAN
PHONE: 310-372-7944
FAX: 866-808-3277
EMAIL: JIM@DIAMONDOILSERVICE.COM

COUNTY PROCUREMENT OFFICE CONTACT:
GRACE SCOTT
PHONE: 714-567-5025
FAX: 714-567-7307
EMAIL: GRACE.SCOTT@OCGOV.COM

CONTRACT SUMMARY:

MA-017-13010843 01/09/2013 THROUGH 01/08/2016

MODIFICATION HISTORY:

ORIGINAL CONTRACT, VERSION 1
G SCOTT 11/05/12 (REPLACES MA-017-10011272 FOLDER #556607)
RX-017-12010211

***** CONTRACT USAGE INSTUCTIONS *****

1. Agencies/Departments are to contact the contractor directly to arrange / request delivery of Diesel Fuel.
2. Fill out delivery log and contact information sheet available for download from BidSync. A copy of the log shall be forwarded to the vendor and County Procurement Office (Attn: Grace Scott).
3. Coordinate any necessary security clearance procedures with the vendor.



Regional Cooperative Agreement (RCA) MA-017-13010843

With Mobil Delivery Service, Inc. dba Diamond Oil Service

For Diesel Fuel

This Agreement, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as "County," and Mobil Delivery Service, Inc. dba Diamond Oil Service, with a place of business at 1553 S Bluff Rd, Montebello CA 90640-6601; hereinafter referred to as "Contractor," which are sometimes referred to as "Party", or collectively as "Parties."

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are incorporated by reference into this Contract:

- Attachment A – Scope of Work
- Attachment B – Payment / Compensation
- Attachment C – Pricing

RECITALS

WHEREAS, Contractor responded to an Invitation for Bids (IFB),” for Diesel Fuel; and

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB; and

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. **Entire Contract:** This Contract, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or his designee, hereinafter “Purchasing Agent.”

- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the prescribed statement of work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by the County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the services covered by this Contract are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "HH" below, and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.

- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by sub-contractors.
- P. **Insurance Provision:** Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. In addition, all subcontractors performing work on behalf of contractor pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

1. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
2. A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If contractor's Professional Liability policy is a "claims made" policy, contractor shall agree to maintain professional liability coverage for two years following completion of contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "HH" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails himself of any available remedies.
- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "HH" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnities harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** The Contract price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.

- Y. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- EE. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.
- FF. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees, consultants and subcontractors performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employee, consultants and subcontractors for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

HH. Indemnification Provisions: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as Attachment A.
2. **Contract Term:** This Contract shall commence on January 9, 2013 upon approval by the County and execution of all necessary signatures, whichever occurs later, and continue through and including January 8, 2016, unless otherwise terminated by County. This Contract may be renewed as set forth in paragraph 3 below.
3. **Renewal:** This Contract may be renewed for two (2) additional years, by mutual written agreement of both Parties. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
5. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this contract without penalty.
6. **Fiscal Appropriations:** This contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this contract. If such appropriations are not approved, the contract will be terminated without penalty to the County.
7. **Adjustments – Scope of Work:** No adjustments made to the scope of work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
8. **Regional Cooperative Agreement:** Regional Cooperative Agreements (RCA) awarded by the County of Orange are intended to be used as cooperative agreements against which individual subordinate contracts may be executed by participating County departments and non-County public entities during the effective dates outlined herein. The RCA terms, conditions, and pricing shall be extended to all subordinate contracts issued in accordance with the RCA. Subordinate contracts shall be in full force and effect through their agreed upon termination date, unless otherwise terminated by the agency/department. County departments and non-County public entities shall issue subordinate contracts in their own names, and be solely responsible for all payment requirements. Contractor shall ensure that all subordinate contracts with non-County public agencies contain an indemnification clause in which the non-County agency indemnifies and holds harmless the County of Orange from all claims, demand actions, or causes of actions of every kind arising out of, or in any way connected with

the use of County issued cooperative agreements. Failure to meet this requirement shall be considered a material breach of this RCA and grounds for immediate contract termination.

9. **Amendments – Changes/Extra Work:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract Amendment; said Amendment shall be issued by the County-assigned DPA, shall require the mutual consent of all Parties, and may be prohibit the Contractor from proceeding with the work as set forth in this Contract.

10. **Americans with Disabilities Act (ADA):** Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.

11. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub-Contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

12. **Authorization Warranty:** The contractor represents and warrants that the person executing this contract on behalf of and for the contractor is an authorized agent who has actual authority to bind the contractor to each and every term, condition and obligation of this agreement and that all requirements of the contractor have been fulfilled to provide such actual authority.
13. **Authorized Agency/Department Personnel:** Each County Agency/Department will appoint authorized staff who may request Services in accordance with the pricing, terms, and conditions of this contract. These staff will be identified in the subordinate contracts created by each user agency/department, and Contractor shall execute each subordinate contract separately. Authorized Agency Personnel will assign Contract Coordinators, defined in Attachment A, who will oversee the Services. Contractor shall not perform services for unauthorized requestors.

14. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - i. Terminate the Contract immediately, pursuant to Section K herein;
 - ii. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - iii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - iv. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
15. **California Sales Tax to Out-of-State Contractors:** Out-of-state contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the contractor.
16. **Contractor – Change in Ownership:** The contractor agrees that if there is a change in ownership prior to completion of this contract, the new owner will be required, under terms of sale, to assume this contract and complete it to the satisfaction of the County.
17. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
18. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
19. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
20. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The contractor shall not, during the period of this contract, employ any County employee for any purpose.
21. **Conflict with Existing Law:** The Contractor and the County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either Party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such

provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with interests of both Parties to the maximum extent reasonable.

22. **Contingent Fees:** The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the contractor or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

For breach or violation of this warranty, the County shall have the right to terminate this contract in accordance with the termination clause and at its sole discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from the contractor.

23. **Contractor Bankruptcy/Insolvency:** If the contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the contractor's insolvency, the County may terminate this contract.
24. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
25. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
26. **Contractor's License Requirements:** Contracts that include requirements for installation or state "furnish and install" require that the contractors possess a valid California State Contractor's License at the time of contract award. If sub-contractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if total cost, including labor and materials, of the project is \$300.00 or more. Failure to be licensed or to keep the license current and in good standing during the term of the contract with the County shall be grounds for contract revocation.
27. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a project manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This project manager shall be subject to approval by the County and shall not be changed without the written consent of the County's project manager, which consent shall not be unreasonably withheld.
- The Contractor's Project Manager shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it elects to request the removal of Contractors Project Manager from providing services to the County under this Contract.
28. **Contractor Work Hours and Safety Standards:** The Contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with federal, state and County's safety regulations and laws.

29. **Contractor Personnel-Uniform/Badges/Identification:** The contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be worn at all times while working on County property. The assigned buyer must be notified in writing, within seven days of notification of award of contract of the uniform and /or badges and/or other notification to be worn by employees prior to beginning work and notified in writing seven days prior to any changes in this procedure.

30. **Contractor Personnel – Reference Checks:** The contractor warrants that all persons employed to provide service under this contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this contract.
31. **Contractor's Power and Authority:** The Contractor warrants that it has the full power and authority to grant the rights herein granted and will hold the County hereunder harmless from and against any loss, cost, liability and expense, including reasonable attorney fees, arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the County under this Contract.
32. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of seven years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
33. **Correspondence to Buyer - Contract:** Any correspondence related to the terms, prices and conditions of this contract must be directed to the agency/department purchasing division to the attention of the assigned DPA. Correspondence not directed through the DPA for resolution will not be regarded as valid.

County of Orange
Attn: Grace Scott
County Procurement Office
1300 S. Grand Ave., Bldg. A, 2nd Floor
Santa Ana, CA 92705-4434
714.567.5025

34. **Cost/Price Data:** At all times during and following the period of Contract performance, the County may require Contractor to furnish such cost and pricing data as the County deems necessary to assess the reasonableness of Contract pricing, including the reasonableness of changes. Contractor agrees to maintain such records for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law.
35. **County Of Orange Child Support Enforcement:** In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the Contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:
- In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
 - In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;

- c. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- d. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

- 36. **Debarment:** Contractor shall certify that neither contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible.
- 37. **Delivery Location – No Loading Dock:** Delivery locations may not have loading docks. The contractor is required to make all necessary arrangements for lift trucks or other means necessary to complete delivery. Inside delivery to secured facilities may be required.
- 38. **Disputes – Contract:**
 - a. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
 - i. The Contractor shall submit to the agency/department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - ii. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
 - b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the provision of services under this Contract. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

39. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County Contracts if the County determines that any of the following has occurred:

- a. The Contractor has made false certification, or
 - b. The Contractor violates the certification by failing to carry out the requirements as noted above.
40. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations. (See Exhibit D.)

