REVERSE AUCTION FOR BULK FUEL BID # **1022**

Issue Date: September 25, 2009

COOPERATIVE PURCHASE INVOLVING
THE FOLLOWING CALIFORNIA AGENCIES:
COUNTY OF SANTA CLARA

COUNTY OF SANTA CRUZ

CITY OF GILROY

CITY OF MOUNTAIN VIEW

CITY OF SAN JOSE

CITY OF SAN LEANDRO

CITY OF SUNNYVALE

MORGAN HILL UNIFIED SCHOOL DISTRICT

SANTA CLARA VALLEY WATER DISTRICT

BIDS RECEIVED VIA ELECTRONIC MEANS ON:

Wednesday, October 14, 2009,

AND

Thursday, October15, 2009

AND

Friday, October 16, 2009

ALL DATES BETWEEN 10 a.m. PDT AND 11 a.m. PDT

Lead Agency:

Procurement Department

County of Santa Clara

2310 North First Street, Suite 201

San Jose, CA 95131-1040

(408) 491-7403

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SECTION I. INVITATION

Bids are invited **BY REVERSE AUCTION** to provide unleaded gasoline, diesel fuel and/or bio-fuel during a three-year period for the following California public agencies: Counties of Santa Clara and Santa Cruz; Cities of Gilroy, Mountain View, San Jose, San Leandro and Sunnyvale; Morgan Hill Unified School District; and Santa Clara Valley Water District. The estimated combined total annual purchases of the participating agencies are 3,642,520 gallons of unleaded gasoline, +738,600 gallons of diesel, and 963,633 gallons of bio-diesel. Bids are invited for individual lots and fuel types.

The lead agency is the County of Santa Clara which has taken responsibility for consolidating information from the participating agencies into this bid solicitation; facilitating communication between bidders and agencies during the bidding period; and issuing Addenda, if required. However, the successful bidder(s) shall enter into individual contract(s) directly with each participating agency. The individual contracts will have a variety of contract start dates; and each individual contract may be extended for additional periods at the option of each agency.

SECTION II. INSTRUCTIONS TO BIDDERS

A. **Method of Procurement** – The participating agencies have determined that a reverse auction will be utilized as the method of procurement for this purchase. The auction event will take place in three sections, as follows:

- Auction Section 1 (unleaded gasoline) is scheduled to start Wednesday, October 14, 2009, at 10 a.m. PDT and is scheduled to end October 14, 2009, at 11 a.m. PDT in accordance with auction rules.

- Auction Section 2 (diesel fuel) is scheduled to start Thursday, October 15, 2009, at 10 a.m. PDT and is scheduled to end October 15 2009, at 11 a.m. PDT in accordance with auction rules.

- Auction Section 3 (bio-diesel fuel) is scheduled to start Friday, October 16, 2009, at 10 a.m. PDT and is scheduled to end October 16, 2009, at 11 a.m. PDT in accordance with auction rules.

B. **General Inquiries and Addenda** – If any discrepancies or omissions are found in this bid solicitation or if there is doubt as to the meaning of any portion of the general requirements and/or the requirements of any participating agency, bidders shall post questions on BidSync's website at www.bidsync.com. The County of Santa Clara Procurement Department, after consultation with participating agencies, will respond to inquiries relevant to the bid solicitation in one or more Addenda which will also be posted on BidSync's website. The County will endeavor to answer posted questions in a timely manner. However, the County makes no guarantee that questions submitted will be answered before the date and time set for the auction event.

The County may also post Addenda on BidSync's website which includes information that participating agencies deem necessary and relevant to responding to the bid solicitation.

Specifications may not be amended without the issuance of a written Addendum by the County of Santa Clara, California. Participating agencies shall not be held responsible for oral interpretations.

C. **Bidder Participation in Reverse Auction** – All bids will be accepted only via online reverse auction during the event. To be eligible to bid during the reverse auction, bidders must register with BidSync at www.bidsync.com (click on "Register") by 5 p.m. on Tuesday, September 29, 2009.

Pre-Bid Conference- A pre-bid conference will be held on Friday, **October 2, 2009, beginning at 9 a.m. PDT,** and will include a BidSync webcast. The intent of this conference and webcast is to introduce bidders to the reverse auction process and to train them in the use of the BidSync software. Although participation is optional, bidders are highly encouraged to take advantage of this opportunity to ensure a successful reverse auction experience. To schedule participation, bidders shall contact Pomi Amjad, County of Santa Clara, at least 24 hours prior to the beginning of Section 1 of the auction by email to pomi.amjad@proc.sccgov.org. If more than fifteen (15) potential bidders request participation, a second pre-bid conference and webcast will be held on Tuesday, October 6, 2009, beginning at 9 a.m. PDT.

Each participating agency's specifications, terms and conditions included in this bid solicitation apply to and become a part of the individual contract between the successful bidder and the participating agency. Bidders shall log on to the BidSync website prior to the start of the Section 1 of the auction event to review individual agency terms and conditions and indicate whether terms and conditions are accepted or whether exceptions are taken. Bidders who have not completed this step in the process may participate in the auction, but participation will be considered evidence of acceptance of agency terms and conditions. No exceptions will be allowed.

Bidders may also telephone BidSync at 1-800-990-9339 or email BidSync at support@bidsync.com for clarification of questions pertaining to participation in, or the operation of, the reverse auction event.

In addition to submitting bids online, all bidders must return a completed, signed hardcopy Bid Form for each lot to the individuals listed at the top of each form by **5 p.m. PDT on Tuesday, October 20, 2009,** regardless of whether or not they are the low bidder. A participating agency may also require bidders to complete and/or sign and submit one or more additional forms with the Bid Form; i.e. a Non-Collusion Declaration form. If this is the case, the Bid Form will indicate this additional requirement; and the additional form(s) will be included on the BidSync website with the Bid Form. Exceptions to agency terms and conditions, if any, must also be detailed and submitted with the Bid Form. Late, illegible, unsigned and/or incomplete Bid Forms and additional

forms, if any, will not be accepted. Person signing bid must have the authority to bind the firm in a contract.

If not bidding, do not return the Bid Form.

D. Bidding Requirements

1. The requirements of each participating agency are included in this auction as:

Auction Section 1 – Unleaded (87 Octane)	Est. Total Gallons Per Year
Lot 1 – County of Santa Clara – Large Tanks	1,233,000
Lot 2 – County of Santa Clara – Small Tanks	+65,900
Lot 3 - City of Sunnyvale	193,000
Lot 4 - City of Mountain View – Delivered	6,000
Lot 5 - City of Mountain View – Picked Up	60,000
Lot 6 – County of Santa Cruz	380,400
Lot 7 – City of Gilroy	70,000
Lot 8 – Morgan Hill Unified School District	76,000
Lot 9 – City of San Jose, Large Tanks	1,308,220
Lot 10 – City of San Jose – Small Tanks	20,000
Lot 11 – City of San Leandro	140,000
Lot 12 – Santa Clara Valley Water District	90,000
Auction Section 2 (Diesel)	
Lot 1 – County of Santa Clara – Large Tanks, ULSD	120,000
Lot 2 – County of Santa Clara – Small Tanks, ULSD	Unknown
Lot 3 - City of Sunnyvale (ULSD, Clear)	75,000
Lot 4 – City of Mountain View – Delivered (ULSD, Red Dye #2)	22,000
Lot 5 – City of Mountain View – Picked Up (ULSD, Red Dye #2)	30,000
Lot 6 - County of Santa Cruz (ULSD, red dye premium)	253,000
Lot 7 – Morgan Hill Unified School District (ULSD)	105,000
Lot 8 - City of San Jose (ULSD, Red Dye #2)	17,600
Lot 9 – City of San Leandro (ULSD, Red Dye #2)	41,000
Lot 10 – Santa Clara County Water District (ULSD)	75,000
Auction Section 3 (Bio-Diesel)	
Lot 1 – City of Mountain View – Picked Up (B-5, ULSD, Red Dye #2)	15,000
Lot 2 – County of Santa Cruz (B-5, red dye premium)	88,000
Lot 3 – City of Gilroy (5% Blend)	33,000
Lot 4 - City of San Jose (B-20)	707,633
Lot 5 – City of San Jose – Small Tanks (B-20)	120,000

Bidder shall bid a percentage per gallon above or below OPIS San Jose average rack for each lot in each auction section with the following exceptions:

- City of San Leandro – Bid shall be a percentage per gallon above or below the ***San Francisco OPIS average rack.***

- City Sunnyvale – Bid shall be a percentage per gallon above or below the ***San Jose OPIS daily rack.***

For bid evaluation purposes, bids shall not include any State of California fees and taxes. However, the parties agree that all current California fees and taxes will be included in the price per gallon for fuel purchased under each and every contract awarded as the result of this bid invitation.

Bidder may bid on one lot, multiple lots or all lots. The participating agencies reserve the right to award a contract to a single bidder or to split the award by lots as in their best interest.

Estimated purchase volume does not constitute a guarantee of actual purchase volume. Quantities may be increased or decreased by each participating agency, depending on actual need during the contract term; however, no price adjustments will be allowed as a result of a reduction in the quantity purchased.

During the contract term, participating agencies may elect to purchase a different or additional type of fuel than that listed in this bid solicitation. Should this occur, participating agencies reserve the right to re-negotiate the contract price for any type of fuel for which the actual quantity purchased is significantly higher than anticipated.

All costs incidental to delivery and off-loading of fuel or coordinating fuel pick up must be included in the bid price.

2. Bidder shall indicate on each Bid Form whether bidder, if awarded a contact(s) as the result of this bid invitation, is willing to consider entering into subsequent separate agreements, on a case-by-case basis, with governmental, public, or quasi-public agencies not participating in this auction event at the same prices, terms and conditions of this bid invitation (aka contract piggybacks). Should bidder elect to extend its bid, agencies will place orders directly with bidder. Agencies listed as participants in this auction event will not be parties to any contract between other agencies and the successful bidder(s); are not agents, partners or representatives of other agencies; and are not obligated or liable for any payment, order or contract between other agencies and the successful bidder(s). In addition, there is no guarantee of usage by other agencies. Whether bidder(s) elects to extend the bid to other agencies will in no way affect consideration of contract award(s) resulting from this auction event.

E. **Non-Collusion Certification –** Bidder shall certify that it has not directly or indirectly been collusive with any other bidder in the preparation and submission of the bid. If at

any time it shall be found that a bidder to whom with a contract has been awarded has, in presenting the bid, colluded with any other party or parties, said bidder shall be liable to each affected participating agency for all loss or damage which the agency has or may suffer as the result of the collusive activity, including, but not limited to, the cost of awarding a new contract.

F. **Contract Documents** – Following contract award by the governing bodies of the participating agencies, the successful bidder(s) shall enter into individual contracts with each agency. Contract documents will consist of this bid invitation; the successful bidder's completed and signed Bid Form; additional documents, if any, required by a participating agency and included in this bid solicitation; and an Agreement or Purchase Order issued by each participating agency.

G. **Insurance** – Individual participating agencies may require the successful bidder(s) to obtain specific insurance coverage and submit an Insurance Certificate prior to contract award. Bidder shall be responsible for fully understanding the requirements of participating agencies prior to bidding.

H. **Reservations** – Participating agencies reserve the right to:

1. Reject any or all bids in total or by individual lot.
2. Waive or correct any minor or inadvertent defect, irregularity, informality or error in any bid or procedure.
3. Accept bid for any lot or group of lots.
4. Cancel the auction event and schedule a new auction event any time thereafter.
5. Extend any or all deadlines, including the deadline for accepting bids.
6. Disqualify any bidder on the basis of any real or apparent conflict of interest or evidence of collusion that is disclosed by the bid or other data available to the participating agency. Such disqualification is at the sole discretion of the participating agency and its decision shall be final.
7. Reject the bid of any bidder that is in breach of or in default under any other agreement with a participating agency.
8. Make such investigations as deemed necessary to determine if a bidder is capable of meeting contract requirements. The determination of the agency as to the bidder's ability to perform shall be final.
9. Determine whether a bid meets, exceeds or does not meet participating agency specifications.

SECTION III. SPECIFICATIONS

A. Participating Agency Requirements

NOTE: All tanks are underground unless otherwise stated. All fuel shall be delivered to designated distribution points unless otherwise stated.

1. County of Santa Clara (Unleaded and Diesel)

a. Estimated Contract Start Date

It is estimated that the start date of any contract(s) awarded as the result of this bid invitation will be February 1, 2010.

b. Required Distribution Points – Large Tanks

GSA Fleet Management 90 West Younger Street San Jose CA 95131	Two (2) each 12,000 gallon tanks Estimated Annual Deliveries – 800,000 gallons unleaded gasoline. Average deliveries to this site are 8,700 gallons.
Roads Department East Yard 1505 Schallenberger Road San Jose, CA 95131	One (1) each, 10,000 gallon tank (diesel) Two (2) each 10,000 gallon tanks (unleaded) Estimated Annual Deliveries – 42,000 gallons diesel and 126,000 gallons unleaded. Average unleaded deliveries are 8,700 gallons; and average diesel deliveries are 6,250 gallons.
Roads Department West Yard 11031 Doyle Road San Jose, CA 95129	One (1) each 10,000 gallon tank (diesel) Two (2) each 10,000 gallon tanks (unleaded) Estimated Annual Deliveries – 18,000 gallons diesel and 112,000 gallons unleaded. Average unleaded deliveries are 8,700 gallons; and average diesel deliveries are 7,500 gallons.
Roads Department South Yard 13600 Murphy Avenue San Martin, CA 95046	One (1) each 10,000 gallon tank (diesel) Two (2) each 10,000 gallon tanks (unleaded) Estimated Annual Deliveries – 30,000 gallons diesel and 50,000 gallons unleaded. Average unleaded deliveries are 8,750 gallons; and average diesel deliveries are 7,500 gallons.

Parks Department Hellyer Yard 995 Hellyer Avenue San Jose, CA 95111	One (1) each 4,000 gallon tank (diesel) One (1) each 10,000 gallon tank (unleaded) Estimated Annual Deliveries – 8,000 gallons diesel and 20,000 gallons unleaded. Average deliveries for diesel are 3,000 gallons.

c. Required Distribution Points – Small Tanks

NOTE: All small tank locations are rural in nature.

James Boys Ranch 19050 Malaguerra Ave. Morgan Hill, CA 95037	One (1) each 750 gallon tank (unleaded) Estimated Annual Deliveries – 2,800 gallons unleaded. Average deliveries are 600 gallons.
Joseph D. Grant Ranch 18405 Mt. Hamilton Rd. San Jose, CA 95140	One (1) each 750 gallon tank (unleaded) One (1) each 250 gallon tank (diesel) Estimated Annual Deliveries – 4,100 gallons unleaded and 250 gallons diesel. Average deliveries of unleaded are 500 gallons.
Uvas Canyon Park 8515 Croy Rd. Morgan Hill, CA 95037	One (1) each 750 gallon tank (unleaded) One (1) each 750 gallon tank (diesel) Estimated Annual Deliveries – 9,000 gallons unleaded and 250 gallons diesel. Average deliveries of unleaded are 500 gallons.
Vasona Lake Park 298 Garden Hill Dr. Los Gatos, CA 95032	One (1) each 1,500 gallon tank (unleaded) One (1) each 500 gallon tank (diesel) Estimated Annual Deliveries - 13,750 gallons unleaded and an unknown quantity of diesel. Average deliveries of unleaded are 880 gallons.
Calero Lake 23201 McKean Rd. San Jose, CA 95120	One (1) each 500 gallon tank (unleaded) Estimated Annual Deliveries - 12,700 gallons unleaded. Average deliveries are 380 gallons.
Ed Levin Park 3100 Calaveras Rd. Milpitas, CA 95035	One (1) each 750 gallon tank (unleaded) One (1) each 250 gallon tank (diesel) Estimated Annual Deliveries - 8,050 gallons unleaded and an unknown quantity of diesel. Average deliveries of unleaded are 515 gallons.

Mt. Madonna Park Hecker Pass Hwy. Watsonville, CA 95076	One (1) each 750 gallon tank (unleaded) One (1) each 250 gallon tank (diesel) Estimated Annual Deliveries - 8,500 gallons unleaded and an unknown quantity of diesel. Average deliveries of unleaded are 600 gallons.
Coyote Lake 10840 Coyote Lake Rd. Gilroy, CA 95020	One (1) each 750 gallon tank (unleaded) One (1) each 250 gallon tank (diesel) Estimated Annual Deliveries – 7,000 gallons unleaded and an unknown quantity of diesel. Average deliveries of unleaded are 500 gallons.
Sanborn-Skyline Park 16055 Sanborn Rd. Saratoga, CA 95050	One (1) each 750 gallon tank (unleaded) One (1) each 250 gallon tank (diesel) Estimated Annual Deliveries – Unknown.
Stevens Creek Park 11401 Stevens Canyon Rd. Cupertino, CA 95014	One (1) each 750 gallon tank (unleaded) One (1) each 250 gallon tank (diesel) Estimated Annual Deliveries – Unknown.

d. Ordering and Delivery Requirements

Orders will be placed via a Contract Release Purchase Order as requirements occur.

Deliveries shall be made within 24 hours after receipt of order.

e. Invoicing and Payment

Invoiced fuel quantities shall be adjusted to standard temperature and pressure.

Invoices should be sent to the address referenced on the Contract Release Purchase Order.

Each invoice shall include the following information:
1. Delivery date
2. Type of fuel and quantity delivered
3. Delivery location

Payment terms are Net 30 after receipt of product and correct invoice.

f. Local Business Preference

In accordance with applicable sections of Board Policy, Section 5.3.13, in the formal solicitation of goods or services, the County of Santa Clara shall give responsive and responsible Local Businesses the preference described below.

"Local Business" means a lawful business with a physical address and meaningful "production capability" located within the boundary of the County of Santa Clara.

The term "production capability" means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm's or bidder's ability to perform the proposed contract. Post Office box numbers and/or residential addresses may not be used as the sole bases for establishing status as a "Local Business."

In the procurement of goods or services in which price is the determining factor for award of the contract, one percent (1%) shall be subtracted from a bid submitted by a responsive and responsible Local Business in determining the lowest responsive responsible bidder. If application of the 1% results in a Local Business bid being lower than the non-local business, the contract award shall be made to the Local Business at the Local Business' original bid price. If after applying the 1% discount, two or more competing vendors have bid the same price, local businesses shall be given preference.

