



County of Santa Clara

Office of the County Executive
Procurement Department

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San Jose, CA 95131-1040
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FIRST AMENDMENT TO AGREEMENT CW2239583 BY AND BETWEEN THE COUNTY OF SANTA CLARA AND WESTERN STATES OIL COMPANY

This is the First Amendment to the Agreement between the County of Santa Clara (County) and Western States Oil Company (Contractor) entered into on January 12, 2021 to provide Ultra-Low Sulfur Diesel and Renewable Diesel 4001 to 6000 Gallons and Big Tanks.

This Agreement is amended as follows effective January 12, 2021:

1. Key Provision, **AGREEMENT TITLE**, is revised to read: "Ultra-Low Sulfur Diesel and Renewable Diesel 4001 Gallons and Up and Big Tanks".
2. Key Provision, **TOTAL AGREEMENT VALUE**, is revised to read: "The total not to exceed value of this Agreement is \$5,000,000 which represents an increase of \$ 4,600,000 from the prior not to exceed value of \$400,000.

Contractor understands that this not to exceed value does not represent a commitment by County to Contractor."

3. Replace **Exhibit B, PRODUCT AND PRICE SCHEDULE**, with **Exhibit B-1, PRODUCT AND PRICE SCHEDULE**, attached hereto and incorporated herein by this reference. Exhibit B-1 includes Ultra-Low Sulfur Diesel and Renewable Diesel 6001 Gallons and Up.
4. Replace **Exhibit C, REQUIREMENTS AND SPECIFICATIONS**, with **Exhibit C-1, REQUIREMENTS AND SPECIFICATIONS**, attached hereto and incorporated herein by this reference. Any reference to Ultra-Low Sulfur Diesel and Renewable Diesel 4001 to 6000 Gallons is revised to Ultra-Low Sulfur Diesel and Renewable Diesel 4001 Gallons and Up.

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All other terms and conditions of the Agreement remain in full force and effect. In the event of a conflict between the original Agreement and this Amendment, this Amendment controls.

Prepared and administered by: Samuel Hirsch at (408) 491-7485 or samuel.hirsch@prc.sccgov.org

The Agreement as amended constitutes the entire agreement of the parties concerning the subject matter herein and supersedes all prior oral and written agreements, representations and understandings concerning such subject matter.

By signing below, signatory warrants and represents that he/she executed this Amendment in his/her authorized capacity, that he/she has the authority to bind the entity listed below to contractual obligations and that by his/her signature on this Amendment, the entity on behalf of which he/she acted, executed this Amendment.

COUNTY OF SANTA CLARA

CONTRACTOR

DocuSigned by:
Teresa Cox 1/12/2021
3A5DF4E90991401...
 Teresa Cox Date
 Procuring Officer

DocuSigned by:
Gene Clark 1/12/2021
C685F692AC71492...
 Gene Clark Date
 Chief Procurement Officer

DocuSigned by:
Bob Brown
B2C3CD0F2FB84AF...

By: _____
 Print: Bob Brown
 Title: Special Project Manager
 Date: 1/12/2021

APPROVED AS TO FORM AND LEGALITY

DocuSigned by:
Sara J Ponzio 1/12/2021
4B974B9E089D4D9...
 Sara Ponzio Date
 Deputy County Counsel

Attachments:
Exhibit B-1, Product and Price Schedule
Exhibit C-1, Requirements and Specifications

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EXHIBIT B-1
Product and Price Schedule

The County shall only be charged for goods as included and described in this Exhibit B-1 Product and Price Schedule. Any charges or fees not specifically listed in this Exhibit B-1 shall not be invoiced to the County.