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Payroll_Taxes/FAQ_-_California_Independent_Contractor_Reporting.htm.

41. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the

circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

42. **Equal Employment Opportunity:** The contractor shall comply with U.S. Executive Order 11426 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

43. **Firm Price Quotes:** Prices quoted herein shall be firm for the entire period of the Contract.
44. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
45. **Interpretation of Contract:** In the event of a conflict or question involving the provisions of any part of this contract, interpretation and clarification as necessary shall be determined by the County's assigned buyer. If disagreement exists between the contractor and the County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.
46. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

47. **Nondiscrimination – Statement of Compliance:** The Contractor's signature affixed hereon and dated shall constitute a certification under penalty of perjury under the laws of the state of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Section 8103.
48. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor: Mobil Delivery Service, Inc. dba Diamond Oil Service
Attention: Jim Reagan
1553 S Bluff Rd
Montebello, CA 90640-6601

For County: County of Orange
County Procurement Office
1300 S. Grand Ave., Bldg. A, 2nd Floor
Santa Ana, CA 92705-4434

49. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the exhibits and attachments.
50. **Price Increase/Decrease:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to the County of Orange. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of thirty (30)-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
51. **Security / Badge Requirement:** Some agencies may require specific issuance of security badge prior to performance of work agreement in a restricted facility. All personnel engaged in the performance of work under this proposed agreement shall be expected to pass the screening requirements which may include an F.B.I. background investigation and finger printing. Contractor employee are made aware of his/her responsibilities regarding the privilege of access to restricted areas of certain agencies such as but not limited to John Wayne Airport, Youth Detention Facilities, Sheriff's Department, and etc.

County agency/department is responsible for all costs related to security / badge requirements.

52. **Sub-Contracting:** No performance of this Contract or any portion thereof may be assigned or sub-contracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to assign or sub-Contract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to sub-Contract, this Contract shall prevail and the terms of the sub-Contract shall incorporate by reference and not conflict with the terms of this Contract. In the manner in which the County expects to receive services, the County shall look to the Contractor for performance and not deal directly with any sub-Contractor. All matters related to this Contract shall be handled by the Contractor with the County; the County will have no direct contact with the sub-Contractor in matters related to the performance of this Contract. All work must meet the approval of the County of Orange.

53. **Validity:** The invalidity in whole or in part of any provision of this contract shall not void or affect the validity of any other provision of the contract.
54. **Waivers - Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

CONTRACT SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

MOBIL DELIVERY SERVICE, INC. DBA DIAMOND OIL SERVICE*

<u>Melissa Fraser</u>	<u>Vice President</u>
Print Name	Title
<u>Melissa Fraser</u>	<u>11/5/12</u>
Signature	Date
<u>JIM REAGAN</u>	<u>CFO</u>
Print Name	Title
<u>Jim Reagan</u>	<u>11-5-12</u>
Signature	Date

* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

In the alternative, a single corporation signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

COUNTY OF ORANGE, a political subdivision of the State of California

<u>Grace Scott</u>	<u>Procurement Contract Specialist</u>
Print Name	Title
<u>Grace Scott</u>	<u>11/05/2012</u>
Signature	Date

ATTACHMENT A

Scope of Work

1. Introduction

- 1.1 The Contractor shall be providing Diesel Fuel to various County facilities and other government entities within Orange County.
- 1.2 Service locations may be added or deleted and service hours modified at any given time, and usage is not guaranteed. Contractor is required to provide Diesel Fuel upon request by any County agency/department and other government entities within Orange County.

2. Fuel Specifications

- 2.1 CARB #2 Diesel – Clear: All diesel fuel sold for vehicular use in California must meet a 15 ppm maximum sulfur limit (Ultra Low), in addition to meeting all of the current low aromatics CARB diesel specifications. The definition of "vehicular use" in California includes on-highway vehicles and non-road vehicles such as agriculture and construction equipment.

CARB #2 Diesel – Clear may contain up to 5% bio.
- 2.2 CARB #2 Diesel – Red: The same specifications as CARB #2 Diesel – Clear (2.1) except for the red dye & dying process to denote usage for tax-exempt purposes.

3. Contractor Responsibilities

- 3.1 Contractor shall possess all Federal, State and Local permits, licenses and approvals necessary to provide goods/services required in the Scope of Work. Any associated fees shall be the responsibility of the Contractor.
- 3.2 Contractor shall provide all transitional interfacing and continual uninterrupted services at Contract date.
- 3.3 Contractor shall provide current, applicable, and required Material Safety Data Sheet (MSDS) prior to Contract award, or at any time during the contract as requested by County.
- 3.4 If service on any County owned tank is required, Contractor shall service the tank only at the County's request at the hourly rate proposed in this Contract.
- 3.5 Contractor shall be held liable for any damage or criminal /civil citations which may occur as a result of any spills and/or accidents.
- 3.6 Contractor shall perform all deliveries and to act in a safe and professional manner, adhering to all required Federal, State, & Local regulations for the handling and supply of Diesel Fuel.
- 3.7 Diesel Fuel must meet current fuel industry laws of Federal, State & local codes, requirements, standards and guidelines, including South Coast Air Quality Management District (SCAQMD); American Society of Testing and Materials (ASTM) laws; Department of Transportation (DOT); Air Resources Board (ARB) regulations, Reid Vapor Pressure (RVP) requirements & regulations for the handling and supply of Diesel Fuel.
- 3.8 Contractor must commit to delivery as requested, at time stated on accepted orders.
- 3.9 Contractor's delivery trucks must comply with the California Air Resources Board

approved/certified Phase II Vapor Recovery Equipment Requirements. Proof of compliance shall be provided to the County upon request.

- 3.10 All drivers / delivery personnel shall be HAZMAT trained and certified in safety measures to prevent accidents endangering County personnel and property. Hazardous Materials shall be clearly marked with the proper shipping name and identification number as required by the Department of Transportation.
- 3.11 Contractor shall be responsible for obtaining fuel reading and managing load inventory as requested by County.
- 3.12 Contractor shall provide, at Contractor's cost, a 24-hour, toll free customer support telephone number and services for responding to all requests / orders for fuel , including telephone coverage on weekdays during normal business hours as well as 24-hour access phone number for emergency situations.
- 3.13 Contractor shall be responsible for all freight/delivery charges.
- 3.14 All deliveries of 4000+ gallons shall have temperature correction adjustments to sixty (60) degrees Fahrenheit based on refinery bill of lading.
- 3.15 Contractor shall perform full delivery of fuel within 48 hours after receipt of agency/department's order. Contractor shall provide a delivery metered ticket for each delivery of fuel; and the metered ticket must be signed and dated, and provided to the ordering agency at delivery.
- 3.16 Delivery truck driver shall stick each tank with a fuel tank gauge stick prior to offloading to insure that adequate fuel storage is available to accept the entire shipment without spillage. Readings shall be taken by the driver prior to unloading fuel and after unloading fuel and shall be recorded on the delivery receipts. Each Delivery truck must be equipped with a stick. Driver shall sign the delivery ticket at the time and place of delivery. One copy of each delivery ticket is to be mailed to the appropriate location.
- 3.17 Contractor shall itemize applicable Federal and California fuel surcharges, Federal and State Excise Tax, and California State Sales Tax as separate line items when invoicing.
- 3.18 Contractor shall adhere to each County facility/location set delivery hours.
- 3.19 A summary of accounts and usage report shall be provided to the County Procurement Office as requested within 30 days of request for such report.

4. Additional Fees/Charges

- 4.1 **Emergency Delivery:** Deliveries requested on County observed holidays, and request for same day delivery shall be considered as emergency delivery. Contractor shall be entitled to an emergency delivery fee and an emergency delivery invoice must accompany the fuel invoice for payment of the fee. The emergency delivery fee shall be billed at the rate designated in this solicitation.
- 4.2 **Standing Time:** The County will not be charge any additional fees for the amount of time it takes the Contractor in offloading / transferring fuel to County tanks in various locations.

Up to one-hour of "standing time" shall be allowable at no charge for the purpose of unloading. If the Contractor is unable to unload fuel within one hour after the scheduled arrival at a County site due to delays caused by County operations, demurrage charges may be assessed by Contractor.

- 4.3 Spillage: The County requires "zero leakage" standard for fuel transfer operations.

The Contractor shall provide necessary equipment and proper training of delivery personnel to prevent spillage or minimize the chance of spillage during connection and disconnection of hoses and during the transfer of fuel. The Contractor will likewise ensure that all equipment, tools and procedures used are in compliance with all applicable specification and regulations governing such operations.