When a contract for goods or services, as defined in this policy, is presented to the Board of Supervisors for approval, the accompanying transmittal letter shall include a statement as to whether the proposed vendor is a Local Business and whether the application of the local preference policy was a decisive factor in the award of the proposed contract.

This Local Business preference shall not apply to the following:

1. Public works contracts,
2. Where such a preference is precluded by local, state or federal law or regulation,
3. Contracts funded in whole or in part by a donation or gift to the County where the special conditions attached to the donation or gift prohibits or conflicts with this preference policy. The donation or gift must be approved or accepted by the Board of Supervisors in accordance with County policy, or
4. Contracts exempt from solicitation requirements under an emergency condition in accordance with board policy, state law and/or the County of Santa Clara Ordinance Code Section A34-82).

In order to be considered for Local Preference, bidder must complete and submit Declaration of Local Business with its ITB response.

2. City of Sunnyvale (Unleaded and Diesel)

NOTE: Bids placed on this lot shall be a percentage per gallon above or below the ***San Jose OPIS daily rack***.

a. Estimated Contract Start Date

It is estimated that the start date of any contract(s) awarded as the result of this bid invitation will be February 1, 2010.

b. Required Distribution Points

Civic Center 605 All America Way Sunnyvale, CA 94086	Two (2) each 12,000 gallon tank (unleaded) One (1) each 6,000 gallon tank (diesel) Estimated Annual Deliveries – 116,500 gallons unleaded and 11,000 gallons diesel. Average deliveries are 8,000 gallons unleaded and 3,500 gallons diesel.
Corporation Yard 221 Commercial Sunnyvale, CA 94086	One (1) each 12,000 gallon tank (unleaded) One (1) each 10,000 gallon tank (unleaded) One (1) each 12,000 gallon tank (diesel) One (1) each 250 gallon tank (diesel) Estimated Annual Deliveries – 84,000 gallons unleaded and 45,200 gallons diesel. Average deliveries are 8,000 gallons unleaded and 6,000 to 7,000 gallons diesel.
Department of Public Safety 700 All America Way Sunnyvale, CA	One (1) 12,000 gallon tank (diesel) Estimated Annual Deliveries – 4,000 gallons diesel.
Sunnyvale Annex 650 W Olive Avenue Sunnyvale, CA	One (1) 500 gallon tank (diesel) Estimated Annual Deliveries – 250 gallons diesel .
Sunnyvale Golf Course 605 Macara Avenue Sunnyvale, CA	One (1) each 4,000 gallon tanks (unleaded) One (1) each 1,000 gallon tank (diesel) Estimated Annual Deliveries – 3,500 gallons unleaded 4,000 gallons diesel. Average deliveries of diesel are 900 to 1,000 gallons.

d. Ordering and Delivery Requirements

Orders will be placed by telephone as requirements occur (typically every Monday). Deliveries shall be made within 24 hours of receipt of order. Small truck shall be available for delivery to the generator locations (Sunnyvale Annex and Corporation Yard).

e. Invoicing and Payment

Invoiced fuel quantities shall be adjusted to standard temperature and pressure. Invoices shall be sent to the address on the Blanket Purchase Order with a copy faxed to 408-736-1611 (Attn: Central Stores). The City's standard payment terms are Net 30 days.

3. City of Mountain View (Unleaded, Diesel and Bio-Diesel)

a. Estimated Contract Start Date

It is estimated that the start date of any contract(s) awarded as the result of this bid invitation will be December 2009.

b. Delivered Unleaded and Diesel

1. Required Delivery Locations

Fire Station #4 229 N Whisman Rd Mountain View, CA 94043	One (1) each 2,500 gallon tank (diesel) Estimated Annual Deliveries – 13,000 gallons diesel. Average deliveries are 1,000 to 1,100 gallons.
Shoreline Golf Links 2940 N Shoreline Blvd Mountain View, CA 94043	One (1) each 1,000 gallons above ground (diesel) One (1) each 1,000 gallons above ground (unleaded) Estimated Annual Deliveries – 9,000 gallons diesel and 6,000 gallons unleaded. Average deliveries for both unleaded and diesel are 500 gallons each.

2. Ordering and Delivery Requirements

Orders will be placed by telephone, as required, for delivery within 24 hours. Deliveries at Fire Station #4 shall take place between the hours of 8 a.m. and 4 p.m. Monday through Friday, unless authorized by the City. Deliveries at Shoreline Golf Links shall take place between the hours of 7

a.m. and 2 p.m. Monday through Friday, unless authorized by the City. In the event that the City has an emergency (e.g. disaster occurrence), the City shall require delivery within three (3) hours.

Driver shall provide written tank stick readings before and after delivery. The City prefers that this information be noted on every invoice, but will allow readings to be noted solely on the delivery documentation.

3. Invoicing and Payment

Invoices shall specify the delivery date, delivery location, type of fuel, gallons delivered, and OPIS contract information. City-approved invoices will be paid by check in net 30 days. Invoiced fuel quantities shall be adjusted to standard temperature and pressure.

c. Unleaded, Diesel and Bio-Diesel – Picked Up

1. Ordering and Pick up Requirements

City staff, using a bottom loading fuel truck, typically picks up fuel every Thursday. City staff will pick up the following estimated fuel quantities on a weekly basis:

- Approximately 1,000 gallons of unleaded fuel (87 octane).
- Approximately 600 gallons total of diesel.

2. Payment

The City will utilize a fuel card payment system. The successful vendor(s) shall be capable of accepting payment by fuel card (Cardlock). The City anticipates discounted pricing for fuel that is picked up by the City compared to fuel that is delivered by awarded vendor.

3. Bio-Diesel Quality

The quality of the bio-diesel shall meet the highest regulatory purity in effect at the time of purchase.

4. County of Santa Cruz (Unleaded, Diesel and Bio-Diesel)

a. Estimated Contract Start Date

It is estimated that the start date of any contract(s) awarded as the result of this bid invitation will be February 1, 2010.

b. Required Distribution Points (Unleaded and Diesel)

Fleet Services General Services 691 Ocean St Santa Cruz, CA 95060	One (1) 15,000 gallon tank (unleaded) Estimated Annual Deliveries – 182,000 gallons (unleaded). Full truck loads delivered every 14-18 days.
Brommer Yard 2700 Brommer St Santa Cruz, CA	One (1) each 12,000 gallon tank (unleaded) One (1) each 12,000 gallon tank (diesel) Estimated Annual Deliveries – 85,000 gallons unleaded and 36,000 gallons diesel. Average deliveries of unleaded are 8,600 gallons; and average deliveries of diesel are 7,400 gallons.
D. A. Porath Facility 2750 Lode St Santa Cruz, CA	One (1) each 4,000 gallon tank (unleaded) One (1) each 4,000 gallon tank (diesel) Estimated Annual Deliveries – 32,000 gallons unleaded and 8,000 gallons diesel. Average deliveries of unleaded are 2,300 gallons; and average deliveries of diesel are 2,300 gallons.
Felton Yard 201 Hihn St Felton, CA	One (1) each 2,000 gallon tank (unleaded) One (1) each 2,000 gallon tank (diesel) Estimated Annual Deliveries – 20,000 gallons unleaded and 14,000 gallons diesel. Average deliveries of both unleaded and average diesel are 1,400 gallons.
Wilson Yard 198 Holohan Rd Watsonville, CA	One (1) each 6,000 gallon tank (unleaded) One (1) each 6,000 gallon tank (diesel) Estimated Annual Deliveries – 55,000 gallons unleaded and 195,000 gallons diesel. Average deliveries of unleaded are 4,000 gallons; and average deliveries of diesel are 3,000 to 4,000 gallons. Diesel is delivered every week on a “keep full” basis.
Buena Vista Landfill 150 Rountree Ln Watsonville, CA 95076	Estimated Annual Deliveries – 6,400 gallons unleaded. Fuel is delivered monthly.

c. Required Distribution Points (Bio-Diesel)

Buena Vista Landfill 150 Rountree Ln Watsonville, CA 95076	Estimated Annual Deliveries – 59,000 gallons bio-diesel. Truck load deliveries (7,400 gallons).
Ben Lomond Transfer Station 9835 Newell Creek Rd Ben Lomond, CA 95003	Estimated Annual Deliveries – 29,000 gallons bio-diesel. Truck load deliveries (7,400 gallons).

d. Ordering and Delivery Requirements

Except for Wilson Yard and the Landfill, orders will be placed by telephone on an "as needed" basis. Deliveries shall be made in a pump truck only within 24 hours of placed phone order.

e. Invoicing and Payment

Invoiced fuel quantities shall be adjusted to standard temperature and pressure. Invoices shall be mailed to the individual delivery locations with the exception of invoices to Fleet Services which shall be made to 701 Ocean Street, Room 330, Santa Cruz, CA 95060.

f. Non-Exclusive Clause

The parties agree that the contract does not establish an exclusive contract between the County of Santa Cruz and vendor nor does it constitute a commitment by the County of Santa Cruz, whether expressed or implied, to contract with vendor to perform or supply any work; nor is there any guarantee as to the volume of work or the duration of the contract. The County of Santa Cruz expressly reserves all it rights, including but not limited to the following: The right to utilize others to perform or supply work of the type contemplated by the contract, the right to request proposals from others with our without requesting proposal(s) from vendor for work of the type contemplated by the contract, and the unrestricted right by the County of Santa Cruz to bid or perform any such work.

5. City of Gilroy (Unleaded and Bio-Diesel)

a. Estimated Contract Start Date

It is estimated that the start date of any contract(s) awarded as the result of this bid invitation will be December 2009.

b. Required Distribution Points

Corporation Yard 613 Old Gilroy Street Gilroy, CA 95020	One (1) each 12,000 gallon tank (unleaded) One (1) each 12,000 gallon tank (bio-diesel) Estimated Annual Deliveries - 70,000 gallons unleaded and 30,000 gallons bio-diesel. Average deliveries are 8,000 gallons for both unleaded and bio-diesel.
Sunrise Fire Station 880 Sunrise Drive Gilroy, CA 95020	One (1) each 1,000 gallon above ground tank. Estimated Annual Deliveries – 3,000 gallons.

c. Ordering and Delivery Requirements

Orders will be placed by telephone on an "as needed" basis. Deliveries shall be made within 24 hours of placed phone order.

d. Invoicing and Payment Process

Invoices shall be sent to the address stated on the blanket purchase order (Attn: Fleet Division). Invoiced fuel quantities shall be adjusted to standard temperature and pressure.

All payments are net 30 days.

6. Morgan Hill Unified School District (Unleaded and Diesel)

a. Estimated Contract Start Date

It is estimated that the start date of any contract(s) awarded as the result of this bid invitation will be December 2009.

b. Required Distribution Point

105 Edes Ct Morgan Hill, CA 95037	One (1) each 12,000 gallon tank (unleaded) One (1) each 12,000 gallon tank (diesel) Estimated Annual Deliveries – 76,000 gallons unleaded and 105,000 diesel. Average deliveries are 4,900 gallons of diesel and 3,500 gallons of unleaded.

c. Ordering and Delivery Requirements

Orders will be placed by telephone when fuel is needed. Deliveries shall be made within two (2) days of receipt of order. Deliveries shall be between the

hours of 5:30 a.m. to 4:30 p.m. Monday through Friday. School district requires that the temperature of the fuel is checked and noted on the invoice to insure a more accurate dump reading.

d. Invoicing and Payment

Invoiced fuel quantities shall be adjusted to standard temperature and pressure.

Invoices shall be sent to the address on the Blanket Purchase Order. School District's standard payments terms are net 30 days after receipt of product and correct invoice. Each invoice shall include the following information: a complete price breakdown reflecting all fees, type of fuel and quantity delivered.

e. Non-Exclusive Clause

The parties agree that the contract does not establish an exclusive contract between the School District and vendor nor does it constitute a commitment by the School District, whether expressed or implied, to contract with vendor to perform or supply any work; nor is there any guarantee as to the volume of work or the duration of the contract. The School District expressly reserves all it rights, including but not limited to the following: The right to utilize others to perform or supply work of the type contemplated by the contract, the right to request proposals from others without requesting proposal(s) from vendor for work of the type contemplated by the contract, and the unrestricted right of the School District to bid or perform any such work.

7. City of San Jose (Unleaded, Diesel and Bio-Diesel)

a. Estimated Contract Start Date

It is estimated that the start date of any contract(s) awarded as the result of this bid invitation will be December 2009 – January 2010.

b. Required Distribution Points, Large Tanks (Unleaded and Diesel)

GS Mabury Yard 1404 Mabury Rd. San Jose, CA 95133	One (1) each 12,000 gallon tank (unleaded) Estimated Annual Deliveries – 52,100 gallons unleaded. Average deliveries are 2,500 to 5,000 gallons.
GSA South Yard 4420 Monterey Rd. San Jose, CA 95111	One (1) each 12,000 gallon tank (unleaded) Estimated Annual Deliveries – 74,400 gallons unleaded. Average deliveries are 2,500 to 5,000 gallons.

Police Muni Garage 825 N. San Pedro San Jose, CA 95112	Two (2) each 15,000 gallon tank (unleaded) Estimated Annual Deliveries – 982,400 gallons unleaded.
San Jose Int'l Airport 1239 & 1240 Airport Blvd. San Jose, CA 95110	One (1) each 10,000 gallon tank (unleaded) Estimated Annual Deliveries – 151,300 gallons unleaded.
Water Pollution Control Plant 700 Los Esteros Rd. San Jose, CA 95110	Two (2) each 15,000 gallon tanks (diesel) One (1) each 2,300 gallon tank (unleaded) Estimated Annual Deliveries – 52,000 gallons diesel and 12,000 gallons unleaded. Average deliveries are 500 to 1,000 gallons unleaded and 7,000 to 9,000 gallons diesel.

c. <u>Required Distribution Points, Large Tanks (Bio-Diesel)</u>

GS Mabury Yard 1404 Mabury Rd. San Jose, CA 95133	Two (2) each 12,000 gallon tanks (bio-diesel) Estimated Annual Deliveries – 81,100 gallons bio-diesel. Average deliveries are 2,500 to 5,000 gallons.
GSA South Yard 4420 Monterey Rd. San Jose, CA 95111	Two (2) each 12,000 gallon tank (bio-diesel) Estimated Annual Deliveries – 109,500 gallons bio-diesel. Average deliveries are 2,500 to 5,000 gallons.
Police Muni Garage 825 N. San Pedro San Jose, CA 95112	One (1) each 6,000 gallon tank (bio-diesel) Estimated Annual Deliveries – 4,700 gallons bio-diesel
San Jose Int'l Airport 1239 & 1240 Airport Blvd. San Jose, CA 95110	One (1) each 10,000 gallon tank (bio-diesel) Estimated Annual Deliveries – 446,700 gallons bio-diesel.
Water Pollution Control Plant 700 Los Esteros Rd San Jose CA 95110	Tank 2 - One (1) each 10,000 gallon skid tank (bio-diesel) Tank 3 - One (1) each 2,300 gallon tank (bio-diesel). Estimated Annual Deliveries – 18,000 gallons bio-

diesel. Average deliveries are 1,000 to 3,000 gallons to Tank 2 and 450 gallons to Tank 3.

d. Required Distribution Points, Small Tanks (Unleaded and Bio-Diesel)

Estimated annual deliveries per tank are unavailable. All deliveries are B-20 bio-diesel except Fire Station #98 and Happy Hollow Park which are unleaded.

Fire Station #1 225 N Market St. San Jose, CA 95110	One (1) each 1,000 gallon tank Average deliveries are 200 to 400 gallons.
Fire Station #2 2933 Alum Rock Ave. San Jose, CA 95127	Station closed for reconstruction (Estimated re-open 9/1/2010)
Fire Station #4 710 Leigh Ave. San Jose, CA 95128	One (1) each 1,000 gallon tank Average deliveries are 200 to 400 gallons.
Fire Station #6 1386 Cherry Ave. San Jose, CA 95125	One (1) each 500 gallon tank Average deliveries are 100 gallons.
Fire Station #9 3410 Ross Ave. San Jose, CA 95124	One (1) each 500 gallon tank Average deliveries are 150 gallons.
Fire Station #11 2840 The Villages Pkwy. San Jose, CA 95135	One (1) each 500 gallon tank Average deliveries are 125 gallons.
Fire Station #12 5912 Cahalan Ave. San Jose, CA 95123	One (1) each 1,000 gallon tank Average deliveries are 200 to 400 gallons.
Fire Station #13 4380 Pearl Ave. San Jose, CA 95136	One (1) each 1,000 gallon tank Average deliveries are 200 to 400 gallons.
Fire Station #14 1201 San Thomas Aquino Rd. San Jose, CA 95117	One (1) each 1,000 gallon tank Average deliveries are 200 to 400 gallons.

Fire Station #17 5170 Coniston Way San Jose, CA 95118	One (1) each 1,000 gallon tank Average deliveries are 200 to 400 gallons.
Fire Station #22 6461 Bose Ln. San Jose, CA 95120	One (1) each 1,000 gallon tank Average deliveries are 200 to 400 gallons.
Fire Station #25 5125 Wilson Way Alviso, CA 95002	One (1) each 1,000 gallon tank Average deliveries are 200 to 400 gallons.
Fire Station #26 528 Tully Rd. San Jose, CA 95111	One (1) each 1,000 gallon tank Average deliveries are 200 to 400 gallons.
Fire Station #27 6027 San Ignacio Rd. San Jose, CA 95119	One (1) each 500 gallon tank Average deliveries are 200 gallons.
Fire Station #28 19911 McKean Rd. San Jose, CA 95120	One (1) each 500 gallon tank Average deliveries are 125 gallons.
Fire Station #29 199 Innovation Dr San Jose, CA 95134	One (1) each 500 gallon tank Average deliveries are 215 gallons.
Fire Station #30 454 Auzerais San Jose, CA 95126	One (1) each 500 gallon tank Average deliveries are 125 gallons.
Fire Station #31 3100 Ruby Ave. San Jose, CA 95135	One (1) each 500 gallon tank Average deliveries are 200 gallons.
Fire Station #33 2933 Saint Florian Way San Jose, CA 95136	One (1) each 1,000 gallon tank Average deliveries are 200 to 400 gallons.
Fire Station #34 1634 Las Plumas Ave San Jose, CA 95133	One (1) each 500 gallon tank Average deliveries are 200 to 400 gallons.