A. PRICING TABLE

| # | Product Description | Range of Quantity Ordered | UOM | Fixed Margin off OPIS Daily Contract Average Rack Price |
|---|---|---------------------------|--------|---|
| 1 | Ultra-Low Sulfur Diesel and Renewable Diesel | 4001-6000 | Gallon | \$-0.0050 |
| 2 | Ultra-Low Sulfur Diesel and Renewable Diesel | 6001 and Above | Gallon | \$-0.0150 |
| 3 | Ultra-Low Sulfur Diesel and Renewable Diesel Big Tank | 10000 | Gallon | \$-0.0225 |

Prices are on a per gallon basis per the increments shown on the table. All prices shall be F.O.B. destination freight prepaid and allowed. All costs incidental to delivery and off-loading of fuel or coordinating fuel pick up are included in the price. Pricing does not include any State of California fees, taxes or the Cap-and-Trade for fuel California Carbon Allowance (CAR) fee that went into effect on January 1, 2015. However, the parties agree that all current California fees and taxes will be included in the final paid price per gallon for fuel purchased under the Agreement. The County and the participating agencies will not be charged for any additional fees for the amount of time it takes the Contractor to offload and transfer fuel to tanks in various locations.

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EXHIBIT C-1
Requirements and Specifications

Contractor shall provide Ultra-Low Sulfur Diesel and Renewable Diesel 4001 Gallons and Up, and Big Tanks to the County of Santa Clara in accordance with the terms and conditions of this Agreement.

The Agreement shall be used as a master agreement against which the ordering department shall issue subordinate purchase documents based on the pricing, terms, and conditions of the agreement. County does not guarantee, whether implied or in writing, to purchase any estimated quantities based on past usage, annual dollar volume, or quantity. No minimum orders are guaranteed.

A. BACKGROUND

The County of Santa Clara's Facilities and Fleet (FAF) requires Ultra-Low Sulfur Diesel and Renewable Diesel for the locations listed in the service locations in table 2.1 below.

B. OBJECTIVES

Contractor must be capable of:

1. Providing Ultra-Low Sulfur Diesel and Renewable Diesel on an as needed basis;
2. Delivering fuel to multiple County locations on an as needed basis;
3. Following all required specifications and delivery requirements throughout the term of the Agreement.
4. Responding to emergency calls; and
5. Providing reports per County requirements.

C. DEFINITIONS

1. CRPO: Contract Release Purchase Order
Abbreviation for Contract Release Purchase Order, which is a County-issued purchase order provided to the Contractor when an order is placed for contracted services and goods.
2. CARB: California Air Resources Board

D. SPECIFICATIONS AND SUPPLIER RESPONSIBILITIES

1. Technical Specifications

- 1.1 All products shall conform to the State of California specifications including California Air Resources Board (CARB), American Society of Testing & Materials (ASTM), "The California Reformulated Gasoline Regulations" Title 13, California Code of Regulations Sections 2250-2273.5 latest version /sub articles, and all-inclusive amendments.

1.1.1 Regular Unleaded Gasoline

2. Service Locations

2.1 Contractor shall service the County's required distribution points/locations as listed in the table below.

| # | Location | Address |
|----|--------------------------------------|--|
| 1 | FAF Fleet Management | 2265 Junction Ave. San Jose |
| 2 | Roads East Yard | 1505 Schallenberger Rd. San Jose |
| 3 | Roads West Yard | 11031 Doyle Rd. San Jose |
| 4 | Roads South Yard | 13550 Diessner, San Martin |
| 5 | Parks Central Yard | 995 Hellyer Ave., San Jose |
| 6 | Younger Gas Station | 90 W. Younger Ave., San Jose |
| 7 | James Boys Ranch | 19050 Malaguerra Ave., Morgan Hill |
| 8 | Joseph D. Grant Ranch | 18405 Mt. Hamilton Road., San Jose |
| 9 | Uvas Canyon Park | 8515 Croy Rd., Morgan Hill |
| 10 | Vasona Lake Park | 298 Garden Hill Dr., Los Gatos |
| 11 | Calero Lake | 3201 McKean Rd., San Jose |
| 12 | Ed Levin Park | 3100 Calaveras Road., Milpitas |
| 13 | Mt. Madonna Park | Hecker Pass Hwy, Watsonville |
| 14 | Coyote Lake | 10840 Coyote Lake Rd. Gilroy |
| 15 | Sanborn-Skyline Park | 16055 Sanborn Rd., Saratoga |
| 16 | Stevens Creek Park | 11401 Stevens Canyon Rd., Cupertino |
| 17 | Mt. Hamilton San Antonio Valley Yard | 47365 San Antonia Valley Road, Livermore |

3. Fuel and Fuel Delivery Requirements

3.1 Orders and Locations

3.1.1 Fuel site deliveries will include a combination of filling tanks and direct facility of off-road equipment with specified quantities. No order shall be delivered without an order placed by the responsible County Department.