In the event of leakage or spillage, it shall be the responsibility of the Contractor to perform immediate containment, clean up, disposal and restoration activities as necessary in accordance with applicable State of California laws and regulations and subject to the County's satisfaction. All material associated with such clean up shall be removed by the Contractor.

- 4.4 Service Rate: In the event that spillage or standing time was a delay caused by County an hourly service rate quoted herein shall include all costs for labor, tools, equipment, transportation, overhead, profit, travel time, and all other costs related to providing the services described in the scope of work; hourly service rates shall be prorated and billed to the nearest ¼ hour.

- 4.5 County may request service on County owned tank.

5. County Responsibilities

- 5.1 County agencies/departments shall provide Contractor with a log that will include the following information:
Agency/ Department Name
Agency Contact's Name & Number
Agency /Department Location
Number of fuel tanks; capacity/sizes; unit of measure & fuel site / delivery location
- 5.2 Ordering agencies/departments or participating government entities shall coordinate delivery schedules with Contractor and specify details of each delivery location's physical surroundings and/or limitations (i.e. Secured & remote locations; no loading dock; narrow, winding or unpaved roads). Depending on the agreed schedule with the agency/department or participating government entity, the Contractor is requested to deliver during off peak hours between 10 am to 4 pm.
- 5.3 County will work with Contractor on security clearance procedures that may be required for delivery drivers on high security facilities / locations.
- 5.4 If service for any County owned tank is required, the Contractor shall service the tank only at the County's request. Services shall be billed at the hourly rate according to Attachment C.

6. Security Requirements

- 6.1 The County operates several secured facilities: most notable are several Probation, Sheriff and Airport operated sites. Contractors and their employees who perform services in these facilities will be required to strict operation policies and may be required to pass a background check prior to their employment due to security requirements for certain facilities covered under this Contract. During performance of the work, especially at detention facilities, workers shall closely monitor all tools, equipment and other materials at all times. Workers shall have no contact verbal or physical, with any inmate of these facilities. These policies have been designed with the primary purpose of ensuring a safe and secure environment for all involved.
- 6.2 The Contractor will provide a list of all personnel/employees who will be directly performing tasks associated with the Contract. Contractor's personnel/employees providing service in a secured detention facility, a Probation facility or a Sheriff's facility will be expected to pass two (2) separate background checks performed by the Orange County Sheriff's Department and the Orange County Probation Department. No changes shall be authorized to the approved list without a request in writing submitted by the Contractor and approved by the County Site Coordinator. At no time will unauthorized Contractor employees perform any task associated with this Contract. If this occurs, the Contractor will be notified that they have not complied with the terms of this Contract and are subject to Contract termination. The list of all Personnel/Employees working on County projects shall be submitted prior to award of this Contract.
- 6.3 Contractor shall prepare and submit a Security Clearance form to the County Site Coordinator for all persons who will be working on or who will need access to secured facilities.
- 6.4 Security Clearance forms shall be submitted at least five (5) working days prior to the start of work or prior to the use of any person subsequent to the start of work.
- 6.5 Said Security Clearance forms shall be thoroughly and accurately complete. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.
- 6.6 No person shall be employed on this work who has not received prior clearance from the Probation Department, Sheriff's Department or John Wayne Airport.
- 6.7 The County, John Wayne Airport, the Probation Department and the Sheriff's Department are not under any obligation to give a reason clearance is denied.
- 6.8 The Contractor shall be responsible to sign in with the County Site Coordinator or designee, as required. Upon arrival at any secure facility (e.g., JWA, Probation) the Contractor shall report to the Central Control Center (Control). Contractor personnel shall have no contact, either verbal or physical, with internees in secured detention facilities.
 - 6.8.1 Do not give names or addresses to internees.
 - 6.8.2 Do not receive any names or addresses from internees.
 - 6.8.3 Do not disclose the identity of any internee to anyone outside the facility.
 - 6.8.4 Do not give any materials to internees.
 - 6.8.5 Do not receive any materials from internees (including materials to be passed to another individual or internee).

Specifically:

**Failure to comply with these requirements is a criminal act and can result in prosecution.*

- 6.9 Any Contractor personnel/employee(s) engaged in the performance of work under this Contract shall be expected to pass the screening requirements and abide by all of the security requirements set forth by the Federal Aviation Administration (FAA) and the County of Orange.

“The Federal Aviation Administration (FAA) approved security program for John Wayne Airport requires that each person issued a John Wayne Airport security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of the airport”.

All persons within the restricted air operation areas of the airport are required to display, on their person, a John Wayne Airport security badge, unless they are specifically exempted for reasons or they are under escort by a properly badge individual. Each airport employee or airport tenant employee who has been issued a John Wayne Airport security badge is responsible for challenging any individual who is not properly displaying an airport issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid John Wayne Airport security badge must immediately be referred to the Sheriff's Department Airport Detail Office for proper handling.

The John Wayne Airport security badge is the property of the County of Orange and must be returned upon termination of employment at John Wayne Airport. The loss of a badge shall be reported within twenty-four (24) hours to the Sheriff's Department Airport Dispatch Center (949) 252-5000. A report shall be made before a replacement badge will be issued.

- 6.10 All vehicles parked on-site shall be locked and thoroughly secured at all times.
- 6.11 All equipment and materials shall remain in the Contractor possession at all times and shall never be left unattended. All lost or misplaced equipment or materials shall be reported immediately to the (a) security staff or Control in secured detention facilities or (b) the escort or Control in Sheriff's facilities.
- 6.12 Personnel shall not smoke or use profanity or other inappropriate language while on-site.
- 6.13 Personnel shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession.
- 6.14 Personnel shall plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all equipment and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.
- 6.15 Contractor employee(s) shall be well-disposed to the public and County staff utilizing the facilities but shall be responsive only to the requests of the County Site Coordinator unless otherwise directed and shall direct all inquiries or requests to the County Site Coordinator.

ATTACHMENT B

Payment/Compensation

1. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods/services rendered. Invoices must be submitted to address indicated on the procurement documents provided by the individual agency/department. The invoice must have a unique number and must include the following information:
 - 1.1 Contractor's name and address;
 - 1.2 Contractor's remittance address if different from above;
 - 1.3 Contractor's Federal Tax I.D. Number;
 - 1.4 Name of County Agency/Department serviced;
 - 1.5 Service/delivery address;
 - 1.6 MA/DO/PO/CT Number;
 - 1.7 Date of services rendered;
 - 1.8 Fuel charges
 - 1.9 Additional Fees/Charges
 - 1.10 Service description, including number of hours or fraction thereof
 - 1.11 Surcharges and Taxes
 - 1.12 Total

2. **Payment Terms:**
 - 2.1 The Invoice is to be submitted in arrears to the user agency/department to the bill-to address or delivery location, unless otherwise directed in this Contract. Contractor shall reference the MA/DO/PO/CT number on invoice. Payment will be net 30 days after receipt of the invoice in a format acceptable to the County and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.
 - 2.2 Billing shall cover goods/services not previously invoiced. The Contractor shall reimburse the County for any monies paid to the Contractor for goods/services not provided or when goods/services do not meet the Contract requirements.
 - 2.3 Payments made by the County shall not preclude the right of the County from thereafter disputing any goods/services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods/services.

ATTACHMENT C Pricing

1. CARB #2 Diesel – clear, and CARB #2 Diesel – red:

1.1 Fuel prices shall be in accordance with the daily average rack/terminal price published in OPIS , PAD District 5 Los Angeles Rack Price Fuel prices per gallon shall be calculated using the following formula:

$$\text{OPIS PAD District 5 Los Angeles Regional Rack Price} + \text{adjustment differential} = \text{Price per gallon.}$$

1.2 The adjustment / differential (price shall remain firm for the entire term of the contract.

The Contractor is required to attach a copy of the OPIS report with each fuel invoice submitted to the County for payment. The OPIS report must correspond with the date fuel was provided to the County.