Fire Station #35 135 Poughkeepsie Road San Jose, CA 95123	One (1) each 1000 gallon tank Average deliveries are 200 to 400 gallons.
Fire Station #98 245 S. Montgomery San Jose, CA 95110	One (1) each 1,000 gallon tank (unleaded) Average deliveries are 200 to 400 gallons.
Fire Station #99 245 S Montgomery San Jose, CA 95110	One (1) each 1,000 gallon tank Average deliveries are 300 to 500 gallons.
Happy Hollow Park 1300 Senter Rd. San Jose, CA 95112	One (1) each 500 gallon tank (unleaded) Average deliveries are 250 gallons.

e. Ordering and Delivery Requirements

1. Per the Bay Area Air Quality Management District (BAAQMD), the City requires that any diesel fuel delivered be accompanied by either of the following:
   - Vendor certification of sulfur content
   - Written certification stating the diesel meets California Resource Board (CARB) 500 PPMW maximum sulfur content
   - Test results showing sulfur content from a District approved test
2. The City requires delivery of fuel within two (2) days After Receipt of Order (ARO) for normal orders. Same day delivery required when fuel supply in any tank is less than 100 gallons.

   NOTE: General Services Buyer generally places just one order per week, every Monday afternoon, for all distribution points.

3. Fire Department RUSH orders should be same day delivery and no later than one (1) day After Receipt of Order (ARO).

   NOTE: The City shall make every reasonable effort to avoid rush orders.

4. The City will not agree to any minimum order.

f. Invoicing and Payment

Invoiced fuel quantities shall be adjusted to standard temperature and pressure.

The City of San Jose will issue one Open Purchase Order for all distribution points.

The City shall issue payment to the vendor approximately thirty (30) days after receipt of the commodity and the correct original invoice, whichever arrives last. The City shall consider early payment discounts if payment is to be make within twenty (20) days of invoicing.

Vendor shall mail invoices to the addresses specified on the Open Purchase Orders. All invoices must contain price breakdown reflecting all fees, and shall state the distribution point name, Purchase Order number, date of delivery, and quantity delivered.

8. City of San Leandro (Unleaded and Diesel)

NOTE: Bids placed on this lot shall be a percentage per gallon above or below the ***San Francisco*** OPIS average rack.

a. Estimated Contract Start Date

It is estimated that the start date of any contract(s) awarded as the result of this bid invitation will be December 2009.

b. Required Distribution Points

Public Works Service Center 14200 Chapman Rd San Leandro, CA 94578	Tank 1 – 20,000 gallons unleaded Tank 2 – 20,000 gallons unleaded Tank 3 – 12,000 gallons diesel Tank 4 - 12,000 gallons unleaded Estimated Annual Deliveries – 125,000 gallons unleaded and 25,000 gallons diesel. Average deliveries for Tanks 1 and 2 are 8,800 each or 16,000 gallons split. Deliveries for Tanks 3 and 4 are typically either 4,000 or 8,000 gallons each.
Marina 40 Mulford Point Dr San Leandro, CA 94577	Tank 1 – 10,000 gallons unleaded Tank 2 – 10,000 gallons diesel Estimated Annual Deliveries – 15,000 gallons unleaded and 7,500 gallons diesel. Average deliveries are Tanks 1 and 2 are 4,000 gallons each.

Water Pollution Control Plant 3000 Davis St San Leandro, CA 94577	Tank 1 – 5,500 gallons diesel Tank 2 – 2,000 gallons diesel Estimated Annual Deliveries – 8500 gallons diesel. Average delivery for Tank 1 is 4,500 gallons and 1,000 gallons for Tank 2.

c. Ordering and Delivery Requirement

Vendor shall accept orders only from an authorized City representative. Deliveries shall be made during normal working hours for each location (typically, 8:30 a.m. l- 2:30 p.m.). List of authorized City representatives and delivery hours per location will be provided to successful vendor (s) upon contract award.

d. Invoicing and Payment

Invoices shall be sent to 835 East 14th Street. Invoiced fuel quantities shall be adjusted to standard temperature and pressure. Packing slip/delivery receipt shall be left with delivery site personnel.

9. Santa Clara Valley Water District (Unleaded and Diesel)

a. Estimated Contract Start Date

It is estimated that the start date of any contract(s) awarded as the result of this bid invitation will be December 2009.

b. Required Distribution Points

5750 Almaden Expressway San Jose, CA 95118	Tank 1 – 12,000 gallon tank (diesel) Tank 2 – 12,000 gallon tank (diesel Tank 3 – 12,000 gallon tank (unleaded) Estimated Annual Deliveries – 136,000 gallons diesel and 85,000 gallons unleaded. Average deliveries are 7,500 to 8,000 gallons to each tank.
400 More Avenue Los Gatos CA 95032-111	Tank 4 – 1,000 gallon tank (diesel) Tank 7 – 1,000 gallon tank (unleaded) Estimated Annual Deliveries – 2,500 gallons diesel and 5,000 gallons

	unleaded. Average deliveries are 500 to 700 gallons to each tank.
18300 Peet Road Morgan Hill, CA 95037-9312	Tank 10 – 1,000 gallon tank (diesel) Estimated Annual Deliveries – 4,500 gallons diesel. Average deliveries are 500 to 700 gallons.

c. Ordering and Delivery Requirements

Deliveries must be received within 24 hours of the order being placed by District Equipment Management Unit (EMU) and the Water Utility Maintenance Supervisor/Manager.

e. Invoicing and Payment Requirements

1. Invoiced fuel quantities shall be adjusted to standard temperature and pressure.

2. The District will issue one Standing Purchase Order for all distribution points.

3. The District will issue payment to the vendor approximately thirty (30) days after receipt of the commodity and the correct original invoice, whichever arrives last. The District will consider early payment discounts if payment is to be made within twenty (20) days of invoicing.

4. Vendor shall mail invoice to the addresses specified on the Standing Purchase Order. All invoices must contain the correct pricing as specified by the bidder in this request. Invoices shall have a complete price breakdown reflecting all fees and shall state the distribution point name, Purchase Order number, date of delivery, and quantity delivered.

SECTION IV. TERMS AND CONDITIONS

A. General Terms and Conditions - The following terms and conditions shall apply to all contracts resulting from this bid solicitation, regardless of participating agency:

1. Taxes - The supplies or materials called for under the specifications will be used by participating agencies in the performance of a governmental function and are exempt from federal excise taxation by the United States Government. Each participating agency will, if requested, furnish a tax exemption certificate and any and all affidavits and documents that may be necessary to establish such exemption.

2. Environmental and Safety and Health Standards Compliance - The selected vendor(s) shall comply with applicable environmental statutes, regulations and

guidelines in performing the work required under this contract. Vendor(s) shall also comply with applicable Occupational Safety and Health standards, regulations and guidelines in performing the work required under this contract.

3. Hazardous Chemicals and Wastes - The selected vendor(s) shall bear full and exclusive responsibility for any release by vendor of hazardous or non-hazardous chemicals or substances during the course of performance of the contract(s). Vendor(s0 shall immediately report any such release to the appropriate person in charge of that facility. Vendor(s) shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against participating agency and its officers, agents and employees as a result of such release and shall hold harmless, indemnify and defend the participating agency and its officers, agents and employees from any claims arising from such release. For purposes of this section only, the term "claims" shall include (a) all notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction and (b) any claim, cause of action, or administrative or judicial proceeding brought against the participating agency, its directors, or employees, or for any loss, cost (including reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including participating agency.

   Each participating agency reserves the right to terminate the contract(s) if, notwithstanding compliance with the procedures set forth herein, vendor(s) delivers duel in a negligent or careless manner or causes a spill of fuel while delivering fuel to participating agency facilities.

   In addition to insurance coverage required in each participating agency's standard terms and conditions, the selected vendor shall provide to each participating agency evidence of Pollution Liability Coverage which is valid for the term of the contract in the amount of $2,000,000.

4. OSHA Material Safety Data Sheets - During the duration of the contract(s), the selected vendor(s) shall comply with all Federal and California laws and regulations and safety standards in effect.

   Prior to the commencement of any of the work called for under the contract(s), vendor(s) shall submit to each participating agency OSHA Material Safety Data Sheets on all applicable items.

5. Use of Alternative Source – The participating agencies reserve the right to purchase product from an alternate source should the selected vendor(s) be unable to deliver the required product within the required timeframe.

6. Invoicing – Each invoice shall include a printout of the applicable OPIS pricing for the date of each delivery which verifies the invoice pricing.

B. Agency-Specific Terms and Conditions

In addition to the General Terms and Conditions indicated above, the agreement or purchase order issued by each participating agency shall be subject to that agency's standard terms and conditions. Any exceptions to standard terms and conditions should be itemized in detail and attached to the bid form which is submitted to the applicable agency. Agencies reserve the right to accept or reject such exceptions as in the best interest of each agency.

BID FORM FOR VEHICLE FUEL (Page 1 of 2)

COUNTY OF SANTA CLARA

Return this completed and signed original form, as well as the Non-Collusion Declaration and Declaration of Local Business (if applicable) immediately following this form, to Roslyn Fuller, Santa Clara County Procurement Department, 2310 N. First Street, Suite 201, San Jose, CA 95131-1040 (telephone 408-491-7419) by 5 p.m. PDT on Tuesday, October 20, 2009, regardless of whether or not you are the low bidder. Failure to do so will disqualify your bid.

The undersigned bidder hereby offers to sell and deliver fuel to the County of Santa Clara in the State of California in strict compliance with the specifications, terms and conditions stated herein.

Auction Section 1, Unleaded	**Percentage +/- from OPIS San Jose Average Rack**
Lot 1 – Unleaded (87 Octane), Large Tanks	_____
Lot 2 – Unleaded (87 Octane), Small Tanks	_____
Auction Section 2, Diesel	
Lot 1 – Diesel (Clear CARB No. 2), Large Tanks	_____
Lot 2 - Diesel (Clear CARB No.2), Small Tanks	_____

Additional Information Required of Bidder

1. List the following information for three organizations to whom you currently provide fuel deliveries. Include only organizations with fuel requirements similar to those of the County of Santa Clara.

   A. Name of Organization _____

      Location _____

      Contact Person Telephone _____

   B. Name of Organization _____

      Location _____

      Contact Person Telephone _____

BID FORM FOR VEHICLE FUEL (Page 2 of 2)

COUNTY OF SANTA CLARA

C. Name of Organization _____

Location _____

Contact Person Telephone _____

2. Number of Years in the Business _____

3. Number of Delivery Trucks _____

4. Prompt Payment Discount _____

5. If bidder is awarded contract, will bidder consider extending pricing to other government agencies in the San Jose OPIS area? _____ yes _____ no

In compliance with this Invitation for Bids and all Specifications, Terms & Conditions imposed therein, and hereby incorporated by reference, the undersigned offers, and agrees to furnish the item(s) listed above at the price(s) indicated during the reverse auction.

SIGNATURE

Company Name _____

Address from which fuel will be delivered to the County of Santa Clara:

_____

_____

_____	_____
Signature	Title
_____	_____
Name (printed or typed)	Date
_____	_____
Telephone Number	Fax Number

_____

E-Mail Address

COUNTY OF SANTA CLARA

NON-COLLUSION DECLARATION

MUST BE RETURNED WITH BID FORM

I, _____, am the

(Print Name)

_____of _____,

(Position/Title) (Name of Company)

the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid; and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner directly or indirectly, sought by Agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the Bid contract; that all statements contained in the bid are true; and, further, that the Bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct:

Print or Type Name: _____

Authorized Signature: _____

Company Name: _____

Date: _____

COUNTY OF SANTA CLARA

DECLARATION OF LOCAL BUSINESS

TO BE CONSIDERED, MUST BE RETURNED WITH BID FORM

Santa Clara County gives local businesses a preference in formal solicitations of goods and services as set forth in the Board Policy, Section 5.3.13. A bidder or proposer has the option of qualifying for the preference by self declaring its qualification as a "local business." By signing below, the bidder or proposer is certifying its qualification as a "local business" for purposes of application of Santa Clara County's policy and is deemed to be applying for the local preference.

All information submitted is subject to investigation, as well as to disclosure to third parties under the California Public Records Act. Incomplete, unclear, or incomprehensible responses to the following will result in the bid or proposal not being considered for application of Santa Clara County's local preference policy. False or dishonest responses will result in rejection of the bid or proposal and curtail the firm or individual's ability to conduct business with the County in the future. It may also result in legal action.

Provide the complete physical address of your business with meaningful "production capability" located within the boundary of the County of Santa Clara. The term "production capability" means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm's/bidder's/proposer's ability to perform the proposed contract. Post Office box numbers and/or residential addresses may not be used as the sole bases for establishing status as a "Local Business." If you have more than one physical address in Santa Clara County, please provide an attachment with all of the addresses in the form specified below.

Business
Name:_____

Street:_____

City/State:_____ Zip:_____

Please Indicate Business Organization (Check One)

☐ Individual Proprietorship ☐ Corporation

☐ Partnership ☐ Other

By filling this form, bidder/proposer declares its qualification as a local business as defined in County of Santa Clara Board Policy, Section 5.3.13.

The undersigned declares that he or she is an official/agent of responding firm or individual and is empowered to represent, bind, and execute contracts on behalf of the firm or individual.

The undersigned declares under penalty of perjury, under the laws of the State of California, that all statements in this Exhibit and response are true and correct, with full knowledge that all statements are subject to investigation and that any incomplete, unclear, false or dishonest response may be grounds for denial or revocation of the accompanying bid or proposal and may result in being barred from doing business with Santa Clara County as well as additional legal consequences.

_____ _____

Signature Title

_____ _____

Name Date

_____

Business License Number (if applicable)

BID FORM FOR VEHICLE FUEL (Page 1 of 2)

CITY OF SUNNYVALE

Return this completed and signed original form to Dreama Howard, Purchasing Division, 650 West Olive Avenue, Sunnyvale, CA 94088 (telephone 408-730-7396), by 5 p.m. PDT on Tuesday, October 20, 2009, regardless of whether or not you are the low bidder. Failure to do so will disqualify your bid.

The undersigned bidder hereby offers to sell and deliver fuel to the City of Sunnyvale in the State of California in strict compliance with the specifications, terms and conditions stated herein.

Auction Section 1, Unleaded	**Percentage +/- from OPIS San Jose Daily Rack**
Lot 3 - Unleaded Gasoline (87 Octane)	_____
Auction Section 2, Diesel	
Lot 3 – Diesel (Ultra Low Sulfur, Clear)	_____

Additional Information Required of Bidder

1. List the following information for three organizations to whom you currently provide fuel deliveries. Include only organizations with fuel requirements similar to those of the City of Sunnyvale.

   A. Name of Organization _____

   Location _____

   Contact Person Telephone _____

   B. Name of Organization _____

   Location _____

   Contact Person Telephone _____

   C. Name of Organization _____

   Location _____

   Contact Person Telephone _____

BID FORM FOR VEHICLE FUEL (Page 2 of 2)

CITY OF SUNNYVALE

2. Number of Years in the Business _____

3. Annual Sales _____

4. Number of Employees _____

5. Number of Delivery Trucks _____

6. Prompt Payment Discount _____

7. If bidder is awarded contract, will bidder consider extending pricing to other government agencies in the San Jose OPIS area? _____Yes _____No

In compliance with this Invitation for Bids and all Specifications, Terms & Conditions imposed therein, and hereby incorporated by reference, the undersigned offers, and agrees to furnish the item(s) listed above at the price(s) indicated on the reverse auction.

SIGNATURE

Company Name _____

Address from which Fuel will be Delivered to the City of Sunnyvale:

_____

_____

_____ _____
Signature Title

_____ _____
Name (printed or typed) Date

_____ _____
Telephone Number Fax Number

_____
E-Mail Address

BID FORM FOR VEHICLE FUEL (Page 1 of 2)

CITY OF MOUNTAIN VIEW

Return this completed and signed original form to Tina Yoke, Purchasing Division, 500 Castro Street, Mountain View, CA 94041 (telephone 650-903-6296), by 5 p.m. PDT on Tuesday, October 20, 2009, regardless of whether or not you are the low bidder. Failure to do so will disqualify your bid.

The undersigned bidder hereby offers to sell and deliver fuel to the City of Mountain View in the State of California in strict compliance with the specifications, terms and conditions stated herein.

Auction Section 1, Unleaded	**Percentage +/- from OPIS San Jose Average Rack**
Lot 4 - Unleaded Gasoline (87 Octane), Delivered	_____
Lot 5 – Unleaded Gasoline (87 Octane), Picked Up	_____
Auction Section 2, Diesel	
Lot 4 – Diesel, Ultra Low Sulfur, Red Dye #2, Delivered	_____
Lot 5 - Diesel, Ultra Low Sulfur, Red Dye #2, Picked Up	_____
Auction Section 3, Bio-Diesel	
Lot 1 - B-5 Bio-Diesel, Ultra Low Sulfur, Red Dye #2, Picked Up	_____

Additional Information Required of Bidder

1. List the following information for three organizations to whom you currently provide fuel deliveries. Include only organizations with fuel requirements similar to those of the City of Mountain View.

   A. Name of Organization _____

   Location _____

   Contact Person Telephone _____

BID FORM FOR VEHICLE FUEL (Page 2 of 2)
CITY OF MOUNTAIN VIEW

B. Name of Organization _____

Location _____

Contact Person Telephone _____

C. Name of Organization _____

Location _____

Contact Person Telephone _____

2. Number of Years in the Business _____
3. Annual Sales _____
4. Number of Employees _____
5. Number of Delivery Trucks _____
6. Prompt Payment Discount _____
7. If bidder is awarded contract, will bidder consider extending pricing to other government agencies in the San Jose OPIS area? _____Yes _____No

In compliance with this Invitation for Bids and all Specifications, Terms & Conditions imposed therein, and hereby incorporated by reference, the undersigned offers, and agrees to furnish the item(s) listed above at the price(s) indicated on the reverse auction.