3.1.2 The County reserves the right to add locations or discontinue service to existing locations without any additional charges or change in the bid price structure. All tanks will be underground unless otherwise stated. All fuel shall be delivered to designated points unless otherwise stated.

3.1.3 The following locations take deliveries by transport:

3.1.3.1 FAF Fleet Management, 2265 Junction Ave. San Jose

3.1.3.2 Roads West Yard, 11031 Doyle Rd. San Jose

3.1.3.3 Roads South Yard 13550 Diessner, San Martin

3.1.3.4 Roads East Yard. 1505 Schallenberger Rd. San Jose

3.1.3.5 Santa Rita Fuel Station, 6175 Madigan Rd. Dublin, CA

3.1.3.6 Santa Rita Fuel Station, 6175 Madigan Rd. Dublin, CA

3.1.3.7 14200 Chapman Road, Leandro, CA 94578

3.2 If delivery vehicle is equipped with metered pumps, these pumps shall be currently certified as to accuracy by the California Department of Agriculture, Division of Weights and Measures.

3.3 If metering is not accomplished from the delivery vehicles at the time of delivery, a highway transportation receipt (H.T.R.), issued at the point where the fuel order was loaded in the delivery vehicle, shall be delivered

to the ordering Department. At minimum the H/T/R. shall show the date fuel loaded, carrier, truck numbers, quantity and type of fuel loaded, and temperature when loaded.

- 3.4** All deliveries shall be temperature corrected to 60 degrees Fahrenheit.
- 3.5** All delivery trucks shall comply with the California Environmental Protection Agency Air Resources Board approved certified Phase II Vapor Recovery Equipment Requirements. Proof of compliance will be supplied by the awarded vendor when requested by the County. There are many other smaller Back-up Power Generators that tanks do not need to meet the EVR requirements, but at times the vendor may need to service these locations too.
- 3.6** Delivery dates and times must be coordinated with the County end user Department. All deliveries shall be made Monday through Friday between the hours of 8:00 a.m. to 5:00 p.m. unless special delivery restrictions or instructions are required by the requested County end- user Department.
- 3.7** Urgent Deliveries
 - 3.7.1** It shall be expected that vendor shall deliver any urgent fill orders placed by the County and participating agencies within twelve (12) hours of the time order is placed with no additional cost.
 - 3.7.2** Urgent deliveries are not anticipated to occur often and shall be kept to a minimum by the end-user Department placing the order.
 - 3.7.3** There are no minimum requirements for urgent deliveries.
 - 3.7.4** All urgent deliveries shall occur during normal delivery hours of 8:00 a.m. to 5:00 p.m. unless special delivery instructions apply by the requesting Department.
- 3.8** Emergency Deliveries
 - 3.8.1** During a state of emergency, in which a natural disaster or other type of declared emergency, County of Santa Clara is a first responder to said emergency. As a result, the County and any other participating agencies of this contract, will have a priority status on available fuel.
 - 3.8.2** It shall be expected that vendor shall deliver any emergency fill orders placed by the County and participating agencies within four (4) hours of the time order is placed with no additional cost to the County.
 - 3.8.3** Emergency deliveries are not anticipated to occur often and shall be kept to a minimum by the end-user Department placing the order.
 - 3.8.4** There are no minimum requirements for emergency deliveries.
 - 3.8.5** Emergencies deliveries shall be placed by phone from the ordering department with confirmation by electronic mail or facsimile by the same ordering Department.
- 3.9** Standing Time – The County will not be charged any additional fees for the time it takes the Contractor to fuel the County’s off-road equipment or generator tanks.
- 3.10** Spillage
 - 3.10.1** The County has a “zero” leakage standards for fuel transfer operations.