Gallons	Diesel – Clear Adjustment	Diesel – Red Adjustment
0 - 400	+0.15	+0.15
401 - 1,000	+0.12	+0.12
1,001 - 2,000	+0.06	+0.06
2,001 - 5,000	+0.05	+0.05
5,001 - 10,000	+0.04	+0.04
10,000 +	+0.01	+0.01

2. Additional Fixed Fee Charges

- 3.1 Emergency Delivery Fixed Fee Charge \$ 100.00 /delivery
- 3.2 Standing Time/Demurrage Charge \$ 20.00 / Quarter of an hour
in excess of first initial hour
- 3.3 Service Rate \$ 85.00 /hour
- 3.4 Returnable Drum Deposit \$ 25.00 /each



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
4/15/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Leavitt Southern California Insurance Services #0F13098 1820 E. First Street, Ste 500 Santa Ana CA 92705	CONTACT NAME: Lisa Andrade PHONE (A/C No, Ext): (714) 569-2700 E-MAIL ADDRESS: lisa-andrade@leavitt.com	FAX (A/C No): (714) 569-3099
	INSURER(S) AFFORDING COVERAGE	
INSURED Mobil Delivery Service, Inc. DBA: Diamond Oil Service 1553 South Bluff Road Montebello CA 90640	INSURER A: HDI-Gerling America Insurance NAIC # 41343	
	INSURER B: Intl Ins Co of Hannover 86486	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 15-16 GL A WC EXC CARGO **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			EGGCD000030515	4/1/2015	4/1/2016	EACH OCCURRENCE \$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ EXCLUDED
	GENL AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COM/OP AGG \$ 2,000,000
							\$
A	AUTOMOBILE LIABILITY			EAGCD000030515	4/1/2015	4/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> Pollution CA9948						MCS 90 Endorsement \$ INCLUDED
A	UMBRELLA LIAB		<input checked="" type="checkbox"/> OCCUR	EXAGD000030515	4/1/2015	4/1/2016	EACH OCCURRENCE \$ 3,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB		<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$ 3,000,000
	DED <input checked="" type="checkbox"/>	RETENTION \$ 1,000					\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			EWGCD000030515	4/1/2015	4/1/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		<input type="checkbox"/> Y/N				E.L. EACH ACCIDENT \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Motor Truck Cargo			MTC14E046802	4/1/2015	4/1/2016	Single Conveyance/\$400,000 Deduct/5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Re: Fuel Delivery Service for the City of Costa Mesa
City of Costa Mesa is named as Additional Insured as respect to General Liability per endorsements CG2010 0413 and CG2037 0413 attached. Workers Compensation Waiver of Subrogation applies per endorsement WC040306 (Ed. 4-84) attached.

CERTIFICATE HOLDER stephanie.urueta@costamesa City of Costa Mesa - City Hall 77 Fair Drive Costa Mesa, CA 92628-1200	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Gary Wells/DAMEAD

35

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – SCHEDULED PERSON OR
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
AS REQUIRED BY WRITTEN CONTRACT, , , CA	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
AS REQUIRED BY WRITTEN CONTRACT , , CA	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

As Required By Written Contract

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 04-01-2015
Insured
MOBIL DELIVERY SERVICE, INC.

Policy No. EWGCD000030515
Insurance Company
HDI-Gerling America Ins. Co.

Endorsement No.

Countersigned By _____



COUNTY OF ORANGE MASTER AGREEMENT COUNTY PROCUREMENT OFFICE MODIFICATION

FOR INTERNAL COUNTY USE
ONLY. THIS IS NOT A LEGAL
DOCUMENT. DO NOT
DISTRIBUTE TO VENDOR.

CONTRACT INFORMATION

MASTER AGREEMENT NUMBER: MA-017-11012276		NOT TO EXCEED AMOUNT: \$999,999,999.00	
Begin Date: 04/28/2011	Expiration Date: 04/27/2016	Record Date: 02/20/2014	Procurement Folder: M557404
Board-Award Date:	Board Award Number:	Procurement Type: Request for Bids - RFB	Replaces Award Document:
Modification Date: 02/20/2014	Contract Type: Hybrid	Replaced by Award Document:	Version Number: 3
Cited Authority: Contract Policy Manual Thresholds Allow			

COUNTY CONTACTS

REQUESTOR: MELVA GIPSON 714-567-7363	ISSUER: MARIA SIO MARIA.SIO@OCGOV.COM	BUYER: MARIA SIO N/A MARIA.SIO@OCGOV.COM
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CONTRACT DESCRIPTION

UNLEADED FUEL / GASOLINE SERVICES - RCA
This is a Regional Cooperative Agreement (RCA) for Unleaded Fuel / Gasoline Services. This contract is available for use in accordance with the attached pricing, terms & conditions and scope of work.

FOR INTERNAL USE-DPA's are required to: 1) Agencies/Depts may issue a DO directly against the RCA; or MA-DO, CT, PO (one time purchase only) referencing the RCA number in the Extended Description text field of the CAPS+ document. 2) Prepare a delivery log with the following information: agency/department name, agency contact's name & number, agency/department location and number of fuel tanks; capacity/sizes; unit of measure; fuel site/delivery location and include any physical surrounding and/or limitations information. A copy of the log shall be forwarded to the vendor and County procurement Office (attn: Marijo Sio). 3) Coordinate any necessary security clearance procedures with the vendor. 4) Provide invoicing instructions to the vendor. 5) SEE RCA ADDTL TEXT FOR CONTACT INFORMATION, CONTRACT SUMMARY AND MODIFICATION HISTORY. RQS-017-11010059

REASON FOR MODIFICATION

Amendment 2 issued to renew Contract for 2 additional years and to revise Attachment C - Fuel Pricing to reflect price increase effective 4/28/2014. RQL-017-14012430

VENDOR INFORMATION

Name /Address: VC0000010303: MOBIL DELIVERY SERVICE INC DBA DIAMOND OIL SERVICE 1553 S BLUFF RD MONTEBELLO, CA 90640-6601	Contact: JIM REAGAN 310-372-7944 JIM@DIAMONDOILSERVICE.COM
--	--

COMMODITY / SERVICE INFORMATION

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Tax Amount	Line Total
1	0.00		\$0.00	\$0.00			\$0.00	\$0.00	\$0.00

Commodity Code: 40500 - FUEL, OIL, GREASE AND LUBRICANTS
UNLEADED FUEL / GASOLINE SERVICES

COMMODITY / SERVICE INFORMATION

Line	Quantity	UOM	Unit Price	Service Amount	Service From	Service To	Line Sub Total	Tax Amount	Line Total
2	0.00		\$0.00	\$0.00			\$0.00	\$0.00	\$0.00

Commodity Code: 96379 - Surcharges and Taxes (To Include Fuel Surcharges and Taxes)
APPLICABLE FUEL SURCHARGES & TAXES

AUTHORIZED FUNDING SOURCES

Department	No Limit	Spending Limit
ALL	NO	\$999,999,999.00

APPROVALS

Date	Approver	Approval Level	Status Before	Status After

APPROVALS				
Date	Approver	Approval Level	Status Before	Status After
02/20/2014 11:06:01 AM	rivera.elsa1	4	Pending	Approved

**RCA ADDITIONAL TEXT
MA-017-11012276
UNLEADED FUEL / GASOLINE SERVICES
MOBIL DELIVERY SERVICES INC. DBA DIAMOND OIL SERVICE**

CONTACT INFORMATION:

VENDOR CONTACT: JIM REAGAN
PHONE: (310) 372-7944
FAX: (866) 808-3277
EMAIL: JIM@DIAMONDOILSERVICE.COM

COUNTY PROCUREMENT OFFICE CONTACT: MARIJO SIO
PHONE: (714) 567-7389
FAX: (714) 567-7307
EMAIL: MARIJO.SIO@OCGOV.COM

CONTRACT SUMMARY:

MA-017-11012276 - 04/28/2011 THROUGH AND INCLUDING 04/27/2012 - ORIGINAL
MA-017-11012276 - 04/28/2012 THROUGH AND INCLUDING 04/27/2014 - RENEWAL
MA-017-11012276 - 04/28/2014 THROUGH AND INCLUDING 04/27/2016 - RENEWAL

MODIFICATION HISTORY:

VERSION 1 - ORIGINAL CONTRACT
CGIRON 04/21/2011

VERSION 2
AMENDMENT #1 ISSUED TO RENEW CONTRACT FOR TWO (2) ADDITIONAL YEARS EFFECTIVE 04/28/2012 THROUGH AND INCLUDING 04/27/2014.
MSIO 03/06/2012

VERSION 3
AMENDMENT #2 ISSUED TO RENEW CONTRACT FOR TWO (2) ADDITIONAL YEARS EFFECTIVE 04/28/2014 THROUGH AND INCLUDING 04/27/2016 AND TO REVISE ATTACHMENT C – FUEL PRICING TO REFLECT PRICE INCREASE EFFECTIVE 4/28/2014.
M.SIO 02/19/2014

***** **CONTRACT USAGE INSTUCTIONS** *****

1. Agencies/Departments are to contact the contractor directly to arrange / request delivery of Unleaded Fuel / Gasoline.
2. Prepare a delivery log with the following information: agency/department name, agency contact's name & number, agency/department location and number of fuel tanks; capacity/sizes; unit of measure; fuel site/delivery location, and include any physical surrounding and/or limitations information. A copy of the log shall be forwarded to the vendor and County Procurement Office (attn: Marijo Sio).
3. Coordinate any necessary security clearance procedures with the vendor.
4. Provide invoicing instructions to the vendor.
5. The following document may be downloaded via www.BidSync.com

1. Unleaded Fuel / Gasoline Services Delivery Log



Amendment Number Two
To Master Contract Number MA-017-11012276
Mobil Delivery Services Inc. DBA Diamond Oil Service
for
Unleaded Fuel/Gasoline Services

This Amendment Number Two, (hereinafter referred to as "Amendment") to Contract Number MA-017-11012276 is made and entered into upon execution of all necessary signatures between the County of Orange (hereinafter referred to as "County"), a political subdivision of the State of California; and Mobil Delivery Service Inc. DBA Diamond Oil Service with a place of business at 1553 S. Bluff Road Montebello, CA 90640-6601; (hereinafter referred to as "Contractor"), and which are sometimes referred to separately as "Party", or collectively as "Parties."