SIGNATURE

Company Name _____

Address from which Fuel will be Supplied to the City of Mountain View:

_____

_____

_____	_____
Signature	Title
_____	_____
Name (printed or typed)	Date
_____	_____
Telephone Number	Fax Number

_____

E-Mail Address

BID FORM FOR VEHICLE FUEL (Page 1 of 2)

COUNTY OF SANTA CRUZ

Return this completed and signed original form to Blanche Bettinger, Procurement Department, 701 Ocean Street, Room 330, Santa Cruz, CA 95060 (telephone 831-454-2721), by 5 p.m. PDT on Tuesday, October 20, 2009, regardless of whether or not you are the low bidder. Failure to do so will disqualify your bid.

The undersigned bidder hereby offers to sell and deliver fuel to the County of Santa Cruz in the State of California in strict compliance with the specifications, terms and conditions stated herein.

Auction Section 1, Unleaded	**Percentage +/- from OPIS San Jose Average Rack**
Lot 6 - Unleaded Gasoline (87 octane)	_____
Auction Section 2, Diesel	
Lot 6 - Diesel, Ultra Low Sulfur, red dye premium	_____
Auction Section 3, Bio-Diesel	
Lot 2 – B-5, red dye premium	_____

Additional Information Required of Bidder

1. List the following information for three organizations to whom you currently provide fuel deliveries. Include only organizations with fuel requirements similar to those of the County of Santa Cruz.

   A. Name of Organization _____

      Location _____

      Contact Person Telephone _____

   B. Name of Organization _____

      Location _____

      Contact Person Telephone _____

BID FORM FOR FUEL (Page 2 of 2)

COUNTY OF SANTA CRUZ

C. Name of Organization _____

Location _____

Contact Person Telephone _____

2. Number of Years in the Business _____
3. Annual Sales _____
4. Number of Employees _____
5. Number of Delivery Trucks _____
6. Prompt Payment Discount _____
7. If bidder is awarded contract, will bidder consider extending pricing to other government agencies in the San Jose OPIS area? _____Yes _____No

In compliance with this Invitation for Bids and all Specifications, Terms & Conditions imposed therein, and hereby incorporated by reference, the undersigned offers, and agrees to furnish the item(s) listed above at the price(s) indicated on the reverse auction.

SIGNATURE

Company Name _____

Address from which Fuel will be Delivered to the County of Santa Cruz:

_____

_____

_____ _____
Signature Title

_____ _____
Name (printed or typed) Date

_____ _____
Telephone Number Fax Number

_____
E-Mail Address

BID FORM FOR VEHICLE FUEL (Page 1 of 2)

CITY OF GILROY

Return this completed and signed original form, as well as the Non-Collusion Declaration immediately following this form, to Frank Comin, 7351 Rosanna Street, Gilroy, CA 95020 (telephone 408-846-0287), by 5 p.m. PDT on Tuesday, October 20, 2009, regardless of whether or not you are the low bidder. Failure to do so will disqualify your bid.

The undersigned bidder hereby offers to sell and deliver fuel to the City of Gilroy in the State of California in strict compliance with the specifications, terms and conditions stated herein.

Auction Section 1, Unleaded	**Percentage +/- from OPIS San Jose Average Rack**
Lot 7 - Unleaded Gasoline (87 Octane)	_____
Auction Section 3, Bio-Diesel	
Lot 3 - Bio-Diesel, 5% Blend	_____

Additional Information Required of Bidder

1. List the following information for three organizations to whom you currently provide fuel deliveries. Include only organizations with fuel requirements similar to those of the City of Gilroy.

   A. Name of Organization _____

   Location _____

   Contact Person Telephone _____

   B. Name of Organization _____

   Location _____

   Contact Person Telephone _____

   C. Name of Organization _____

   Location _____

   Contact Person Telephone _____

2. Number of Years in the Business _____

BID FORM FOR VEHICLE FUEL (Page 2 of 2)

CITY OF GILROY

3. Annual Sales _____

4. Number of Employees _____

5. Number of Delivery Trucks _____

6. Prompt Payment Discount _____

7. If bidder is awarded contract, will bidder consider extending pricing to other government agencies in the San Jose OPIS area? _____Yes _____No

In compliance with this Invitation for Bids and all Specifications, Terms & Conditions imposed therein, and hereby incorporated by reference, the undersigned offers, and agrees to furnish the item(s) listed above at the price(s) indicated on the reverse auction.

SIGNATURE

Company Name _____

Address from which Fuel will be Delivered to the City of Gilroy:

_____

_____

_____	_____
Signature	Title
_____	_____
Name (printed or typed)	Date
_____	_____
Telephone Number	Fax Number

_____

E-Mail Address

CITY OF GILROY

NONCOLLUSION DECLARATION

I, _____ declare as follows:

That I am the _____ of _____, the party making the attached bid; that the bid is not made in the interest of any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and had not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid or that anyone shall refrain from bidding, that the bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true, and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member of agent thereof to effectuate a collusive or sham bid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

By: _____

Title: _____

NOTE**: Signature must be notarized.**

Authority: Public Contract Code 7106

CCP 2015.5

BID FORM FOR VEHICLE FUEL (Page 1 of 2)

MORGAN HILL UNIFIED SCHOOL DISTRICT

Return this completed and signed original form to Linda Evaro, 105 Edes Ct., Morgan Hill, CA 95037 (telephone 408-201-6320), by 5 p.m. PDT on Tuesday, October 20, 2009, regardless of whether or not you are the low bidder. Failure to do so will disqualify your bid.

The undersigned bidder hereby offers to sell and deliver fuel to the Morgan Hill Unified School District in the State of California in strict compliance with the specifications, terms and conditions stated herein.

Auction Section 1 - Unleaded	**Percentage +/- from OPIS San Jose Average Rack**
Lot 8 - Unleaded Gasoline (87 Octane)	_____

Auction Section 2 - Diesel	
Lot 7 - Diesel, Ultra Low Sulfur	_____

Additional Information Required of Bidder

1. List the following information for three organizations to whom you currently provide fuel deliveries. Include only organizations with fuel requirements similar to those of the Morgan Hill Unified School District.

   A. Name of Organization _____

   Location _____

   Contact Person Telephone _____

   B. Name of Organization _____

   Location _____

   Contact Person Telephone _____

   C. Name of Organization _____

   Location _____

   Contact Person Telephone _____

BID FORM FOR VEHICLE FUEL (Page 2 of 2)
MORGAN HILL UNIFIED SCHOOL DISTRICT

2. Number of Years in the Business _____

3. Annual Sales _____

4. Number of Employees _____

5. Number of Delivery Trucks _____

6. Prompt Payment Discount _____

7. If bidder is awarded contract, will bidder consider extending pricing to other government agencies in the San Jose OPIS area? _____Yes _____No

In compliance with this Invitation for Bids and all Specifications, Terms & Conditions imposed therein, and hereby incorporated by reference, the undersigned offers, and agrees to furnish the item(s) listed above at the price(s) indicated on the reverse auction.

SIGNATURE

Company Name _____

Address from which Fuel will be Delivered to the Morgan Hill Unified School District:

_____

_____

_____	_____
Signature	Title
_____	_____
Name (printed or typed)	Date
_____	_____
Telephone Number	Fax Number

_____

E-Mail Address

BID FORM FOR VEHICLE FUEL (Page 1 of 2)

CITY OF SAN JOSE

Return this completed and signed original form as well as the Request for Contracting Preference for Local and Small Businesses (if applicable) immediately following this form to Michael Pfister, Purchasing Division, 200 East Santa Clara Street, 13th Floor, San Jose CA 95113 (telephone 408-535-7046), by 5 p.m. PDT on Tuesday, October 20, 2009, regardless of whether or not you are the low bidder. Failure to do so will disqualify your bid.

The undersigned bidder hereby offers to sell and deliver fuel to the City of San Jose in the State of California in strict compliance with the specifications, terms and conditions stated herein.

Auction Section 1, Unleaded	**Percentage +/- from OPIS San Jose Average Rack**
Lot 9 - Unleaded Gasoline (87 Octane), Large Tanks	_____
Lot 10 – Unleaded Gasoline (87 Octane), Small Tanks	_____
Auction Section 2, Diesel	
Lot 8 – Diesel, Ultra Low Sulfur, Red Dye #2	_____
Auction Section 3, Bio-Diesel	
Lot 4 – B-20 Bio-Diesel, Large Tanks	_____
Lot 5 - B-20 Bio-Diesel, Small Tanks	_____

Additional Information Required of Bidder

1. List the following information for three organizations to whom you currently provide fuel deliveries. Include only organizations with fuel requirements similar to those of the City of San Jose.

   A. Name of Organization _____

   Location _____

   Contact Person Telephone _____

BID FORM FOR VEHICLE FUEL (Page 2 of 2)
CITY OF SAN JOSE

B. Name of Organization _____

Location _____

Contact Person Telephone _____

C. Name of Organization _____

Location _____

Contact Person Telephone _____

2. Number of Years in the Business _____
3. Annual Sales _____
4. Number of Employees _____
5. Number of Delivery Trucks _____
6. Prompt Payment Discount _____
7. If bidder is awarded contract, will bidder consider extending pricing to other government agencies in the San Jose OPIS area? _____Yes _____No

In compliance with this Invitation for Bids and all Specifications, Terms & Conditions imposed therein, and hereby incorporated by reference, the undersigned offers, and agrees to furnish the item(s) listed above at the price(s) indicated on the reverse auction.

SIGNATURE

Company Name _____

Address from which Fuel will be Delivered to the City of San Jose:

_____

_____

_____	_____
Signature	Title
_____	_____
Name (printed or typed)	Date
_____	_____
Telephone Number	Fax Number

_____
E-Mail Address

CITY OF SAN JOSE
Request for Contracting Preference for Local and Small Businesses

Chapter 4.12 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.

In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (*regardless of where they are located*) of your firm is 35 or fewer.

There are two ways in which the preference can be applied. In procurements where price is the determinative factor (*i.e. there are not a variety of other factors being considered in the selection process*) the preference is in the form of a credit applied to the **dollar value** of the bid or quote. For example, a non-local vendor submits a quote of $200 per item and a LBE submits a quote of $204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately $5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as $199.

In procurements such as RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an **additional** 5% to 10% **points** in the **scoring** of their proposal.

The following determinations have been made with respect to this procurement: (for official use only)

Type of Procurement	☒ Bid	☐ Request for Quote	☐ Request for Proposal

Type of Preference	☒ Price is Determinative	☐ Price is Not Determinative
Amount of Preference	LBE preference = 2.5% of **Cost** SBE preference = 2.5% of **Cost**	LBE preference = 5% of **Points** SBE preference = 5% of **Points**

In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.

Business Name			
Business Address			
Telephone No.			
Type of Business	☐ Corporation	☐ LLC	☐ LLP
	☐ General Partnership	☐ Sole Proprietorship	☐ Other (explain)

***LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE**
In order to qualify as an LBE you must provide the following information:

Current San Jose Business Tax Certificate Number:

Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County:	

****SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE**

In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your **entire** business --NOT just local employees, or employees working in the office address given above.

Please state the number of employees that your Business has: _____

Based upon the forgoing information I am requesting that the Business named above be given the following preferences (*please check*):

☐ Local Business Enterprise ☐ Small Business Enterprise

I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed at: _____, California

Date: _____

Signature _____

Print name _____

BID FORM FOR VEHICLE FUEL (Page 1 of 2)

CITY OF SAN LEANDRO

Return this completed and signed original form to Don Brockman, Purchasing Agent, 835 East 14th Street, San Leandro, CA 94577 (telephone 510-577-3472), by 5 p.m. PDT on Tuesday, October 20, 2009, regardless of whether or not you are the low bidder. Failure to do so will disqualify your bid.

The undersigned bidder hereby offers to sell and deliver fuel to the City of San Leandro in the State of California in strict compliance with the specifications, terms and conditions stated herein.

Auction Section 1, Unleaded	**Percentage +/- from OPIS San Francisco Average Rack**
Lot 11 - Unleaded Gasoline (87 Octane)	_____

Auction Section 2, Diesel	
Lot 9 - Diesel, Ultra Low Sulfur, Red Dye #2	_____

Additional Information Required of Bidder

1. List the following information for three organizations to whom you currently provide fuel deliveries. Include only organizations with fuel requirements similar to those of the City of San Leandro.

   A. Name of Organization _____

   Location _____

   Contact Person Telephone _____

   B. Name of Organization _____

   Location _____

   Contact Person Telephone _____

   C. Name of Organization _____

   Location _____

   Contact Person Telephone _____

BID FORM FOR VEHICLE FUEL (Page 2 of 2)

CITY OF SAN LEANDRO

2. Number of Years in the Business _____

3. Annual Sales _____

4. Number of Employees _____

5. Number of Delivery Trucks _____

6. Prompt Payment Discount _____

7. If bidder is awarded contract, will bidder consider extending pricing to other government agencies in the San Francisco OPIS area? _____Yes _____No

In compliance with this Invitation for Bids and all Specifications, Terms & Conditions imposed therein, and hereby incorporated by reference, the undersigned offers, and agrees to furnish the item(s) listed above at the price(s) indicated on the reverse auction.

SIGNATURE

Company Name _____

Address from which Fuel will be Delivered to the City of San Leandro:

_____

_____

_____	_____
Signature	Title
_____	_____
Name (printed or typed)	Date
_____	_____
Telephone Number	Fax Number

_____

E-Mail Address

BID FORM FOR VEHICLE FUEL (Page 1 of 2)

SANTA CLARA VALLEY WATER DISTRICT

Return this completed and signed original form to Darryl Williams, Purchasing, 5750 Almaden Expressway, San Jose, CA 95118-3614 (telephone 408-265-2607 x3188), by 5 p.m. PDT on Tuesday, October 20, 2009, regardless of whether or not you are the low bidder. Failure to do so will disqualify your bid.

The undersigned bidder hereby offers to sell and deliver fuel to the Santa Clara Valley Water District in the State of California in strict compliance with the specifications, terms and conditions stated herein.

Auction Section 1, Unleaded	**Percentage +/- from OPIS San Jose Average Rack**
Lot 12 - Unleaded Gasoline (87 Octane)	_____
Auction Section 2, Diesel	
Lot 10 - Diesel, Ultra Low Sulfur	_____

Additional Information Required of Bidder

1. List the following information for three organizations to whom you currently provide fuel deliveries. Include only organizations with fuel requirements similar to those of the Santa Clara Valley Water District.

   A. Name of Organization _____

   Location _____

   Contact Person Telephone _____

   B. Name of Organization _____

   Location _____

   Contact Person Telephone _____

   C. Name of Organization _____

   Location _____

   Contact Person Telephone _____

BID FORM FOR VEHICLE FUEL (Page 2 of 2)

SANTA CLARA VALLEY WATER DISTRICT

2. Number of Years in the Business _____

3. Annual Sales _____

4. Number of Employees _____

5. Number of Delivery Trucks _____

6. Prompt Payment Discount _____

7. If bidder is awarded contract, will bidder consider extending pricing to other government agencies in the San Jose OPIS area? _____Yes _____No

In compliance with this Invitation for Bids and all Specifications, Terms & Conditions imposed therein, and hereby incorporated by reference, the undersigned offers, and agrees to furnish the item(s) listed above at the price(s) indicated on the reverse auction.

SIGNATURE

Company Name _____

Address from which Fuel will be Delivered to the Santa Clara Valley Water District:

_____

_____

_____	_____
Signature	Title
_____	_____
Name (printed or typed)	Date
_____	_____
Telephone Number	Fax Number

_____

E-Mail Address

ATTACHMENT A
COUNTY OF SANTA CLARA STANDARD TERMS AND CONDITIONS
FOR AGREEMENT FOR GOODS AND RELATED SERVICES

It is mutually agreed between the parties:

1. EXHIBITS

The following Exhibits are attached hereto and incorporated herein by reference:

A. Exhibit A – Price Summary and Compensation Plan

B. (Others to be determined)

C. (Others to be determined)

D. (Others to be determined)

2 . NON-EXCLUSIVE AGREEMENT

This Agreement does not establish an exclusive contract between the County and the Contractor. The County expressly reserves rights to, without limitation, the following: the right to utilize others to provide products, support and services; the right to request proposals from others with or without requesting proposals from the Contractor; and the unrestricted right to bid any such product, support or service.

3. PRODUCTS

Contractor agrees to provide the County all goods on terms set forth in this Agreement (including Exhibits), as well as all necessary equipment and resources. However, this Agreement does not provide authority to ship goods. That authority shall be established by contract release purchase orders placed by the County and sent to Contractor throughout the term of the Agreement. Each and every contract release purchase order shall incorporate all terms of this Agreement and this Agreement shall apply to same.

ANY ADDITIONAL OR DIFFERENT TERMS OR QUALIFICATIONS SENT BY CONTRACTOR, INCLUDING, WITHOUT LIMITATION, IN MAILINGS, ATTACHED TO INVOICES OR WITH ANY GOODS SHIPPED, SHALL NOT BECOME PART OF THE CONTRACT BETWEEN THE PARTIES. COUNTY'S ACCEPTANCE OF CONTRACTOR'S OFFER IS EXPRESSLY MADE CONDITIONAL ON THIS STATEMENT.

Contractor shall provide to the County, all documentation and manuals relevant to the goods to be supplied, at no additional cost. Such documentation and shall be delivered either in advance of the delivery of goods or concurrently with the delivery of goods.

Employees and agents of Contractor, shall, while on the premises of the County, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

If required, Contractor shall be responsible for installation, training and knowledge transfer activities in relation to the goods being supplied.

All equipment shall be delivered to a County site specified in the contract release purchase order, or if not so specified therein, in the Statement of Work/Specifications.

Contractor holds itself out as an expert in the subject matter of the Agreement. Contractor represents itself as being possessed of greater knowledge and skill in this area than the average person. Accordingly, Contractor is under a duty to exercise a skill greater than that of an ordinary person, and the manner in which performance is rendered will be evaluated in light of the Contractor's superior skill. Contractor shall provide equipment and perform work in a professional manner consistent, at minimum, with industry standards.

Contractor represents that all prices, warranties, benefits and other terms being provided hereunder are fair, reasonable and commensurate with the terms otherwise being offered by Contractor to its current customers ordering comparable goods and services.

County does not guarantee any minimum orders.

This Agreement shall not be effective or binding unless approved in writing by the County Director of Procurement, or authorized designee, as evidenced by their signature as set forth in this Agreement.

Furthermore, at any time during the term of the Agreement, the Agreement is subject to Termination in accordance with this Agreement. The County may contract with Contractor for recurring services beyond the contract term.