- 3.10.2** The Contractor shall provide equipment for and training of truck drivers to minimize the chance of spillage during connection and disconnection of hoses and during the transfer of fuel.
- 3.10.3** The vendor shall ensure that all equipment, tools and procedures used follow all applicable specifications and regulations governing such operations.
- 3.10.4** In the event of leakage or spillage, it shall be the vendor's responsibility to effect immediate containment, cleanup, and disposal and restoration activities in accordance with applicable State of California laws and regulations and subject to County's satisfaction.
- 3.10.5** All material associated with such clean-up shall be removed by the Contractor.
- 3.11** Safety Data Sheet – It is required by law that all hazardous materials must be identified and be accompanied with a "Safety Data Sheet" (SDS) at the delivery site.
- 3.12** Substitutions – Contractor will not be allowed to substitute any product with any other without the consent of the County end-user Department placing the order. If substitute products are delivered without approval, it will be the responsibility of the vendor to collect product at no charge or penalty to the County.

4. Electronic Transactions in Ariba Network

The County has implemented the Santa Clara County Procure-to-Pay Collaborative Commerce (SCC P2P) project in year 2015 to streamline its procurement and payment functions. The County transacts business with its suppliers electronically using the Ariba system, which includes issuing purchase orders to and receiving invoices from its suppliers. In order to do business with the County, Contractor needs to register to establish a relationship with the County on the Ariba Network. The Ariba Network is a cloud-based electronic commerce network that allows buyers and sellers of goods and services to collaborate.

Contractor will not be charged for their relationship and/or any transactions with the County of Santa Clara on the Ariba Network.

Contractor shall provide and maintain an Ariba-compatible catalog of all products within the scope of the contract.

5. Reports

Contractor shall be responsible for processing, discussing, and submitting reports upon request, which shall include, but not be limited to:

- 5.1** Spend Reports – Expenditures against the Agreement, including ability to provide total spend by the County, total spend for contracted services and products, and total spend by date.

- 5.2 Usage Reports – Includes but shall not be limited to the cumulative contract activity and any other analytical information as mutually agreed upon.
- 5.3 Upon request and as mutually agreed upon by County and Contractor, Contractor shall provide additional reports on items that are not contained in the spend or usage reports.

6. Invoicing

- 6.1 Invoices shall be provided to the County end user departments submitting the CRPO. Invoices shall include, but not be limited to the following information:
 - 6.1.1 Fuel site location;
 - 6.1.2 Date and time of transport;
 - 6.1.3 Description(s) of product(s) provided;
 - 6.1.4 Amount of fuel;
 - 6.1.5 Total gallons and dollars by product;
 - 6.1.6 Summary of fuel gallons applicable taxes;
 - 6.1.7 Copy of OPIS Rack Price for the date of order/delivery
 - 6.1.8 Associated CRPO numbers(s); and
 - 6.1.9 Associated Agreement number.
- 6.2 Contractor shall correct any invoices that include incorrect or missing information. Invoices cannot be processed until invoices are correct and approved by County department.
- 6.3 Contractor shall not invoice the County for any fees or charges not specifically listed in the final agreement.
- 6.4 Credit Memos – Contractor shall issue credit memos to the County identifying any amounts due back to the County for incorrect charges (e.g. overcharges, cancellations, non-contracted products, etc.).

E. COUNTY RESPONSIBILITIES

- 1. County shall issue a CRPO to the Contractor for all contracted products to be ordered against this Agreement.
 - 1.1 CRPO issuance may need to be processed upon delivery of products by Contractor. For these instances, County shall issue CRPO's after delivery of products and receipt of invoice.
 - 1.2 County shall not process any invoices for payment until goods are delivered and received.

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