RECITALS

WHEREAS, Contractor responded to an Invitation for Bids (IFB)," for Unleaded Fuel/Gasoline Services; and

WHEREAS, County and Contractor entered into Contract Number MA-012-11012276 (hereinafter referred to as "Original Contract") for Unleaded Fuel/Gasoline Services, commencing on 04/28/2011 through and including 04/27/2012; and

WHEREAS, the Parties issued Amendment One to renew the Contract for two additional years effective 4/28/2012 through and including 4/27/2014; and

WHEREAS, the Parties desire to amend the Contract to renew for two additional years and to revise Attachment C – Fuel Pricing to reflect price increase effective 4/28/14; and

NOW, THEREFORE, the Parties mutually agree as follows:

1. Contract will be renewed for two additional years effective 04/28/2014 through and including 04/27/2016.
2. A fully amended Attachment C – Fuel Pricing is hereby attached.
3. All remaining terms and conditions of the original Contract and subsequent amendments, to the extent they are not modified herein, are incorporated by this reference as if fully set forth herein and shall remain in full force.

- Signature Page Follows -

CONTRACT SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Mobil Delivery Service Inc. DBA Diamond Oil Service *

MIRANDA REAGAN PRESIDENT
Print Name Title

[Signature] 2-11-2014
Signature Date

JIM REAGAN CFO
Print Name Title

[Signature] 2-11-2014
Signature Date

* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

In the alternative, a single corporation signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

COUNTY OF ORANGE, a political subdivision of the State of California

Marijo Sie Procurement Contract Specialist
Print Name Title

[Signature] 02-18-2014
Signature Date

**ATTACHMENT C
Fuel Pricing**

Prices are to be the daily "average" price published in the OPIS (Oil Price Information Service) for unbranded fuel under PADD 5(Petroleum Administration for Defense District) Los Angeles Regional Rack Report for the type /grade of fuel requested, +/- Contractor's "cents per gallon" market adjustment / differential.

OPIS PAD District 5 Los Angeles Regional Rack Price +/- Adjustment/Differential = Total Price per Gallon

The market "adjustment / differential" shall be inclusive of all delivery/unloading/handling charges to all County fuel fill locations or participating government entity location.

The market adjustment / differential (difference between the bid price and the daily average price Los Angeles Rack Price reported by OPIS for Unbranded Fuel) shall remain firm for the entire term of the contract.

The Contractor is also required to attach a copy of the OPIS Report in each fuel invoice for the County to verify legitimacy of the per gallon price on the fueling date.

Gallons	Regular Unleaded Gasoline, Minimum Octane Rating 87	Unleaded Plus Gasoline, Minimum Octane Rating 89	Unleaded Premium Gasoline, Minimum Octane Rating 92
0 – 999 gallons	+0.15	+0.15	+0.15
1000 - 1,999 gallons	+0.10	+0.10	+0.10
2,000 – 4,999 gallons	+0.06	+0.05	+0.05
5,000 – 10,000+ gallons	+0.01	+0.01	+0.01

Additional Fees / Charges	Dollar Amount
Emergency Delivery Fee – Fixed Fee Per Delivery	\$100.00
Service Rate Per Hour	\$85.00

Hourly service rates herein shall include all costs for labor, tools, equipment, transportation, overhead, profit, travel time, and all other costs related to providing the services described in the scope of work. Hourly service rates shall be prorated and billed to the nearest ¼ hour.



**Amendment Number One
To Master Contract Number MA-017-11012276
Mobil Delivery Services Inc. DBA Diamond Oil Service
for
Unleaded Fuel/Gasoline Services**

This Amendment Number One, (hereinafter referred to as "Amendment") to Contract Number MA-017-11012276 is made and entered into upon execution of all necessary signatures between the County of Orange (hereinafter referred to as "County"), a political subdivision of the State of California; and Mobil Delivery Service Inc. DBA Diamond Oil Service with a place of business at 1553 S. Bluff Road Montebello, CA 90640-6601; (hereinafter referred to as "Contractor"), and which are sometimes referred to separately as "Party", or collectively as "Parties."

RECITALS

WHEREAS, Contractor responded to an Invitation for Bids (IFB)," for Unleaded Fuel/Gasoline Services; and

WHEREAS, County and Contractor entered into Contract Number MA-012-11012276 (hereinafter referred to as "Original Contract") for Unleaded Fuel/Gasoline Services, commencing on 04/28/2011 through and including 04/27/2012; and

WHEREAS, the Parties desire to amend the Contract to renew for two additional years effective 4/28/2012 through and including 4/27/2014; and

NOW, THEREFORE, the Parties mutually agree as follows:

1. Contract will be renewed for two additional years effective 04/28/2012 through and including 04/27/2014.
2. All remaining terms and conditions of the original Contract and subsequent amendments, to the extent they are not modified herein, are incorporated by this reference as if fully set forth herein and shall remain in full force.

- Signature Page Follows -

CONTRACT SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Mobil Delivery Service Inc. DBA Diamond Oil Service *

Jimmy D REAGAN CFO
Print Name Title

Jimmy D Reagan 3-1-12
Signature Date

MIRANS C/OF REAGAN PRES.
Print Name Title

[Signature] 3-1-12
Signature Date

* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

In the alternative, a single corporation signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

COUNTY OF ORANGE, a political subdivision of the State of California

Marijo Sio Procurement Contract Specialist
Print Name Title

[Signature] 3-2-12
Signature Date

**Contract Number MA-017-11012276
With Mobil Delivery Service, Inc. DBA Diamond Oil Service
For Unleaded Fuel / Gasoline Services**

This Contract Number MA-017-11012276 for Unleaded Fuel / Gasoline Services. (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between Mobil Delivery Service, Inc. DBA Diamond Oil Service, with a place of business at 1553 S Bluff Road Montebello, CA 90640; (hereinafter referred to as "Contractor,") and the County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County,") which are sometimes referred to separately as "Party" or collectively referred to as "Parties".

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are incorporated by reference into this Contract:

- Attachment A – Scope of Work
- Attachment B – Payment & Compensation Terms
- Attachment C – Fuel Pricing

RECITALS

WHEREAS, Contractor responded to an Invitation for Bids (IFB),” for Unleaded Fuel / Gasoline Services; and

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB; and

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. **Entire Contract:** This Contract, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or his designee, hereinafter “Purchasing Agent.”

- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
- E. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the prescribed statement of work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by the County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the services covered by this Contract are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "HH" below, and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall not be considered an independent Contractor and neither Contractor, nor its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, nor its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by sub-contractors.

P. **Insurance Provisions:**

Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. In addition, all subcontractors performing work on behalf of contractor pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00-01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If contractor's Professional Liability policy is a "claims made" policy, contractor shall agree to maintain professional liability coverage for two years following completion of contract.

The Commercial General Liability policy shall contain a severability of interests' clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Procurement Office or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- Q. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "HH" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay

to County within thirty-six (36) hours of the start of the delay and Contractor avails himself of any available remedies.

- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "HH" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnities harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- X. **Pricing:** The Contract price shall include full compensation for providing all required services in accordance with required specifications, or services as specified herein or when applicable, in the scope of work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

- EE. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.
- FF. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees, consultants and subcontractors performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employee, consultants and subcontractors for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- HH. **Indemnification Provision:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure unleaded fuel and related services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as Attachment A.
2. **Contract Term:** This Contract shall commence on 4/28/2011 upon execution of all necessary signatures, and continue to be effective through and including 4/27/2012, unless otherwise terminated by County. This Contract may be renewed as set forth in paragraph 3 below.