4. NECESSARY ACTS AND FURTHER ASSURANCES

The Contractor shall at its own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

5. COUNTING DAYS

Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded.

6. PRICING

Unless otherwise stated, prices shall be fixed for the term of the contract, including all extensions. If any product listed in this Agreement is discontinued or upgraded prior to delivery, Contractor shall extend the same pricing towards a comparable replacement which is functionally equivalent or an upgraded version.

Exhibit A of this Agreement is the basis for pricing and compensation throughout the term of the Agreement.

Notwithstanding the above, if at any time during the term of the Agreement the Contractor offers special, promotional or reduced pricing when compared with the price paid by the County, County shall benefit from that pricing, and that pricing shall apply to the County at the same time that is offered to other entities. Contractor is required, on an ongoing basis, to inform the County of any such special, promotional or reduced pricing.

7. MODIFICATION

This Agreement or any contract release purchase order may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement contract release purchase order will be binding on County unless it is in writing and signed by County's Procurement Director.

8. TIME OF THE ESSENCE

Time is of the essence in the delivery of goods by Contractor under this Agreement and any contract release purchase order. In the event that the Contractor fails to deliver goods and/or services on time, the Contractor shall be liable for any costs incurred by the County because of Contractor's delay. For instance, County may purchase or obtain the goods and/or services elsewhere and the Contractor shall be liable for the difference between the price in the Agreement and the cost to the County; or County may terminate on grounds of material and Contractor shall be liable for County's damages.

The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract with the County.

The rights and remedies of County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

9. HAZARDOUS SUBSTANCES

If any product being offered, delivered or supplied to the County is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Contractor must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase

order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

10. SHIPPING AND RISK OF LOSS

Goods shall be packaged, marked and otherwise prepared by Contractor in suitable containers in accordance with sound commercial practices. Contractor shall include an itemized packing list with each shipment and with each individual box or package shipped to the County. The packing list shall contain, without limitation, the applicable contract release purchase order number.

Unless otherwise specified in writing, all shipments by Contractor to County will be F.O.B. point of destination. Freight or handling charges are not billable unless such charges are referenced on the order. Transportation receipts, if required by contract release purchase order, must accompany invoice. Regardless of F.O.B. point, Contractor agrees to bear all risks of loss, injury, or destruction to goods and materials ordered herein which occur prior to delivery at County's destination; and such loss, injury or destruction shall not release Contractor from any obligation hereunder.

Any shipments returned to the Contractor shall be delivered as F.O.B. shipping point.

11. INSPECTION AND RELATED RIGHTS

All goods and services are subject to inspection, testing, approval and acceptance by the County. Inspection shall be made within 60 days or a reasonable time after delivery, whichever period is longer. If the goods, services, or the tender of delivery fail in any respect to conform to the contract, the County may reject the entire tender, accept the entire tender, or, if the deliverables are commercially divisible, may, at its option, accept any commercial unit or units and reject the rest.

Contractor shall be responsible to reclaim and remove any rejected goods or items at its own expense. Should Contractor fail to reclaim or remove any rejected goods or items within a reasonable time, County shall, at its option dispose of such goods or items and require reimbursement from Contractor for any costs or expenses incurred.

In the event that the Contractor's goods are not accepted by County, the Contractor shall be liable for any costs incurred by the County because of such failure by Contractor. For instance, County may purchase or obtain the goods elsewhere and the Contractor shall be liable for the difference between the price in the Agreement and the cost to the County, and any other costs incurred; or County may terminate for cause on grounds of material breach and Contractor shall be liable for County's damages.

The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract with the County.

The rights and remedies of County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

12. ADJUSTMENT BY COUNTY

The County reserves the right to waive a variation in specification of goods or services supplied by the Contractor. Contractor may request an equitable adjustment of payments to be made by County if County requires a change in the goods or services to be delivered. Any claim by the Contractor for resulting adjustment of payment must be asserted within 30 days from the date of receipt by the Contractor of the notification of change required by County; provided however, that the Procurement Director, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment made for goods and services supplied by Contractor. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Purchasing Director shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse performance by Contractor.

13. INVOICING

Contractor shall invoice according to the pricing exhibit of this Agreement. Invoices shall be sent to the County customer or department referenced in the individual contract release purchase order. Invoices for goods or services not specifically listed in the Agreement will not be approved for payment.

Invoices shall include: Contractor's complete name and remit-to address; invoice date, invoice number, and payment term; County contract number; pricing per the Agreement; applicable taxes; and total cost.

Contractor and County shall make reasonable efforts to resolve all invoicing disputes within seven (7) days.

14. AVAILABILITY OF FUNDING

The County's obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of funding and upon appropriation for payment to the Contractor. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

15. PAYMENT

Payment shall be due Net 30 days from the date of acceptance of the goods ordered, or Net 30 days from the date of approval by County of correct and proper invoices, whichever date is later. Payment is deemed to have been made on the date when the County mails the warrant or initiates the electronic fund transfer.

Notwithstanding anything to the contrary, County shall not make payments prior to receipt of goods or services (i.e. the County will not make "advance payments"). Unless specified in writing in a contract release purchase order, the County will not accept partial delivery with respect to any purchase order. Any acceptance of partial delivery shall not waive any of County's rights.

Sales tax shall be noted separately on every invoice. Items that are not subject to sales tax shall be clearly identified.

Contractor shall be responsible for payment of all state and federal taxes assessed on the compensation received under this Agreement and such payment shall be identified under the Contractor's federal and state identification number(s).

The County does not pay Federal Excise Taxes (F.E.T). The County will furnish an exemption certificate in lieu of paying F.E.T. Federal registration for such transactions is: County #94-730482K. Contractor shall not charge County for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose, unless expressly authorized by the County.

16. LATE PAYMENT CHARGES OR FEES

The Contractor acknowledges and agrees that the County will not pay late payment charges.

17. DISALLOWANCE

In the event the Contractor receives payment for goods or services, which payment is later disallowed by the County or state or federal law or regulation, the Contractor shall promptly refund the disallowed amount to the County upon notification. At County's option, the County may offset the amount disallowed from any payment due to the Contractor under any contract with the County.

18. TERMINATION FOR CONVENIENCE

The County may terminate this Agreement or any contract release purchase order at any time for the convenience of the County by giving ten (10) days written notice specifying the effective date and scope of such termination.

In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other materials (collectively referred to as "materials") prepared by Contractor under this Agreement contract release purchase order shall become the property of the County and shall be promptly delivered to the County. Upon receipt of such materials, County shall pay the Contractor as full compensation for performance, the unit or pro rata price for the then-accepted portion of goods and/or services.

19. TERMINATION FOR CAUSE

County may terminate this Agreement or any contract release purchase order, in whole or in part, for cause upon ten (10) days written notice to Contractor. For purposes of this Agreement, cause includes, but is not limited to, any of the following: (a) material breach of this Agreement or any contract release purchase order by Contractor, (b) violation by Contractor of any applicable laws or regulations; (c) assignment or delegation by Contractor of the rights or duties under this Agreement without the written consent of County or (d) less than perfect tender of delivery or performance by Contractor that is not in strict conformance with terms, conditions, specifications, covenants, representations, warranties or requirements in this Agreement or any contract release purchase order.

In the event of such termination, the Contractor shall be liable for any costs incurred by the County because of Contractor's default. For instance, the County may purchase or obtain goods elsewhere and the defaulting Contractor shall be liable for the difference between Contractor's price pursuant to this Agreement, and all costs incurred by the County. The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract or contract release purchase order with the County.

If, after notice of termination under the provisions of this clause, it is determined for any reason that the Contractor was not in default under this provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination For Convenience clause.

In lieu of terminating immediately upon contractor's default, County may, at its option, provide written notice specifying the cause for termination and allow Contractor 10 days (or other specified time period) to cure. If, within 10 days (or other specified time) after the County has given the Contractor such notice, Contractor has not cured to the satisfaction of the County, or if the default cannot be reasonably cured within that time period, County may terminate this Agreement at any time thereafter. County shall determine whether Contractor's actions constitute complete or partial cure. In the event of partial cure, County may, at its option, decide whether to (a) give Contractor additional time to cure while retaining the right to immediately terminate at any point thereafter for cause; or (b) terminate immediately for cause. If County determines that the Contractor's actions contribute to the curtailment of an essential service or pose an immediate threat to life, health or property, County may terminate this Agreement immediately without penalty upon issuing either oral or written notice to the Contractor and without any opportunity to cure.

20. TERMINATION FOR LACK OF APPROPRIATION

The term of the agreement between Contractor and County, and the purchase of goods and/or services hereunder, are contingent on the appropriation of funds by the County. Should sufficient funds not be appropriated, this Agreement may be terminated by County at any time by providing Contractor with thirty (30) days written notice. In the event of such Termination for Lack of Appropriation, County shall be responsible only for any undisputed, unpaid balances for goods and/or services provided by Contractor and accepted by County prior to the effective date of termination.

21. TERMINATION FOR BANKRUPTCY

If Contractor is adjudged to be bankrupt or should have a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Contractor's insolvency, the County may terminate this Agreement immediately without penalty.

22. BUDGETARY CONTINGENCY

Performance and/or payment by the County pursuant to this Agreement is contingent upon the appropriation of sufficient funds by the County for services covered by this Agreement. If funding is reduced or deleted by the County for services covered by this Agreement, the County may, at its option and without penalty or liability, terminate this Agreement or offer an amendment to this Agreement indicating the reduced amount.

23. DISENTANGLEMENT

Contractor shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County's efforts to ensure that there is no interruption of work required under the Agreement and no adverse impact

on the supply of goods, provision of services or the County's activities. Contractor shall return to County all County assets or information in Contractor's possession.

For any software programs developed for use under the County's Agreement, Contractor shall provide a nonexclusive, nontransferable, fully-paid, perpetual, irrevocable, royalty-free worldwide license to the County, at no charge to County, to use, copy, and modify, all work or derivatives that would be needed in order to allow County to continue to perform for itself, or obtain from other providers, the services as the same might exist at the time of termination.

County shall be entitled to purchase at net book value those Contractor assets used for the provision of services to or for County, other than those assets expressly identified by the parties as not being subject to this provision. Contractor shall promptly remove from County's premises, or the site of the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, the County Data and client files, held by Contractor, and after return of same, Contractor shall destroy all copies thereof not turned over to County, all at no charge to County.

24. DISPUTES

A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by the Director of Procurement who shall furnish the decision to the Contractor in writing. The decision of the Director of Procurement shall be final and conclusive unless determined by the court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith. The Contractor shall proceed diligently with the performance of the contract pending the Director of Procurement's decision.

B. The "Disputes" clause does not preclude consideration of legal questions in connection with decisions provided for in paragraph (a) above. Nothing in this agreement shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

25. ACCOUNTABILITY

Contractors will be the primary point of contact and assume the responsibility of all matters relating to the purchase, including those involving the manufacturer and deliverer or any subcontractor, as well as payment issues. If issues arise, the Contractor must take immediate action to correct or resolve the issues.

26. NO ASSIGNMENT, DELEGATION OR SUBCONTRACTING WITHOUT PRIOR WRITTEN CONSENT

Contractor may not assign any of its rights, delegate any of its duties or subcontract any portion of its work or business under this Agreement or any contract release purchase order without the prior written consent of County. No assignment, delegation or subcontracting will release Contractor from any of its obligations or alter any of its obligations to be performed under the Agreement. Any attempted assignment, delegation or subcontracting in violation of this provision is voidable at the option of the County and constitutes material breach by Contractor. Contractor is responsible for payment to sub-contractors and must monitor, evaluate, and account for the sub-contractor(s) services and operations.

As used in this provision, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

27. MERGER AND ACQUISITION

The terms of this Agreement will survive an acquisition, merger, divestiture or other transfer of rights involving Contractor. In the event of an acquisition, merger, divestiture or other transfer of rights Contractor must ensure that the enquiring entity or the new entity is legally required to:

A. Honor all the terms negotiated in any pre-acquisition or pre-merger Agreement between Contractor and the County, including but not limited to a) established pricing and fees; b) guaranteed product support until the contract term even if a new product is released; and c) no price escalation during the term of the contract.

B. If applicable, provide the functionality of the software in a future, separate or renamed product, if the acquiring entity or the new entity reduces or replaces the functionality, or otherwise provide a substantially similar functionality of the current licensed product. No additional license or maintenance fee will apply.

C. Give 30-days written notice to the County following the closing of an acquisition, merger, divestiture or other transfer of right involving Contractor.

28. COMPLIANCE WITH ALL LAWS & REGULATIONS

Contractor shall comply with all laws, codes, regulations, rules and orders (collectively, "Regulations") applicable to the goods and/or services to be provided hereunder. Contractor's violation of this provision shall be deemed a material default by Contractor, giving County a right to terminate the contract. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq. the Fair Packaging and Labeling Act, etc. and the standards and regulations issued there under. Contractor agrees to indemnify and hold harmless the County for any loss, damage, fine, penalty, or any expense whatsoever as a result of Contractor's failure to comply with the act and any standards or regulations issued there under.

29. FORCE MAJEURE

Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service.

Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

The party asserting *Force Majeure* as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

The County shall reserve the right to terminate this Agreement and/or any applicable order or contract release purchase order upon non-performance by Contractor. The County shall reserve the right to extend the agreement and time for performance at its discretion.

30. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

31. INDEPENDENT CONTRACTOR

Contractor shall supply all goods and/or perform all services pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of County. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the County and Contractor. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of County, nor shall any such person be entitled to any benefits available or granted to employees of the County.

32. INSURANCE

Contractor shall maintain insurance coverage pursuant to the exhibit setting forth insurance requirements, if such exhibit is attached.

33. DAMAGE AND REPAIR BY CONTRACTOR

Any and all damages caused by Contractor's negligence or operations shall be repaired, replaced or reimbursed by Contractor at no charge to the County. Repairs and replacements shall be completed with 72 hours of the incident unless the County requests or agrees to an extension or another time frame. The clean up of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from Contractor's vehicles or during performance shall be responsibility of the Contractor. All materials must be cleaned up in a manner and time acceptable to County (completely and immediately to prevent potential as well as actual environmental damage). Contractor must immediately report each incident to the County's Director of Procurement. Damage observed by Contractor, whether or not resulting from Contractor's operations or negligence shall be promptly reported by Contractor to County. County may, at its option, approve and/or dictate the actions that are in County's best interests.

34. LIENS, CLAIMS, AND ENCUMBRANCES AND TITLE

The Contractor represents and warrants that all the goods and materials ordered and delivered are free and clear of all liens, claims or encumbrances of any kind. Title to the material and supplies purchased shall pass directly from Contractor to County at the F.O.B. point, subject to the right of County to reject upon inspection.

35. INDEMNITY

County shall not be liable for, and Contractor shall defend, indemnify and hold harmless County and the employees and agents of County (collectively, "County Parties") against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including without limitation attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, licensees, agents, servants or employees, excepting only Claims caused by the sole negligence or willfulness of County Parties. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under its agreement with the County.

36. INTELLECTUAL PROPERTY INDEMNITY

Contractor represents and warrants for the benefit of the County and its users that it is the exclusive owner of all rights, title and interest in the product or services to be supplied. Contractor shall, at its own expense, indemnify, defend, settle, and hold harmless the County and its agencies against any claim or potential claim that any good, (including software) and/or service, or County's use of any good (including software) and/or service, provided under this Agreement infringes any patent, trademark, copyright or other proprietary rights, including trade secret rights. Contractor shall pay all costs, damages and attorneys' fees that a court awards as a result of any such claim.

37. WARRANTY

Any goods and/or services furnished under this order shall be covered by the most favorable commercial warranties that Contractor gives to any of its customers for the same or substantially similar goods and/or services. Any warranties so provided shall supplement, and shall not limit or reduce, any rights afforded to County by any clause in this Agreement, any applicable Uniform Commercial Code warranties, including, without limitation, Implied Warranty of Merchantability and Implied Warranty of Fitness for a Particular Purpose as well as any other express warranty.

Contractor expressly warrants that all goods supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the County, in compliance with all applicable federal, state and local laws and regulations and free of liens, claims and encumbrances. Contractor warrants that all services shall strictly conform to the County's requirements.

Contractor shall immediately replace or repair any good not conforming to any warranty, or provide services to conform to County's requirements. If after notice, Contractor fails to repair or replace goods, or to provide services to conform to County's requirements, Contractor shall promptly refund to County the full purchase price paid by the County. This remedy is non-exclusive of other remedies and rights that may be exercised by the County. Claims for damages may include direct damages, such as cost to repair, as well as incidental and consequential damages.

During the provision of goods and services, Contractor may not disclaim any warranty, express or implied, and any such disclaimer shall be void. Additionally, the warranties above shall not be deemed to exclude Contractor's standard warranties or other rights and warranties that the County may have or obtain.

38. COOPERATION WITH REVIEW

Contractor shall cooperate with County's periodic review of Contractor's performance. Contractor shall make itself available onsite to review the progress of the project and Agreement, as requested by the County, upon reasonable advanced notice.

Contractor agrees to extend to the County or his/her designees and/or designated auditor of the County, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable County, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained.

39. AUDIT RIGHTS

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of $10,000 shall be subject to audit by the State Auditor.

All payments made under this Agreement shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. Adjustments that are found necessary as a result of auditing may be made from current billings.

The Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in any County audits. The Contractor shall pay to County the full amount of any audit determined to be due as a result of County audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

40. ACCESS AND RETENTION OF RECORDS AND PROVISION OF REPORTS

Contractor shall maintain financial records adequate to show that County funds paid were used for purposes consistent with the terms of the contract between Contractor and County. Records shall be maintained during the terms of the Agreement and for a period of four (4) years from its termination, or until all claims have been resolved, whichever period is longer, unless a longer period is required under any contract.

All books, records, reports, and accounts maintained pursuant to the Agreement , or related to the Contractor's activities under the Agreement, shall be open to inspection, examination, and audit by County, federal and state regulatory agencies, and to parties whose Agreements with the County require such access. County shall have the right to obtain copies of any and all of the books and records maintained pursuant to the Agreement, upon the payment of reasonable charges for the copying of such records.