3. **Renewal:** This Contract may be renewed, on an annual basis, by mutual written agreement of both Parties for four (4) additional one (1) year terms. The County does not have to give reason if it elects not to renew.
4. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
5. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
6. **Fiscal Appropriations:** This contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this contract. If such appropriations are not approved, the contract will be terminated without penalty to the County.
7. **Adjustments – Scope of Work:** No adjustments made to the scope of work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
8. **Amendments – Changes/Extra Work:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract Amendment; said Amendment shall be issued by the County-assigned DPA, shall require the mutual consent of all Parties, and may be prohibit the Contractor from proceeding with the work as set forth in this Contract.

9. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to

the County to audit records and interview staff of any sub-Contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

10. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Terminate the Contract immediately, pursuant to Section K herein;
 - b. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
11. **Cal-OSHA Vehicle Regulation:** All vehicles must meet California Motor Vehicle and Cal-OSHA regulations and all other applicable codes required for vehicle use on the roads or highways in the state of California.
12. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
13. **Compensation:** The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.
14. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract; and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
15. **Conflict of Interest – Contractor's Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving,

providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

16. **Conflict with Existing Law:** The Contractor and the County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either Party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with interests of both Parties to the maximum extent reasonable.
17. **Contractor Bankruptcy/Insolvency:** If the contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the contractor's insolvency, the County may terminate this contract.
18. **Contractor Personnel – Reference Checks:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
19. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a project manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This project manager shall be subject to approval by the County and shall not be changed without the written consent of the County's project manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it elects to request the removal of Contractor's Project Manager from providing services to the County under this Contract.

20. **Contractor Work Hours and Safety Standards:** The Contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with federal, state and County's safety regulations and laws.
21. **Contractor Personnel-Uniform/Badges/Identification:** The contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.

All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by the Contractor and must be worn at all times while working on County property. The assigned buyer must be notified in writing, within seven days of notification of award of contract of the uniform and /or badges and/or other notification to be worn by employees prior to beginning work and notified in writing seven days prior to any changes in this procedure.

22. **Contractor's Power and Authority:** The Contractor warrants that it has the full power and authority to grant the rights herein granted and will hold the County hereunder harmless from and against any loss, cost, liability and expense, including reasonable attorney fees, arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the County under this Contract.
23. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
24. **Cost/Price Data:** At all times during and following the period of Contract performance, the County may require Contractor to furnish such cost and pricing data as the County deems necessary to assess the reasonableness of Contract pricing, including the reasonableness of changes. Contractor agrees to maintain such records for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law.
25. **County Of Orange Child Support Enforcement (Within Ten (10) Days Of Notification Of Selection For Award Of Contract):** In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the Contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:
- a. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
 - b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
 - c. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - d. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.
- Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.
26. **Debarment:** Contractor shall certify that neither contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible.

27. **Default - Reprocurement Costs:** In case of default by Contractor, the County of Orange may procure the services from other sources. If the cost for those services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

28. **Disputes – Contract:**

- a. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
 - i. The Contractor shall submit to the agency/department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - ii. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the provision of services under this Contract. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

29. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The organization's policy of maintaining a drug-free workplace;

- iii. Any available counseling, rehabilitation and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
- i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County Contracts if the County determines that any of the following has occurred:

- a. The Contractor has made false certification, or
- b. The Contractor violates the certification by failing to carry out the requirements as noted above.

30. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations. (See Exhibit D.)

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at

http://www.edd.ca.gov/Payroll_Taxes/FAQ_California_Independent_Contractor_Reporting.htm

31. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster,

emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

32. **Equal Employment Opportunity:** The contractor shall comply with U.S. Executive Order 11426 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, contractor agrees to comply with applicable provisions of Title I of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

33. **Firm Price Quotes:** Prices quoted herein shall be firm for the period of the Contract.
34. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
35. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents or damage or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County directives regarding potential hazards. Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic. Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation.

36. **Headings Not Controlling:** Headings used in the Contract are for reference purposes only and shall not be considered in construing this Contract.
37. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
38. **Material Safety Data Sheets (MSDS):** The contractor is required to provide a completed Material Safety Data Sheet (MSDS) for each hazardous substance provided to the County under the contractor's contract with the County. This includes hazardous substances that are not directly included in the contract, but are included in the goods or services provided by the contractor to the County. The provision of the MSDSs must be in accordance with the requirements of California Labor Code Sections 6380 through 6399, General Industry Safety Order Section 5194, and Title 8, California Code of Regulations. The MSDSs for each substance must be sent to the place of shipment or provision of goods/services and must also be sent to:

County of Orange
 County Executive Office of Risk Management
 Attn: Safety and Loss Prevention Program
 PO Box 327
 Santa Ana, CA 92702

39. **Nondiscrimination – Statement of Compliance:** The Contractor's signature affixed hereon and dated shall constitute a certification under penalty of perjury under the laws of the state of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Section 8103.
40. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor: Mobil Delivery Service, Inc. DBA Diamond Oil Service
 Attn: Jim Reagan
 1553 S. Bluff Road Montebello, CA 90640

For County: County of Orange
 County Procurement Office
 Attn: Marijo Sio
 1300 S. Grand Ave., Bldg A, 2nd flr, Santa Ana, CA 92705

41. **Orders:** The contractor shall receive written or verbal requests from individual County agencies/departments on an as-needed basis for items on this contract, subject to the terms, conditions, and pricing listed herein.
42. **Order Dates:** Orders may be placed during the term of the contract even if delivery may not be made until after the term of the contract. Order dates take precedence over delivery dates. The contractor must clearly identify the order date on all invoices to County.
43. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the exhibits and attachments.
44. **Price Increase/Decrease:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to the County of Orange. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of thirty (30)-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
45. **Regional Cooperative Agreement (RCA) – County-Wide Use:** This Contract is to be used as a Regional Cooperative Agreement against which subordinate contracts will be created and issued by the user agencies/departments based on the fixed pricing, terms, and conditions of this RCA. Contractor will be required to fulfill all service order(s) placed by any County agency/department. For the contractor's full and complete performance of its obligations under this Contract, the County shall compensate the contractor the fixed prices set forth herein. This pricing shall remain firm for the first period of this Contract. County agencies/departments will make service requests in their own names, will have deliveries made to their facilities, and will be responsible for making and approving payments for routine processing by the County of Orange Auditor-Controller.

As required by County policy, some subordinate contracts created against the Regional Cooperative Agreement may require Board of Supervisors approval.

Invoices are to be submitted to the user agency/department to the bill-to address, unless otherwise directed in this Contract. The contractor shall reference the agency/department's subordinate agreement number on the invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility of providing an acceptable invoice rests with the contractor.

The contractor will be responsible for providing each agency/department a copy of the Regional Cooperative Agreement upon request.

The contractor is required to maintain a list of the agencies/departments that have used this Regional Cooperative Agreement, including a list of the dollar volumes spent, and shall provide this report on a quarterly basis to the originating County entity.

46. **Cooperative Agreement:** The provisions and pricing of this contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another agency or entity that is entered into as an extension of this Contract a contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The contractor is responsible for providing each cooperative entity a copy of the contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this contract.

The contractor shall be required to maintain a list of the cooperative entities using this contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County.

47. **Security – Youth Detention Facilities/Sheriff's Facilities:** Background checks:

All contractor personnel to be employed in performance of work under this contract shall be subject to background checks and clearance prior to working in a youth detention facility or a Sheriff's facility. The contractor shall prepare and submit an information form to the County's project manager for all persons who will be working or who will need access to the facility. These information forms shall be submitted at least five County working days prior to the start of work on the contract or prior to the use of any person subsequent to the contractor's start of work. These information forms will be provided by the County's project manager upon request and will be screened by the County's Probation Department and/or Sheriff's Department. These information forms shall be thorough, accurate, and complete. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance. No person shall be employed under this contract who has not received prior clearance from the Probation and/or Sheriff's Department. Neither the County, the Probation Department, nor the Sheriff's Department need give a reason clearance is denied.

Performance Requirements:

All contractors' vehicles parked on site shall be locked and thoroughly secured at all times. All tools and materials shall remain in contractor's possession at all times and shall never be left unattended. All lost or misplaced tools or materials shall be reported immediately to the security staff or Control in youth detention facilities or to the escort or Control in the Sheriff's facilities. All materials, large or small, from removal operations or flew construction (especially those materials that could be used to inflict injury, such as nails, wire, wood, etc.) shall be continuously cleaned up as work progresses. All work areas shall be secured prior to the end of each work period. Workers shall have no contact, either verbal or physical, with inmates in the facilities.

Contractor's employees shall NOT:

1. Give names or addresses to inmates;
2. Receive any names or addresses from inmates (including materials to be passed to another individual or inmate);
3. Disclose the identity of any inmate to anyone outside the facility;

4. Give any materials to inmates; or
5. Receive any materials from inmates (including materials to be passed to another individual or inmate).

Failure to comply with these requirements is a criminal act and can result in prosecution.

Contractor's employees shall not smoke or use profanity or other inappropriate language while on site. Contractor's employees shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession. Contractor's employees shall plan their activities to minimize the number of times they must enter and exit a facility. They should transport all tools, equipment and materials needed for the day at the start of the work period and restrict all breaks to the absolute minimum.

Contractor's personnel shall:

1. Comply with the written schedule provided by the County which shall clearly show the specific start and end times for each work day;
2. Arrive at the site no more than 15 minutes prior to the scheduled time or no more than 15 minutes after the scheduled time; and
3. Report to the control desk upon arrival at the job site.

Control will ensure that the work area is clear and ready for work to begin. If a contractor's employee is delayed or cancellation is necessary, the designated on-site coordinator or the County's project manager should be contacted immediately. Repeat problems will be grounds for remedial action which may include contract termination.

48. **Sub-Contracting:** No performance of this Contract or any portion thereof may be assigned or sub-contracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to assign or sub-Contract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to sub-Contract, this Contract shall prevail and the terms of the sub-Contract shall incorporate by reference and not conflict with the terms of this Contract. In the manner in which the County expects to receive services, the County shall look to the Contractor for performance and not deal directly with any sub-Contractor. All matters related to this Contract shall be handled by the Contractor with the County; the County will have no direct contact with the sub-Contractor in matters related to the performance of this Contract. All work must meet the approval of the County of Orange.

49. **Usage Reports – Annual:** The contractor shall submit usage reports on an annual basis to the assigned buyer of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
50. **Terms and Conditions:** The only terms and conditions that will be applicable to this solicitation and resultant Contract are those issued by County Procurement Office.

ATTACHMENT A
Scope of Work

I. GENERAL INFORMATION:

The Contractor will be providing Fuel / Gasoline and related services to various County facilities and participating government entities located throughout the County of Orange.

Service locations may be added or deleted and service hours modified at any given time. Contractor is required to provide fuel and related services upon request by any County agency/department and participating government entity.

II. FUEL SPECIFICATIONS:

- A. Fuel provided must meet Air Resources Board (ARB), "The California Reformulated Gasoline Regulations" Title 13, California Code of Regulations Sections 2250-2273.5 latest version / sub articles, and all inclusive amendments.
- B. Fuel provided must meet Reid Vapor Pressure (RVP) Requirements as required under California's Phase 2 Reformulated Gasoline (CaRFG2) & Phase 3 Reformulated Gasoline (CaRFG2).
- C. Fuel provided must comply with the requirements of American Society of Testing and Materials (ASTM) D4815 standard or latest version as verified by an independent lab of the County's choosing.
- D. Regular Unleaded Gasoline shall have Minimum Octane Rating of 87 which shall be determined by using the R+M/2 method.
- E. Unleaded Plus Gasoline shall have Minimum Octane Rating of 89 which shall be determined by using the R+M/2 method.
- F. Unleaded Premium Gasoline shall have Minimum Octane Rating of 92 which shall be determined by using the R+M/2 method.
- G. Only products of new manufacture or distillation will be accepted. No refined or reclaimed products will be accepted. All fuel / gasoline shall have a minimum shelf life of one (1) year.
- H. All products furnished shall conform to all Federal, State, Local, American Society of Testing & Materials (ASTM), Department of Transportation (DOT) and Air Resources Board (ARB) regulations for the handling and supply of unleaded fuel/gasoline.

III. CONTRACTOR RESPONSIBILITIES:

- Contractor shall possess all Federal, State and Local permits, licenses and approvals necessary to provide goods/services required in the Scope of Work. Any associated fees shall be the responsibility of the Contractor.
- Contractor shall provide all transitional interfacing and continual uninterrupted services at

Contract date.

- Contractor shall provide Material Safety Data Sheet (MSDS) at time of fuel delivery as required by law.
- If service on any County owned tank is required, Contractor shall service the tank only at the County's request at the hourly rate specified in Attachment C.
- Contractor shall be held liable for any damage or criminal /civil citations which may occur as a result of any spills and/or accidents.
- Contractor shall perform all deliveries and to act in a safe and professional manner, adhering to all applicable Federal, State, Local, American Society of Testing & Materials (ASTM), Department of Transportation (DOT) and Air Resources Board (ARB) regulations for the handling and supply of unleaded fuel/gasoline.
- Contractor must commit to delivery as requested, at time stated on accepted orders.
- Contractor's delivery trucks must comply with the California Air Resources Board approved/certified Phase II Vapor Recovery Equipment Requirements. Proof of compliance shall be provided to the County upon request.
- All drivers / delivery personnel shall be HAZMAT trained and certified in safety measures to prevent accidents endangering County personnel and property.
- Contractor shall be responsible for obtaining fuel reading and managing load inventory as requested by County.
- Contractor shall provide, at Contractor's cost, a 24-hour, toll free customer support telephone number and services for responding to all requests / orders for fuel , including telephone coverage on weekdays during normal business hours as well as 24-hour access phone number for emergency situations.
- Contractor shall be responsible for all freight/delivery charges.
- All fuel delivered to the County shall be temperature corrected to 60 degrees Fahrenheit.
- Contractor shall perform full delivery of fuel within 48 hours after receipt of agency/department's order. Contractor shall provide a delivery metered ticket for each delivery of fuel; and the metered ticket must be signed and dated, and provided to the ordering agency at delivery.
- Contractor shall itemize applicable Federal and California fuel surcharges, Federal and State Excise Tax, and California State Sales Tax as separate line items when invoicing.

IV. ADDITIONAL FEES/CHARGES:

EMERGENCY DELIVERY:

Deliveries requested outside the regular delivery hours of 8:00 am to 5:00 pm and County observed holidays shall be considered an emergency. Contractor shall be entitled to an emergency delivery fee.

and an emergency delivery invoice must accompany the fuel invoice for payment of the fee. The emergency delivery fee shall be billed at the rate specified in Attachment C.

URGENT DELIVERY:

The Contractor is expected to deliver any urgent fuel orders by the County within twenty four (24) hours of the time that orders were placed at no additional cost. Urgent deliveries are not anticipated to occur often and ordering agencies should keep it to a minimum. There shall be no minimum requirement on urgent deliveries and shall occur during normal delivery hours of 8:00 am to 5:00 pm. unless special delivery instructions is given by the requesting agency.

STANDING TIME:

The County will not be charge any additional fees for the amount of time it takes the Contractor in offloading / transferring fuel to County tanks in various locations.

SPILLAGE:

The County requires "zero leakage" standard for fuel transfer operations.

The Contractor shall provide necessary equipment and proper training of delivery personnel to prevent spillage or minimize the chance of spillage during connection and disconnection of hoses and during the transfer of fuel. The Contractor will likewise ensure that all equipment, tools and procedures used are in compliance with all applicable specification and regulations governing such operations.

In the event of leakage or spillage, it shall be the responsibility of the Contractor to perform immediate containment, clean up, disposal and restoration activities as necessary in accordance with applicable State of California laws and regulations and subject to the County's satisfaction. All material associated with such clean up shall be removed by the Contractor.

V. COUNTY REPONSIBILITIES:

- County agencies/departments shall provide Contractor with a log that will include the following information:
 - Agency/ Department Name
 - Agency Contact's Name & Number
 - Agency /Department Location
 - Number of fuel tanks; capacity/sizes; unit of measure & fuel site / delivery location
- A copy of the log shall be forwarded to the County Procurement Office.
- Ordering agencies/departments or participating government entities shall coordinate delivery schedules with Contractor and specify details of each delivery location's physical surroundings and/or limitations (i.e. Secured & remote locations; no loading dock; narrow, winding or unpaved roads). Depending on the agreed schedule with the agency/department or participating government entity, the Contractor is requested to deliver during off peak hours between 10 am to 4 pm.
- County will work with Contractor on security clearance procedures that may be required for delivery drivers on high security facilities / locations.

- If service on any County owned tank is required, the Contractor shall service the tank only at the County's request at the hourly rate specified in Attachment C.