Contractor shall provide annual reports that include, at minimum, (i) the total contract release purchase order value for the County as a whole and individual County departments, (ii) the number of orders placed, the breakdown (by customer ID/department and County) of the quantity and dollar amount of each product and/or service ordered per year. Annual reports must be made available no later than 30 days of the contract anniversary date unless otherwise requested.

Contractor shall also provide quarterly reports to the County that show a breakdown by contract release purchase order (i) the order date (ii) ship date (iii) estimated arrival date (iv) actual arrival date (v) list of products, services and maintenance items (vi) the number and details of problem/service calls and department name that each such call pertains to (including unresolved problems). Quarterly reports must be made available to the County in electronic format, two (2) business days after the end of each quarter unless otherwise requested.

41. ACCESS TO BOOKS AND RECORDS PURSUANT TO THE SOCIAL SECURITY ACT

Access to Books and Records: If and to the extent that, Section 1861 (v) (1) (1) of the Social Security Act (42 U.S.C. Section 1395x (v) (1) (1) is applicable, Contractor shall maintain such records and provide such information to County, to any payor which contracts with County and to applicable state and federal regulatory agencies, and shall permit such entities and agencies, at all reasonable times upon request, to access books, records and other papers relating to the Agreement hereunder, as may be required by applicable federal, state and local laws, regulations and

ordinances. Contractor agrees to retain such books, records and information for a period of at least four (4) years from and after the termination of this Agreement. Furthermore, if Contractor carries out any of its duties hereunder, with a value or cost of Ten Thousand Dollars ($10,000) or more over a twelve (12) month period, through a subcontract with a related organization, such subcontract shall contain these same requirements. This provision shall survive the termination of this Agreement regardless of the cause giving rise to the termination.

42. NON-DISCRIMINATION

Contractor shall comply with all applicable Federal, State, and local laws and regulations, including Santa Clara County's policies, concerning nondiscrimination and equal opportunity in contracting. Such laws include, but are not limited to, the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (§§ 503 and 504); California Fair Employment and Housing Act (Government Code §§ 12900 et seq.); and California Labor Code §§ 1101 and 1102. Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. Contractor's violation of this provision shall be deemed a material default by Contractor giving County a right to terminate the contract for cause.

43. DEBARMENT

Contractor represents and warrants that it, its employees, contractors, subcontractors or agents (collectively "Contractor") are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor must within 30 calendar days advise the County if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, as defined by 42. U.S.C. 1320a-7b(f), or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor will indemnify, defend and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.

44. CALIFORNIA PUBLIC RECORDS ACT

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County's deadline for responding to the CPRA request. If Contractor fails to obtain such remedy within County's deadline for responding to the CPRA request, County may disclose the requested information.

Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.

45. SEVERABILITY

Should any part of the Agreement between County and the Contractor or any individual contract release purchase order be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the Agreement or any individual contract release purchase order which shall

continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

46. NON-WAIVER

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by County. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing signed by the County so specifies.

47. USE OF COUNTY'S NAME FOR COMMERCIAL PURPOSES

Contractor may not use the name of the County or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the County as provided by the Director of Procurement.

48. HEADINGS AND TITLES

The titles and headings in this Agreement are included principally for convenience and do not by themselves affect the construction or interpretation of any provision in this Agreement, nor affect any of the rights or obligations of the parties to this Agreement.

49. HANDWRITTEN OR TYPED WORDS

Handwritten or typed words have no greater weight than printed words in the interpretation or construction of this Agreement.

50. AMBIGUITIES

Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

51. ENTIRE AGREEMENT

This Agreement and its Exhibits (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

52. EXECUTION & COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The parties agree that this Agreement, its amendments, and ancillary agreements to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature must be treated in all respects as having the same effect as an original signature. The original signature copy must be sent to the County by United States Postal Service mail, sent by courier or delivered by hand.

53. NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to:

COUNTY:
Name: _____
Contract Administrator
c/o Procurement Department
2310 North First Street, Suite 201
San Jose, CA 95131-1040

CONTRACTOR:

Name: _____

Title: _____

Company: _____

Address 1: _____

Address 2: _____

City: _____

State: _____

Zip: _____

Each party may designate a different person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

54. ACCOUNT MANAGER

Contractor must assign an Account Manager to the County to facilitate the contractual relationship, be fully responsible and accountable for fulfilling the County's requirements. Contractor represents and warrants that such person will ensure that the County receives adequate pre- and post-sales support, problem resolution assistance and required information on a timely basis.

55. SURVIVAL

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement, will survive the termination of this Agreement.

56. GOVERNING LAW, JURISDICTION AND VENUE

This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions shall be exclusively vested in state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

COUNTY OF SANTA CLARA
INDEMNIFICATION AND INSURANCE REQUIREMENTS

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

   a. Each occurrence - $1,000,000

   b. General aggregate - $2,000,000

   c. Products/Completed Operations aggregate - $2,000,000

   d. Personal Injury - $1,000,000

2. General liability coverage shall include:

   a. Premises and Operations

   b. Products/Completed

   c. Personal Injury liability

   d. severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

   Additional Insured Endorsement, which shall read:

   > "County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds."

   Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

   For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars ($1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

   a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

   b. Employer's Liability coverage for not less than one million dollars ($1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.

4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

ATTACHMENT B - CITY OF SUNNYVALE
Standard Terms and Conditions for the Purchase of Goods

UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL PURCHASES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Offer and Acceptance: The Purchase Order is an offer by the City of Sunnyvale ("City") to enter into a term contract and does not, of itself, constitute authority to ship goods. That authority shall be established by individual orders placed by City on an "as required" basis throughout the contract term. No confirming documents will be issued by City for individual orders. Any of the following acts constitute Supplier's acceptance of the Purchase Order and all terms and conditions stated therein: (a) Supplier's execution and delivery to City of Supplier's own acknowledgment form in response to City's first order during the contract term; (b) Supplier's delivery of any goods in response to City's first order during the contract term; or (c) Supplier's acceptance of any payment from City.

2. Prices: All prices itemized in the Purchase Order are firm and not subject to escalation unless so stated on the face of the Purchase Order. Supplier represents and warrants that all prices itemized in the Purchase Order are at least as low as those currently being quoted by Supplier to commercial or government users for the same goods, in like quantities, under similar circumstances. If no price is stated for an item, the price shall be the lowest price currently quoted or charged by Supplier for that item.

3. Taxes: This purchase is subject to all applicable California sales and use taxes. City is exempt from federal excise tax and will provide an exemption certificate, upon request.

4. Terms of Payment: Payment terms shall be net thirty (30) days from the date of receipt of invoice or acceptance of goods, whichever occurs last. If City is entitled to a cash discount, the period of computation shall commence on the date of receipt of invoice or acceptance of goods by City, whichever occurs last. City may set off any amount owed by Supplier to City against any amount owed by City to Supplier under the Purchase Order. City shall endeavor to pay each invoice within thirty (30) days, but shall not be responsible to Supplier for additional charges, interest or penalties due to failure to pay within that period.

5. Quantities: Supplier shall deliver the exact quantities specified by City as each order is placed. City reserves the right to reject incomplete deliveries and to return at Supplier's risk and expense excess quantities delivered.

6. Stocking: Supplier shall regularly stock specific items listed on the Purchase Order in sufficient quantity to keep stock-outs at a minimum. Out-of-stock items shall be provided to City with minimum delays. City reserves the right to purchase out-of-stock items from other sources.

7. Packaging and Shipment: Goods shall be packaged, marked and otherwise prepared for shipment by Supplier in suitable containers in accordance with sound commercial practices. Supplier shall include an itemized packing list with each shipment.

8. Delivery: Time is of the essence in the performance of the Purchase Order. If delivery of goods cannot be made at the agreed-upon time, Supplier shall promptly notify City of the earliest possible date for delivery. Notwithstanding such notice, if Supplier, for any reason whatsoever, fails to deliver goods within the time specified, City may terminate the order or any part thereof without liability except for goods previously delivered and accepted. City's receipt or acceptance of all or part of a nonconforming delivery shall not constitute a waiver of any claim, right or remedy City has under the Purchase Order or applicable law.

9. Title and Risk of Loss: The Purchase Order shall specify a FOB ("free on board") point which shall be either the shipping point or the destination of the goods. If the Purchase Order specifies FOB destination, all shipping charges shall be prepaid by Supplier in full and included in the unit price. Supplier retains title to the goods and risk of loss until the goods have reached the designated destination. If the Purchase Order specifies FOB shipping point, Supplier shall prepay all shipping charges, route the goods on the least expensive common carrier in compliance with the required delivery date, and add shipping charges to the invoice as a separate line item. Buyer

assumes title to the goods and risk of loss at the shipping point. No shipping charges will be allowed unless specified.

10. Inspection and Rejection: Goods shall be received subject to City inspection, testing, approval and acceptance at City premises notwithstanding any prior payment for such goods. Goods rejected by City as nonconforming may be returned to Supplier at Supplier's risk and expense and shall not be replaced by Supplier without written authorization from City. Substitutions are not permitted except upon specific written authorization of City.

11. Warranties: In addition to any other express or implied warranties, Supplier warrants that all goods delivered under the Purchase Order will be new; suitable for the use(s) intended; of the grade and quality specified; free from all defects in design, material and workmanship; in conformance with all samples, drawings, descriptions and specifications furnished by City; in compliance with all applicable federal, state, and local laws and regulations; and free of liens and encumbrances. These warranties shall not be deemed to exclude Supplier's standard warranties or other rights or warranties which City may have or obtain. At its expense and option, Supplier shall replace or repair any goods not conforming to the foregoing warranties. If, after notice, Supplier fails promptly to replace or repair any such goods, Supplier shall promptly refund to City the full purchase price paid by City for such goods.

12. Compliance with Laws: (a) Supplier shall comply with all applicable governmental laws, ordinances, codes, rules, regulations, programs, plans and orders in the performance of the Purchase Order.

(b) Supplier shall be in full compliance with any and all permit or licensing requirements in connection with the manufacture, sale, shipment and/or installation of the goods specified in the Purchase Order.

(c) If, in connection with the specified goods, Supplier is required to comply with the Occupational Safety and Health Act's hazardous communications standard, Supplier agrees to provide copies of the applicable Material Safety Data Sheets at the time of delivery of the goods.

13. Safety and Health Requirements: Goods supplied shall comply with all federal and state Occupational Safety and Health Administration requirements and with all California safety and health requirements.

14. Assignment: Supplier shall not delegate or subcontract any duties or assign any rights or claims under the Purchase Order without City's prior written consent.

15. Notice of Material Change in Business: Supplier agrees that, if it experiences a material change in its business during the term of the Purchase Order, including, without limitation, a reorganization, restructuring, leveraged buyout, bankruptcy, etc., Supplier will immediately notify City of the change.

16. Waiver: Failure of City to enforce any provision of the Purchase Order shall not constitute a waiver or relinquishment by City of the right to such performance in the future nor of the right to enforce any other provision of the Purchase Order.

17. Severability: If any provision of the Purchase Order is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Purchase Order did not contain the particular provision held to be invalid.

18. Patents, Copyrights or Trademarks: Supplier shall hold harmless and fully indemnify City and its officers, employees and agents from all damages or claims for damages, costs or expenses in law or equity that may arise for any infringement of the patent right, copyright or trademark of any person as a consequence of the use by City or any of its officers, employees or agents, of goods supplied under this Purchase Order.

19. Change Orders: City shall have the right to revoke, amend, or modify the Purchase Order at any time by issuance of a written Change Order. No verbal revocations, amendments or modifications shall be held binding on

City. Supplier's receipt of City's written Change Order without response received by City within ten (10) days or Supplier's shipment or other performance reflecting the change, whichever occurs first, shall constitute Supplier's acceptance of the change without any price or other adjustment.

20. Termination: The Purchase Order may be terminated by mutual consent of both parties or by City at its discretion. City may cancel the Purchase Order at any time with written notice to Supplier, stating the extent and effective date of termination. Upon receipt of this written notice, Supplier shall stop performance under the Purchase Order as directed by City. If the Purchase Order is so terminated, Supplier shall be paid in accordance with the terms of the Purchase Order for goods delivered and accepted.

21. Breach of Contract: Should Supplier breach any of the provisions of the Purchase Order, City reserves the right to cancel the Purchase Order upon written notice to Supplier. Supplier shall be liable for any and all damages incidental and consequential suffered by City as the result of Supplier's breach of contract. City shall have any and all remedies provided under the Uniform Commercial Code in the event of a breach of contract by Supplier.

22. Governing Law; Public Records: The Purchase Order shall be governed by and construed in accordance with the laws of the State of California as interpreted by the California courts, and any litigation arising out of the Purchase Order shall be conducted in the courts of the State of California. California law requires that the contents of the Purchase Order be open to inspection and copying by the public.

23. Work to be Completed on City Premises by Supplier: In the event that Supplier is required, as part of its fulfillment of the terms of the Purchase Order, to install goods or perform any other work on City premises, Supplier assumes entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury or alleged injury (including death) or damage to property, sustained or alleged to have been sustained in connection with or to have arisen out of the performance of such work by Supplier.

24. Force Majeure: Neither party to the Purchase Order shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. City may terminate the Purchase Order upon written notice after determining such delay or default will reasonably prevent successful performance of the Purchase Order.

25. Entire Agreement: The Purchase Order, which includes any and all documents incorporated therein by reference, sets forth the entire agreement between Supplier and City with respect to the authorized purchases.

26. Additional or Inconsistent Terms: Any term or condition set forth in any acknowledgment form provided to City by Supplier which is in any way different from, inconsistent with, or in addition to the terms and conditions of the Purchase Order will not become a part of the Purchase Order nor be binding on City. If Supplier objects to any term or condition set forth therein, this objection must be in writing and received by City's Buyer identified on the Purchase Order prior to Supplier's first delivery of goods during the contract term. Notwithstanding such notice, waiver or modification of any term or condition shall occur only if agreed in writing by City.

ATTACHMENT C - CITY OF MOUNTAIN VIEW

NOTE: This section is included for review purposes only and represents City of Mountain View standard terms and conditions. It does not represent the complete terms of a potential agreement that might be negotiated with a vendor awarded the contract. However, all of the following terms and conditions would be included in such an agreement.

TERMS AND CONDITIONS

A. Deviations from Bid Specifications: If there are any deviations from the brands and/or specifications, the Vendor MUST note such differences, brand names, model numbers and attach brochures and a complete description of the goods or services bid. The burden of showing the equivalency is on the Vendor.

B. Payment Terms: The City's payment terms are at a minimum, net thirty (30) days after acceptance of service or delivery of goods. The vendor's invoice must easily match the unit prices listed in this bid and must include the vendor's Social Security number or Federal Tax I.D. number. Vendors may offer discounted payment terms, and those should be listed on the vendor's response.

B. Time of Delivery/Completion: Time is of the essence on this purchase order. The vendor shall deliver all of the goods or complete all of the services called for under this response within the number of working/calendar days or by the date specified for completion in this response, unless the delays are caused by the City or by Acts of God.

C. Ownership and Collusion—Financial Interest by City Employees: The vendor certifies, by signing this bid, that he/she has not, directly or indirectly, been collusive with any other vendor or anyone else interested in this bid. Additionally, the vendor stipulates that no City officer or employee shall be financially interested, either directly or indirectly, in any contract, sale, purchase or lease to which the City is a party, and the vendor stipulates that no City officer or employee has greater than five percent (5%) ownership in this company, as per Section 706 of the City of Mountain View Charter.

D. Assignment: Any purchase order issued as a result of this bid may not be assigned without written consent of the City.

E. Termination: Any purchase order issued as a result of this bid may be terminated by the City at any time with ten (10) days' written notice. The City will only pay for any goods or services ordered, delivered and accepted by the City. Any payments made in advance will be returned to the City on a prorated basis with the City only paying for those goods or services actually provided.

F. Funding-Out Clause: Any purchase order issued as a result of this bid may be terminated every June 30 based upon the City Council not funding the purchase of goods or services to be provided in this bid after each July 1.

G. Nondiscrimination: The vendor shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual orientation, political affiliation, national origin, ancestry, age, marital status or physical or mental disability.

H. Applicable Laws and Attorney's Fees: This Agreement shall be construed and enforced pursuant to the laws of the State of California. Should any legal action be brought by a party for breach of this agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorney's fees, court costs and such other costs as may be fixed by the court. Reasonable attorney's fees of the City Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

I. MSDS: General Industrial Safety Order 5195 requires Material Safety Data Sheets (MSDS) be supplied, for all applicable items, with the initial delivery.

J. Subcontractors: The City prefers a proposal with a single or primary vendor. If you propose a multi-vendor or subcontracted approach, clearly identify the responsibilities of each party and the assurances of performance you offer. The Vendor is the prime contractor and is solely responsible for all of the Vendor's subcontractors.

K. Insurance Requirements:

All required insurance shall be submitted to the Finance and Administrative Services Department—Purchasing Division within ten (10) days of provisional award. Failure to provide the insurance certificates within the time frame specified by the City shall be cause for the response to be rejected as nonresponsive and not acceptable. The vendor shall maintain insurance in full force and effect during the entire period of performance under contract. Failure to do so shall be cause for termination of the contract.

All policies must have a thirty (30) day noncancellation clause giving the City thirty (30) days prior written notice in the event a policy is canceled. At the end of each contract year, the City reserves the right to review insurance requirements and to require more or less coverage depending upon assessment of the risk, the vendor's past experience and the availability and affordability of increased liability insurance coverage.

Insurance coverage must be from an insurance carrier licensed in the State of California and rated "A" or better by the A.M. Best Key Rating Guide.

The following coverage shall be required:

- Commercial General Liability/Automobile Liability Insurance: The Vendor shall obtain Commercial General Liability insurance and Automobile Liability insurance in the amount of One Million Dollars ($1,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract or the general aggregate limit shall be twice the required occurrence limit. The Vendor's insurance coverage shall be written on an occurrence basis.

•Workers' Compensation Insurance: The Vendor shall obtain statutory Workers' Compensation insurance and Employer's Liability insurance in the amount of One Million Dollars ($1,000,000) per accident.

Acceptability of Insurers: Insurance is to be placed with insurers with a current Best Rating of A:VII unless otherwise acceptable to the City.

Verification of Coverage: Insurance, deductibles or self-insurance retentions shall be subject to the City's approval. Original Certificates of Insurance with endorsements shall be received and approved by the City before work commences, and insurance must be in effect for the duration of the contract. The absence of insurance or a reduction of stated limits shall cause all work on the project to cease. Any delays shall not increase costs to the City or increase the duration of the project.

Other Insurance Provisions:

The City of Mountain View, its officers, officials, employees and volunteers are to be covered as additional insured by Endorsement CG 20 10 11 85 for Commercial General and Automobile Liability coverage.

For any claims related to this project, the Vendor's insurance coverage shall be primary and any insurance or self-insurance maintained by the City, its officers, officials, employees and volunteers shall not contribute to it.

Each insurance policy required shall be endorsed that a thirty (30) day notice be given to the City in the event of cancellation or modification to the stipulated insurance coverage.

In the event the Vendor employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of the Vendor to ensure that all subcontractors comply with the same insurance requirements that are stated in this Agreement.

(5) Approval of the insurance by City or acceptance of the Certificate of Insurance by City shall not relieve or decrease the extent to which Vendor may be held responsible for payment of damages resulting from Vendor's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

(6) If, for any reason, Vendor fails to maintain insurance coverage that is required pursuant to this contract, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this contract and obtain damages from Vendor resulting from said breach. Alternately, City may purchase such required insurance coverage, and without further notice to Vendor, City may deduct from sums due to Vendor any premium costs advanced by City for such insurance.

d. Hold Harmless:

Vendor shall defend, indemnify and hold City, its officers, employees and agents harmless from any liability for damage or claims of same, including but not limited to personal injury,

property damage and death, which may arise from Vendor or Vendor's contractors, subcontractors, agents or employees' operations under this Agreement. City shall cooperate reasonably in the defense of any action, and Vendor shall employ competent counsel, reasonably acceptable to the City Attorney.

L. CITY'S UNILATERAL RIGHT

The City reserves the unilateral right to cancel this bid in whole or in part, or reject any or all responses submitted when such action is determined to be fiscally advantageous to the City as determined solely by the City. The City also reserves the unilateral right to award a contract, in whole or in part; to award a contract to one or more bidders; to waive or permit cure of minor irregularities; and to conduct discussions with proposers in any manner necessary.

M. PUBLIC RECORDS

The parties recognize and acknowledge that CITY is subject to the California Public Records Act, California Government Code Section 6250 and following. Public records are subject to disclosure.

N. Entire Agreement:

This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. If the attachments or exhibits to this Agreement, if any, are inconsistent with this Agreement, this Agreement shall control.

ATTACHMENT D - The County of Santa Cruz Terms and Conditions

INVOICING INSTRUCTIONS -The Auditor Controller will only pay by **original invoice.** Machine or carbon copies will not be accepted
unless special approval is given. Partial shipments are not to be made without prior approval of the County General Services Department,
Purchasing Division. No invoices for partial shipments shall be authorized for payment, with the exception of Blanket Orders, without prior
approval.
INVOICES IN TRIPLICATE (original and two copies) must be made to County of Santa Cruz and forwarded promptly to the **bill to**
address as shown on the reverse side. Invoices must bear upon their face the order number that appears in the upper right-hand corner
hereof. They must state whether they cover a complete or partial delivery and must show units and unit prices. If the price shown is a
delivered price, all transportation and delivery charges must be prepaid in full. Transportation and delivery charges must not appear on the
invoice. Price shown on the invoice shall match the price on the purchase order. Invoices will not be processed or approved for payment
unless these requirements have been met.
DELIVERY INSTRUCTION - If a **specific room** is given, delivery must be made to that room number, **no exceptions** unless authorized
by Santa Cruz county general services dept., purchasing division.
HAZARDOUS SUBSTANCE - If any product supplied and/or used in relation to filling this order contains a substance identified by the
California Department of Industrial Relations as a "hazardous substance", submit two (2) copies of the materials safety data sheet as
follows: one copy to be provided with the delivery of the product and the other copy is to be sent to: **SAFETY OFFICER, COUNTY OF**
SANTA CRUZ, 701 OCEAN STREET, RM 330, SANTA CRUZ, CA 95060. The County of Santa Cruz is concerned about the environment
and wishes to avoid ozone depleting chemicals. Vendors are requested to offer for the County's consideration suitable substitutes for any
products that are potentially detrimental to the ozone layer.

CONDITIONS

1. DO NOT substitute without the approval of the County General Services Dept., Purchasing Division.
2. No charges for transportation, containers, packing, etc. will be allowed unless they are specified in this order.
3. Political Subdivisions are not subject to Federal Excise or city sales tax.
4. Surface shipment only is authorized unless specifically stated otherwise in writing.
5. In case of default by the vendor, the County may procure the articles or services from other sources and my deduct from any monies
due, or that may thereafter become due to the vendor, the difference between the price named in the contract or purchase order and the actual cost thereof to the County. Prices paid by the County shall be considered the prevailing market price at the time of purchase.
6. Cost of inspection on deliveries, or offers for delivery, which do not meet specifications, will be for the account of the vendor.
7. The vendor shall hold the County, its officers, agents, servants and employees, harmless from liability of any nature or kind on account
or the use of any copyrighted, or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliance furnished or used under this order.
8. **Independent Contractors** shall exonerate, indemnify, defend, and hold harmless COUNTY, without limitation, its officers, agents employees and volunteers from and against any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which County may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as
a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this AGREEMENT,
excepting any liability arising out of sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons. In addition, all independent contractors are solely responsible for any and all Federal, State, and Local taxes, charges, fees or contributions required to be paid with respect to CONTRACTORS and CONTRACTOR'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding). If contractor is a "design professional," the indemnity protection
provided by this section will be as broad and comprehensive as possible, while complying with the provisions of Civil Code Section 2782.8.
9. **Independent Contractors** supplying services must carry a minimum of $1,000,000 **Comprehensive or Commercial** liability insurance, **Auto insurance** with a minimum combined single limit of $500,000 per occurrence for bodily and property damage if a vehicle is involved in delivery of service and Workers Compensation insurance in the minimum statutory amounts, if the contractor has
employees. Contracts for professional services such as architectural and engineering services are required to carry a minimum of

$1,000,000 **Professional Liability** insurance unless waived or reduced by the County in writing.
10. The vendor will not be held liable for failure or delay in the fulfillment of the order if hindered or prevented by fires, strikes or Acts of
God.
11. Equipment for stock furnished by the County to be used on this order shall be returned to the County free from damage from any cause
and in accordance with all other terms and conditions of bid and order.
12. On shipments sold F.O.B. point of origin, the vendor should prepay charges and add to invoice. Original copy of paid express or freight
bill must be attached to invoice.
13. Electrical Equipment must meet California Industrial Safety Code.
14. The balance of all partial shipments shall be back ordered unless notified otherwise.
15. Shipments not received by date required may be cancelled by purchaser without penalty.
16. If the Living Wage box on the reverse side is checked, this agreement is subject to the provisions of Santa Cruz County Code Chapter
2.122, requiring payment of a living wage to covered employees. To check these requirements you may visit the County website at:
http://sccounty01.co.santa-cruz.ca.us/gsd/Purchasing/Living Wage.
17. OFF-SHORE OUTSOURCING OF SERVICES: The Contractor certifies that any work done under this Purchase Order, either by the
Contractor or any Subcontractor, will be performed solely by workers within the United States.
18. The County may, at its sole option and without penalty, terminate purchase orders for services by giving thirty (30) days written notice.
19. Contractor shall not assign this purchase order without the County's prior written consent. If Contractor's business is sold, thirty (30)
days prior written notice must be provided to the County, which may then, at its sole option and without penalty, terminate the contract

ATTACHMENT E – CITY OF GILROY

AGREEMENT FOR SERVICES

This AGREEMENT made this _____ day of _____, between:

CITY: City of Gilroy, having a principal place of business at 7351 Rosanna Street, Gilroy, California

and CONSULTANT: _____, having a principal place of business at _____.

TERM OF AGREEMENT

This Agreement will become effective on _____ and will continue in effect through _____ unless terminated in accordance with the provisions of **Article 7** of this Agreement.

INDEPENDENT CONTRACTOR STATUS

It is the express intention of the parties that CONSULTANT is an independent contractor and not an employee, agent, joint venturer or partner of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT or any employee or agent of CONSULTANT. Both parties acknowledge that CONSULTANT is not an employee for state or federal tax purposes. CONSULTANT shall not be entitled to any of the rights or benefits afforded to CITY'S employees, including, without limitation, disability or unemployment insurance, workers' compensation, medical insurance, sick leave, retirement benefits or any other employment benefits. CONSULTANT shall retain the right to perform services for others during the term of this Agreement.

SERVICES TO BE PERFORMED BY CONSULTANT

Specific Services

CONSULTANT agrees to: Perform the services as outlined in **Exhibit "A"** ("Specific Provisions") and **Exhibit "B"** ("Scope of Services"), within the time periods described in **Exhibit "C"** ("Milestone Schedule").

Method of Performing Services

CONSULTANT shall determine the method, details and means of performing the above-described services. CITY shall have no right to, and shall not, control the manner or determine the method of accomplishing CONSULTANT'S services.

Employment of Assistants

CONSULTANT may, at the CONSULTANT'S own expense, employ such assistants as CONSULTANT deems necessary to perform the services required of CONSULTANT by this Agreement, subject to the prohibition against assignment and subcontracting contained in **Article 5** below. CITY may not control, direct, or supervise CONSULTANT'S assistants in the performance of those services. CONSULTANT assumes full and sole responsibility for the payment of all compensation and expenses of these assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholding.

Place of Work

CONSULTANT shall perform the services required by this Agreement at any place or location and at such times as CONSULTANT shall determine is necessary to properly and timely perform CONSULTANT'S services.

COMPENSATION

Consideration

In consideration for the services to be performed by CONSULTANT, CITY agrees to pay CONSULTANT the amounts set forth in **Exhibit "D"** ("Payment Schedule"). In no event however shall the total compensation paid to CONSULTANT exceed _____.

Invoices

CONSULTANT shall submit invoices for all services rendered.

Payment

Payment shall be due according to the payment schedule set forth in **Exhibit "D"**. No payment will be made unless CONSULTANT has first provided City with a written receipt of invoice describing the work performed and any approved direct expenses (as provided for in **Exhibit "A"**, **Section IV**) incurred during the preceding period. If CITY objects to all or any portion of any invoice, CITY shall notify CONSULTANT of the objection within thirty (30) days from receipt of the invoice, give reasons for the objection, and pay that portion of the invoice not in dispute. It shall not constitute a default or breach of this Agreement for CITY not to pay any invoiced amounts to which it has objected until the objection has been resolved by mutual agreement of the parties.

Expenses

CONSULTANT shall be responsible for all costs and expenses incident to the performance of services for CITY, including but not limited to, all costs of equipment used or provided by CONSULTANT, all fees, fines, licenses, bonds or taxes required of or imposed against CONSULTANT and all other of CONSULTANT'S costs of doing business. CITY shall not be

responsible for any expenses incurred by CONSULTANT in performing services for CITY, except for those expenses constituting "direct expenses" referenced on **Exhibit "A."**

OBLIGATIONS OF CONSULTANT

Tools and Instrumentalities

CONSULTANT shall supply all tools and instrumentalities required to perform the services under this Agreement at its sole cost and expense. CONSULTANT is not required to purchase or rent any tools, equipment or services from CITY.

Workers' Compensation

CONSULTANT agrees to provide workers' compensation insurance for CONSULTANT'S employees and agents and agrees to hold harmless, defend with counsel acceptable to CITY and indemnify CITY, its officers, representatives, agents and employees from and against any and all claims, suits, damages, costs, fees, demands, causes of action, losses, liabilities and expenses, including without limitation reasonable attorneys' fees, arising out of any injury, disability, or death of any of CONSULTANT'S employees.

Indemnification of Liability, Duty to Defend

Professional Liability

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation reasonable attorneys' fees, to the extent caused by any willful or negligent acts, errors or omissions of CONSULTANT or CONSULTANT'S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

Other Liability

To the fullest extent permitted by law, CONSULTANT shall defend through counsel approved by CITY indemnify and hold harmless CITY, its officers, representatives, agents and employees against any and all suits, damages, costs, fees, claims, demands, causes of action, losses, liabilities and expenses, including without limitation reasonable attorneys' fees, to the extent arising caused by any negligent or malicious act or omission of CONSULTANT or CONSULTANT'S assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property.

Insurance

In addition to any other obligations under this Agreement, CONSULTANT shall, at no cost to CITY, obtain and maintain throughout the term of this Agreement: (a) Commercial Liability Insurance, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of $1,000,000 per occurrence for all damages due to bodily injury, sickness or disease, or death to any person, and damage to property, including the loss of

use thereof; and (b) Professional Liability Insurance (Errors & Omissions) with a minimum coverage of $1,000,000 per occurrence and aggregate. As a condition precedent to CITY'S obligations under this Agreement, CONSULTANT shall furnish evidence of such coverage (naming CITY, its officers and employees as additional insureds on the Comprehensive Liability insurance policy referred to in (a) immediately above) and requiring thirty (30) days written notice of policy lapse or cancellation, or of a material change in policy terms.

Assignment

Notwithstanding any other provision of this Agreement, neither this Agreement nor any duties or obligations of CONSULTANT under this Agreement may be assigned or subcontracted by CONSULTANT without the prior written consent of CITY, which CITY may withhold in its sole and absolute discretion.

State and Federal Taxes

As CONSULTANT is not CITY'S employee, CONSULTANT shall be responsible for paying all required state and federal taxes. Without limiting the foregoing, CONSULTANT acknowledges and agrees that:

- CITY will not withhold FICA (Social Security) from CONSULTANT'S payments;
- CITY will not make state or federal unemployment insurance contributions on CONSULTANT'S behalf;
- CITY will not withhold state or federal income tax from payment to CONSULTANT;
- CITY will not make disability insurance contributions on behalf of CONSULTANT;
- CITY will not obtain workers' compensation insurance on behalf of CONSULTANT.

OBLIGATIONS OF CITY

Cooperation of City

CITY agrees to respond to all reasonable requests of CONSULTANT and provide access, at reasonable times following receipt by CITY of reasonable notice, to all documents reasonably necessary to the performance of CONSULTANT'S duties under this Agreement.

Assignment

CITY may assign this Agreement or any duties or obligations thereunder to a successor governmental entity without the consent of CONSULTANT. Such assignment shall not release CONSULTANT from any of CONSULTANT'S duties or obligations under this Agreement.

TERMINATION OF AGREEMENT

Sale of Consultant's Business/ Death of Consultant.

CONSULTANT shall notify CITY of the proposed sale of CONSULTANT's business no later than thirty (30) days prior to any such sale. CITY shall have the option of terminating this Agreement within thirty (30) days after receiving such notice of sale. Any such CITY termination pursuant to this **Article 7.A** shall be in writing and sent to the address for notices to CONSULTANT set forth in **Exhibit A, Subsection V.H.**, no later than thirty (30) days after CITY' receipt of such notice of sale.

If CONSULTANT is an individual, this Agreement shall be deemed automatically terminated upon death of CONSULTANT.

Termination by City for Default of Consultant

Should CONSULTANT default in the performance of this Agreement or materially breach any of its provisions, CITY, at CITY'S option, may terminate this Agreement by giving written notification to CONSULTANT. For the purposes of this section, material breach of this Agreement shall include, but not be limited to the following:

1. CONSULTANT'S failure to professionally and/or timely perform any of the services contemplated by this Agreement.

2. CONSULTANT'S breach of any of its representations, warranties or covenants contained in this Agreement.

CONSULTANT shall be entitled to payment only for work completed in accordance with the terms of this Agreement through the date of the termination notice, as reasonably determined by CITY, provided that such payment shall not exceed the amounts set forth in this Agreement for the tasks described on Exhibit C" which have been fully, competently and timely rendered by CONSULTANT. Notwithstanding the foregoing, if CITY terminates this Agreement due to CONSULTANT'S default in the performance of this Agreement or material breach by CONSULTANT of any of its provisions, then in addition to any other rights and remedies CITY may have, CONSULTANT shall reimburse CITY, within ten (10) days after demand, for any and all costs and expenses incurred by CITY in order to complete the tasks constituting the scope of work as described in this Agreement, to the extent such costs and expenses exceed the amounts CITY would have been obligated to pay CONSULTANT for the performance of that task pursuant to this Agreement.

Termination for Failure to Make Agreed-Upon Payments

Should CITY fail to pay CONSULTANT all or any part of the compensation set forth in Article 4 of this Agreement on the date due, then if and only if such nonpayment constitutes a default under this Agreement, CONSULTANT, at the CONSULTANT'S option, may terminate this Agreement if such default is not remedied by CITY within thirty (30) days after demand for such payment is given by CONSULTANT to CITY.

Transition after Termination

Upon termination, CONSULTANT shall immediately stop work, unless cessation could potentially cause any damage or harm to person or property, in which case CONSULTANT shall cease such work as soon as it is safe to do so. CONSULTANT shall incur no further expenses in connection with this Agreement. CONSULTANT shall promptly deliver to CITY all work done toward completion of the services required hereunder, and shall act in such a manner as to facilitate any the assumption of CONSULTANT's duties by any new consultant hired by the CITY to complete such services.

GENERAL PROVISIONS

Amendment & Modification

No amendments, modifications, alterations or changes to the terms of this Agreement shall be effective unless and until made in a writing signed by both parties hereto.

Americans with Disabilities Act of 1990

Throughout the term of this Agreement, the CONSULTANT shall comply fully with all applicable provisions of the Americans with Disabilities Act of 1990 ("the Act") in its current form and as it may be amended from time to time. CONSULTANT shall also require such compliance of all subcontractors performing work under this Agreement, subject to the prohibition against assignment and subcontracting contained in Article 5 above. The CONSULTANT shall defend with counsel acceptable to CITY, indemnify and hold harmless the CITY OF GILROY, its officers, employees, agents and representatives from and against all suits, claims, demands, damages, costs, causes of action, losses, liabilities, expenses and fees, including without limitation reasonable attorneys' fees, that may arise out of any violations of the Act by the CONSULTANT, its subcontractors, or the officers, employees, agents or representatives of either.