VI. SECURITY REQUIREMENTS

- A. The County operates several secured facilities: most notable are several Probation, Sheriff and Airport operated sites. Contractors and their employees who perform services in these facilities will be required to strict operation policies and may be required to pass a background check prior to their employment due to security requirements for certain facilities covered under this Contract. During performance of the work, especially at detention facilities, workers shall closely monitor all tools, equipment and other materials at all times. Workers shall have no contact verbal or physical, with any inmate of these facilities. These policies have been designed with the primary purpose of ensuring a safe and secure environment for all involved.
1. The Contractor will provide a list of all personnel/employees who will be directly performing tasks associated with the Contract. Contractor's personnel/employees providing service in a secured detention facility, a Probation facility or a Sheriff's facility will be expected to pass two (2) separate background checks performed by the Orange County Sheriff's Department and the Orange County Probation Department. No changes shall be authorized to the approved list without a request in writing submitted by the Contractor and approved by the County Site Coordinator. At no time will unauthorized Contractor employees perform any task associated with this Contract. If this occurs, the Contractor will be notified that they have not complied with the terms of this Contract and are subject to Contract termination. The list of all Personnel/Employees working on County projects shall be submitted prior to award of this Contract.
 2. Contractor shall prepare and submit a Security Clearance form to the County Site Coordinator for all persons who will be working on or who will need access to secured facilities.
 3. Security Clearance forms shall be submitted at least five (5) working days prior to the start of work or prior to the use of any person subsequent to the start of work.
 4. Said Security Clearance forms shall be thoroughly and accurately complete. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.
 5. No person shall be employed on this work who has not received prior clearance from the Probation Department, Sheriff's Department or John Wayne Airport.
 6. The County, John Wayne Airport, the Probation Department and the Sheriff's Department are not under any obligation to give a reason clearance is denied.
 7. The Contractor shall be responsible to sign in with the County Site Coordinator or designee, as required. Upon arrival at any secure facility (e.g., JWA, Probation) the Contractor shall report to the Central Control Center (Control). Contractor personnel shall have no contact, either verbal or physical, with internees in secured detention facilities.

Specifically:

- (a) Do not give names or addresses to internees.

- (b) Do not receive any names or addresses from internees.
- (c) Do not disclose the identity of any internee to anyone outside the facility.
- (d) Do not give any materials to internees.
- (e) Do not receive any materials from internees (including materials to be passed to another individual or internee).

**Failure to comply with these requirements is a criminal act and can result in prosecution.*

8. Any Contractor personnel/employee(s) engaged in the performance of work under this Contract shall be expected to pass the screening requirements and abide by all of the security requirements set forth by the Federal Aviation Administration (FAA) and the County of Orange.

"The Federal Aviation Administration (FAA) approved security program for John Wayne Airport requires that each person issued a John Wayne Airport security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of the airport".

All persons within the restricted air operation areas of the airport are required to display, on their person, a John Wayne Airport security badge, unless they are specifically exempted for reasons or they are under escort by a properly badge individual. Each airport employee or airport tenant employee who has been issued a John Wayne Airport security badge is responsible for challenging any individual who is not properly displaying an airport issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid John Wayne Airport security badge must immediately be referred to the Sheriff's Department Airport Detail Office for proper handling.

The John Wayne Airport security badge is the property of the County of Orange and must be returned upon termination of employment at John Wayne Airport. The loss of a badge shall be reported within twenty-four (24) hours to the Sheriff's Department Airport Dispatch Center (949) 252-5000. A report shall be made before a replacement badge will be issued.

ATTACHMENT B
Payment/Compensation

1. **PAYMENT – INVOICING INSTRUCTIONS:** The Contractor will provide an invoice on the Contractor's letterhead for services rendered. Invoices must be submitted to address indicated on the Subordinate Contract created by the individual agency/department. The invoice must have a unique number and must include the following information:
 - a) Contractor's name and address;
 - b) Contractor's remittance address if different from above;
 - c) Contractor's Federal Tax I.D. Number;
 - d) Name of County Agency/Department serviced;
 - e) Fuel Site /Service address;
 - f) Master Agreement (MA) or Delivery Order (DO) number;
 - g) Date of fueling services rendered;
 - h) Fuel charges
 - i) Additional Fees/Charges
 - j) Service description, including number of hours or fraction thereof
 - k) Surcharges and Taxes
 - l) Total for each order

2. **PAYMENT TERMS:** Invoices are to be submitted in arrears to the user agency/department to the bill-to address or delivery location, unless otherwise directed in this Contract. Contractor shall reference the Master Agreement Number or Delivery Order number on invoice. Payment will be net 30 days after receipt of the invoice in a format acceptable to the County and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services not previously invoiced. The Contractor shall reimburse the County for any monies paid to the Contractor for services not provided or when services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

3. **PAYMENT PROCESSING:** For purposes of payment processing, invoiced prices are to be the daily unbranded "average" price published in the OPIS PAD District 5 Report for the Los Angeles, California Area +/- Contractor's quoted adjustment / differential. All invoices must show the contract pricing formula:

OPIS PAD District 5 Los Angeles Regional Rack Price +/- Adjustment/Differential = Total Price per Gallon

The Contractor is also required to attach a copy of the OPIS Report in each fuel invoice for the County to verify legitimacy of the per gallon price on the fueling date.

**ATTACHMENT C
Fuel Pricing**

Prices are to be the daily "average" price published in the OPIS (Oil Price Information Service) for unbranded fuel under PADD 5(Petroleum Administration for Defense District) Los Angeles Regional Rack Report for the type /grade of fuel requested, +/- Contractor's "cents per gallon" market adjustment / differential.

OPIS PAD District 5 Los Angeles Regional Rack Price +/- Adjustment/Differential = Total Price per Gallon

The market "adjustment / differential" shall be inclusive of all delivery/unloading/handling charges to all County fuel fill locations or participating government entity location.

The market adjustment / differential (difference between the bid price and the daily average price Los Angeles Rack Price reported by OPIS for Unbranded Fuel) shall remain firm for the entire term of the contract.

The Contractor is also required to attach a copy of the OPIS Report in each fuel invoice for the County to verify legitimacy of the per gallon price on the fueling date.

Gallons	Regular Unleaded Gasoline, Minimum Octane Rating 87	Unleaded Plus Gasoline, Minimum Octane Rating 89	Unleaded Premium Gasoline, Minimum Octane Rating 92
0 – 1,999 gallons	+0.10	+0.10	+0.10
2,000 – 4,999 gallons	+0.06	+0.05	+0.05
5,000 – 9,999 gallons	-0.0125	-0.0225	-0.0225
10,000+ gallons	-0.0125	-0.0225	-0.0225

Additional Fees / Charges	Dollar Amount
Emergency Delivery Fee – Fixed Fee Per Delivery	\$100.00
Service Rate Per Hour	\$85.00

Hourly service rates herein shall include all costs for labor, tools, equipment, transportation, overhead, profit, travel time, and all other costs related to providing the services described in the scope of work. Hourly service rates shall be prorated and billed to the nearest ¼ hour.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
4/15/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Leavitt Southern California Insurance Services #0F13098 1820 E. First Street, Ste 500 Santa Ana CA 92705	CONTACT NAME: Lisa Andrade PHONE (A/C No. Ext): (714) 569-2700 E-MAIL ADDRESS: lisa-andrade@leavitt.com	FAX (A/C No.): (714) 569-3099													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A :HDI-Gerling America Insurance</td> <td>41343</td> </tr> <tr> <td>INSURER B :Intl Ins Co of Hannover</td> <td>86486</td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>		INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A :HDI-Gerling America Insurance	41343	INSURER B :Intl Ins Co of Hannover	86486	INSURER C :		INSURER D :		INSURER E :		INSURER F :
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INSURED Mobil Delivery Service, Inc. DBA: Diamond Oil Service 1553 South Bluff Road Montebello CA 90640															

COVERAGES CERTIFICATE NUMBER:15-16 GL A WC EXC CARGO REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC		EGGCD000030515	4/1/2015	4/1/2016	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ EXCLUDED PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> Pollution CA9948 <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS		EAGCD000030515	4/1/2015	4/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ MCS 90 Endorsement \$ INCLUDED
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 1,000		EXAGD000030515	4/1/2015	4/1/2016	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	EWGCD000030515	4/1/2015	4/1/2016	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Motor Truck Cargo		MTC14E046802	4/1/2015	4/1/2016	Single Conveyance/\$400,000 Deduct/5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Re: Fuel Delivery Service for the City of Costa Mesa
 City of Costa Mesa is named as Additional Insured as respect to General Liability per endorsements CG2010 0413 and CG2037 0413 attached. Workers Compensation Waiver of Subrogation applies per endorsement WC040306 (Ed. 4-84) attached.

CERTIFICATE HOLDER stephanie.urueta@costamesa City of Costa Mesa - City Hall 77 Fair Drive Costa Mesa, CA 92628-1200	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Gary Wells/DAMEAD
---	---

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
AS REQUIRED BY WRITTEN CONTRACT, , , CA	

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
AS REQUIRED BY WRITTEN CONTRACT , , CA	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT—CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2% of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

As Required By Written Contract

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 04-01-2015
Insured
MOBIL DELIVERY SERVICE, INC.

Policy No. EWGCD000030515
Insurance Company
HDI-Gerling America Ins. Co.

Endorsement No.

Countersigned By _____