Attorneys' Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

Captions

The captions and headings of the various sections, paragraphs and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

Compliance with Laws

The CONSULTANT shall keep itself informed of all State and National laws and all municipal ordinances and regulations of the CITY which in any manner affect those engaged or employed

in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Without limiting the foregoing, CONSULTANT agrees to observe the provisions of the Municipal Code of the CITY OF GILROY, obligating every contractor or subcontractor under a contract or subcontract to the CITY OF GILROY for public works or for goods or services to refrain from discriminatory employment or subcontracting practices on the basis of the race, color, sex, religious creed, national origin, ancestry of any employee, applicant for employment, or any potential subcontractor.

Conflict of Interest

CONSULTANT certifies that to the best of its knowledge, no CITY employee or office of any public agency interested in this Agreement has any pecuniary interest in the business of CONSULTANT and that no person associated with CONSULTANT has any interest that would constitute a conflict of interest in any manner or degree as to the execution or performance of this Agreement.

Entire Agreement

This Agreement supersedes any and all prior agreements, whether oral or written, between the parties hereto with respect to the rendering of services by CONSULTANT for CITY and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

No other agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Such other agreements or conversations shall be considered as unofficial information and in no way binding upon CITY.

Governing Law

This Agreement will be governed by and construed in accordance with the laws of the State of California.

Notices

Any notice to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in **Exhibit "A"**, **Section V.H.** but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed delivered as of actual receipt; mailed notices will be deemed delivered as of three (3) days after mailing.

Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Time of the Essence

All dates and times referred to in this Agreement are of the essence.

Waiver

CONSULTANT agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

Executed at Gilroy, California, on the date and year first above written.

CONSULTANT:	**CITY:**
	CITY OF GILROY
_____	
By:	By:
Name: _____	Name: _____
Title:	Title:
Social Security or Taxpayer	
Identification Number _____	
Approved as to Form	ATTEST:
_____	_____
City Attorney	City Clerk

EXHIBIT "A"

SPECIFIC PROVISIONS

I. PROJECT MANAGER

CONSULTANT shall provide the services indicated on the attached **Exhibit "B"**, Scope of Services ("Services"). (All exhibits referenced are incorporated herein by reference.) To accomplish that end, CONSULTANT agrees to assign _____, who will act in the capacity of Project Manager, and who will personally direct such Services.

Except as may be specified elsewhere in this Agreement, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to complete the Services in accordance with the terms of this Agreement.

II. NOTICE TO PROCEED/COMPLETION OF SERVICE

A. NOTICE TO PROCEED

CONSULTANT shall commence the Services upon delivery to CONSULTANT of a written "Notice to Proceed", which Notice to Proceed shall be in the form of a written communication from designated City contact person(s). Notice to Proceed may be in the form of e-mail, fax or letter authorizing commencement of the Services. For purposes of this Agreement, _____ shall be the designated City contact person(s). Notice to Proceed shall be deemed to have been delivered upon actual receipt by CONSULTANT or if otherwise delivered as provided in the **Section V.H.** ("Notices") of this **Exhibit "A"**.

B. COMPLETION OF SERVICES

When CITY determines that CONSULTANT has completed all of the Services in accordance with the terms of this Agreement, CITY shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination of completion when, in its opinion, it has completed all of the Services as required by the terms of this Agreement and, if so requested, CITY shall make this determination within two (2) weeks of such request, or if CITY determines that CONSULTANT has not completed all of such Services as required by this Agreement, CITY shall so inform CONSULTANT within this two (2) week period.

III. PROGRESS SCHEDULE

The schedule for performance and completion of the Services will be as set forth in the attached **Exhibit "C"**.

IV. PAYMENT OF FEES AND DIRECT EXPENSES

Payments shall be made to CONSULTANT as provided for in **Article 4** of this Agreement.

Direct expenses are charges and fees not included in **Exhibit "B"**. CITY shall be obligated to pay only for those direct expenses which have been previously approved in writing by CITY. CONSULTANT shall obtain written approval from CITY prior to incurring or billing of direct expenses.

Copies of pertinent financial records, including invoices, will be included with the submission of billing(s) for all direct expenses.

V. OTHER PROVISIONS

A. STANDARD OF WORKMANSHIP

CONSULTANT represents and warrants that it has the qualifications, skills and licenses necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONSULTANT'S representations and warranties regarding its skills, qualifications and licenses. CONSULTANT shall perform such Services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

Any plans, designs, specifications, estimates, calculations, reports and other documents furnished under this Agreement shall be of a quality acceptable to CITY. The minimum criteria for acceptance shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified. The minimum standard of appearance, organization and content of the drawings shall be that used by CITY for similar purposes.

B. RESPONSIBILITY OF CONSULTANT

CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of the Services furnished by it under this Agreement. CONSULTANT shall not be responsible for the accuracy of any project or technical information provided by the CITY. The CITY'S review, acceptance or payment for any of the Services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT'S negligent performance of any of the services furnished under this Agreement.

C. RIGHT OF CITY TO INSPECT RECORDS OF CONSULTANT

CITY, through its authorized employees, representatives or agents, shall have the right, at any and all reasonable times, to audit the books and records (including, but not limited to, invoices, vouchers, canceled checks, time cards, etc.) of CONSULTANT for the purpose of verifying any and all charges made by CONSULTANT in connection with this Agreement. CONSULTANT shall maintain for a minimum period of three (3) years (from the date of final payment to CONSULTANT), or for any longer period required by law, sufficient books and records in accordance with standard California accounting practices to establish the correctness of all charges submitted to CITY by CONSULTANT, all of which shall be made available to CITY at the CITY's offices within five (5) business days after CITY's request.

D. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data (including, but not limited to, computer data and source code), drawings, descriptions, documents, discussions or other information developed or received by or for CONSULTANT and all other written and oral information developed or received by or for CONSULTANT and all other written and oral information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONSULTANT and shall not, without the prior written consent of CITY, be used for any purposes other than the performance of the Services, nor be disclosed to an entity not connected with the performance of the such Services. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or is or becomes generally known to the related industry (other than that which becomes generally known as the result of CONSULTANT'S disclosure thereof) shall be deemed confidential. CONSULTANT shall not use CITY'S name or insignia, or distribute publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

E. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall CONSULTANT have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

F. OWNERSHIP OF MATERIAL.

All material including, but not limited to, computer information, data and source code, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared (or caused to be prepared) under this Agreement shall be the property of CITY, but CONSULTANT may retain and use copies thereof subject to **Section V.D** of this **Exhibit "A"**.

CITY shall not be limited in any way in its use of said material at any time for any work, whether or not associated with the City project for which the Services are performed. However, CONSULTANT shall not be responsible for, and City shall indemnify CONSULTANT from, damages resulting from the use of said material for work other than PROJECT, including, but not limited to, the release of this material to third parties for work other than on PROJECT.

G. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

H. NOTICES.

Notices are to be sent as follows:

CITY: _____
City of Gilroy
7351 Rosanna Street
Gilroy, CA 95020

CONSULTANT:

I. FEDERAL FUNDING REQUIREMENTS.

☐ If the box to the left of this sentence is checked, this Agreement involves federal funding and the requirements of this **Section V.J.** apply.

☐ If the box to the left of this sentence is checked, this Agreement does not involve federal funding and the requirements of this **Section V.J.** do not apply.

1. DBE Program

CONSULTANT shall comply with the requirements of Title 49, Part 26, Code of Federal Regulations (49 CFR 26) and the City-adopted Disadvantaged Business Enterprise programs.

2. Cost Principles

Federal Acquisition Regulations in Title 48, CFR 31, shall be used to determine the allowable cost for individual items.

3. Covenant against Contingent Fees

The CONSULTANT warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, the Local Agency shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

ATTACHMENT F – CITY OF SAN JOSE

PURCHASE ORDER TERMS AND CONDITIONS

1. DEFINITIONS: The words “Buyer” and “City” shall mean the City of San Jose or any department thereof.

2. DATA AND FACILITIES: Seller acknowledges that it has in its possession all applicable specifications and drawings, and all other documents to which reference is made herein and/or which are matched hereto, and that such data are adequate to enable Seller fairly to determine its ability to perform work called herein at the price and in accordance with the schedule set forth. Seller represents that it now has or can readily procure without assistance of Buyer all facilities, machinery and equipment necessary for the performance of this purchase order.

3. PACKING AND SHIPPING: Deliveries shall be made as specified without charge for boxing, crating, carting or storage unless otherwise specified, and articles shall be suitably packed to secure lowest transportation costs, and in accordance with the requirements of common carriers, and in such a manner as to assure against damage from weather or transportation. Articles shall be described on bills of lading in accordance with current Motor Freight or Uniform Freight Classification, whichever is applicable. Buyer’s order numbers and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. Buyer’s count or weight shall be final and conclusive on shipments not accompanied by packing lists. Shipments for two or more destinations when so directed by Buyer shall be shipped in separate boxes or containers for each destination at no extra charge.

4. CONTRACT: This purchase order constitutes Buyer’s offer to Seller and shall become a binding contract upon the terms and conditions set forth herein upon acceptance by Seller either by acknowledgement or commencement or performance. Any terms or conditions (including price and delivery dates) proposed by Seller in accepting Buyer’s offer, which are inconsistent with or in addition to the terms and conditions set forth, shall be void and no effect unless and to the extent expressly accepted by Buyer in writing.

5. TAXES: Seller shall separately state on all invoices any taxes imposed by federal or state government applicable to furnishing of the articles; provided, however, where a tax exemption is available, such tax shall be subtracted from the total price and identified. Municipalities are exempt from federal excise and transportation taxes, except for the excise tax on gasoline. Total prices quoted are to exclude federal taxes. Exemption certificates will be furnished upon request. Unless otherwise indicated, prices quoted will be considered to exclude state and city sales or use tax, which is payable by Buyer.

6. PRICES: Seller represents that prices quoted to or paid by Buyer shall not exceed current prices charged to any other customer of Seller for items which are the same or substantially similar to the articles, taking into account the quality of the articles, and Seller will forthwith refund any amounts paid by Buyer in excess of such price.

7. PAYMENT: Payment shall not be due until completion of order unless City agrees in writing to other terms and conditions. No payment shall represent a waiver of City’s right to inspect for defects.

8. CASH DISCOUNT: THE DATE USED AS THE BASIS FOR CASH DISCOUNT CALCULATION IS THE DATE THE ORDER IS COMPLETED OR THE DATE AN ACCEPTABLE INVOICE IS RECEIVED, WHICHEVER IS LATER.

9. WARRANTY: Seller warrants that all articles will conform to applicable specifications, drawings, descriptions, and samples, and will be merchantable, of good workmanship and material, and free from defect. Unless manufactured pursuant to detailed design furnished by Buyer, Seller assumes design responsibility and warrants the articles to be free from design defect and suitable for the purposes intended by Buyer. Seller's warranties, together with its service guarantees, shall run to Buyer and it's users of the articles and shall not be deemed to be exclusive. Buyer's inspections, approval, acceptance, use of payment for all or any part of the articles shall in no way affect its warranty rights whether or not a breach of warranty had become or should have become evident at the time.

10. DEFAULT: Buyer may, by written notice to Seller, cancel for default this purchase order, in whole or from time to time in part: (I) if the Seller fails to deliver the articles or to perform the services strictly within the time specified herein, or if no time is specified, within a reasonable time; (ii) if the articles delivered do not conform to contractual requirements or if Seller fails to perform any of the other provisions of this purchase order, or so fails to make progress as to endanger performance of this purchase order in accordance with its terms; or (iii) if the Seller becomes insolvent or commits an act of bankruptcy. If this purchase order is cancelled for default, Buyer, in addition to all other rights afforded by law for Seller's breach of contract, shall have the right to charge Seller the amount by which the costs of fabricating or procuring the articles cancelled from another source exceed the price specified herein, and Buyer may set off any such charge against any amounts which may become payable to Seller under this purchase order or otherwise. Upon such cancellation Seller will deliver to Buyer any of the articles, parts or materials, for which Buyer shall make written request at or after cancellation and Buyer will pay Seller the fair value of any such property so requested and delivered. Notwithstanding Buyer's right to cancel this purchase order for delay in delivery, Seller shall not be liable to Buyer for any damages therefore: (I) Seller's delay is due to causes beyond its control, and without its fault or negligence, provided Seller promptly notifies Buyer of the conditions causing delay or, (ii) Seller's delay is caused by the default of a subcontractor or supplier, but only if such default arises out of causes beyond the control of both Seller and subcontractor or supplier and without the fault or negligence of either of them, and the articles or services to be furnished by the were not obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule.

11. CHANGES: Buyer shall have the right by written notice to change the extent of the work covered by the purchase order, the time or place of delivery, the method of shipment or packaging, or to suspend work. The only valid change is a change order signed by the Director of Finance or director's authorized designee. Upon receipt of any such notice, Seller shall promptly make the changes in accordance with the terms of the notice. If any such change causes an increase or decrease in the cost or performance or in the time required for performance, an equitable adjustment shall be negotiated promptly and the purchase order modified in writing accordingly. Seller shall promptly deliver to Buyer, and in any event within (30) days after receipt of such notice, a statement showing the effect of any such changes in the delivery dates and prices, such statement to be supplemented within thirty (30) days from the data thereof by detailed specification of the amount of the price adjustment and supporting cost figures. Failure of Seller to submit the statements within the above time limits shall constitute its consent to perform the change without increase in price, without claim for material rendered obsolete and without change in delivery schedule.

12. TERMINATION: The performance of work under this purchase order may be terminated in whole or from time to time in part by Buyer. City's Director of Finance is empowered to terminate this purchase order on behalf of City.

13. COMPLIANCE WITH LAW: Seller shall in performance of this purchase order comply with all applicable laws and regulation of the City and of the State of California.

14. GOVERNING LAW: City and Seller agree that the law governing this Agreement shall be that of the State of California.

15. VENUE: In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the Unite States District Court, Northern District of California, San Jose, California.

16. ASSIGNMENT OF CONTRACT: Seller shall not assign any of the work to be performed under this purchase order nor shall Seller subcontract for completed or substantially completed articles or major components thereof without Buyer's prior written consent. Seller may assign monies due under this purchase order. Buyer will recognize such assignment, to the extent permitted by law, if Buyer is given proper notice thereof. Any assignment shall be subject to set-off or recoupment for any present or future claim which Buyer may have against Seller.

17. WAIVERS: Failure by Buyer to insist, in any one or more instances, upon the performance of any of the terms, convents or conditions of this purchase order, or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such item, covenant or condition or the future performance shall continue in full force and effect.

18. NON-DESCRIMINATION:

    a. Prohibition on Discrimination and Preferential Treatment.

       Contractor shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity or national origin.

       This provision is applicable to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, condition, or privileges of employment, subcontracting and purchasing.

       Noting herein shall be interpreted as precluding any reasonable accommodation provided to any person with a disability.

    b. Compliance Reports.

       If directed by the Director of Equality Assurance of the City, Contractor shall file, and cause any subcontractor to file, compliance reports with the Director of Office of Equality Assurance. Compliance reports shall be in the forms and filed at such times as may designated by the Director of Office Equality Assurance. Compliance reports shall contain such information and be supported by such data or records as may be requested by the Director of Office of Equality Assurance to determine whether Contractor or its subcontractor is complying with the nondiscrimination and non-preference provision of this Agree and Chapter 4.08 of the Municipal Code.

c. Failure to Comply With Nondiscrimination Provisions

If the Director of Office of Equality Assurance determines that the Contractor has not complied with the nondiscrimination or non-preference provisions of this agreement, the City may terminate or suspend this Agreement, in whole or in part. Failure to comply with these provisions may also subject Contractor and/or subcontractor to debarment proceedings pursuant to provisions of the San Jose Municipal Code. Failure to comply with these provisions is a violation of Chapter 4.08 of the San Jose Municipal Code and is a misdemeanor.

d. Subcontracts.

Contractor shall include provisions 1 through 3, inclusive, in each subcontract entered into in furtherance of this agreement so that such provisions are binding upon each of its subcontractors.

e. Waiver of Non-discrimination Provisions.

The non-discrimination provisions of this agreement may be waived by the Director of Office of Equality Assurance, if Director of Office of Equality Assurance determines that the Contractor has its own non-discrimination requirements or is bound in the performance of this agreement by the non-discrimination requirements of another government agency, and the non-discrimination provisions of the Contractor or other government agency are substantially the same as those imposed by the City.

19. GIFTS: Contractor represents that it is familiar with the City's prohibition against the acceptance for any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code. Contractor agrees not to offer any City officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this service order by Contractor. In addition to any other remedies City may have in law or equity, City may terminate this service order fir such breach.

20. WARRANTY AGAINST INFRINGEMENT: If any article sold hereunder is covered, or is purported to be covered, by any patent or copyright, Seller agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from and against it by any and all suits, claims, judgments and costs instituted or recovered against it by any person or persons whomsoever, on account of the purchase, use or resale of such article by City in violation or claimed violation of any rights under patent or copyright.

21. INDEMNITY: Seller agrees to defend, indemnify and hold harmless the City. Its officers, agents, and employees, from any and all claims and liability, including expenses, for injuries or death to persons or damage to or destruction of property caused by or resulting from the acts or omissions of Seller, its agents, suppliers or employees, in the performance of this purchase order.

ATTACHMENT G- CITY OF SAN LEANDRO

Terms and conditions:

Billing terms/cash discount, if any will be computed from the date of complete delivery of order or date of receipt of invoice, whichever is later

All material delivered and services rendered shall comply with City of San Leandro codes, the State of California Occupational Safety and Health Act of 1973, all applicable amendments thereof, occupational safety and health standards and safety orders of the Occupational Safety and Health Standards Board. To the fullest extent legally required and applicable, Contractor shall have an Injury and Illness Prevention Program (IIPP) that conforms to all applicable federal, state and local laws, and shall provide a copy of its current version to the City upon request.

For supplies and materials which require installation or other labor or services and not under formal contract, the seller hereby acknowledges and agrees with the City that in performing any labor or services required to conform to this purchase order, the seller acts as an independent contractor and not an employee or agent of the City; and that, further, as such seller and independent contractor he indemnifies against and saves harmless the City form any and all claims for damages arising out of the performance of such labor and services and the performance of the requirements hereof.

This order is not assignable without the consent of the Purchasing Agent

Invoice to be sent to:
City of San Leandro A/P
835 E. 14th Street
San Leandro, CA 94577

Insurance requirements:

1. Without limiting the foregoing in any way, Vendor shall carry standard form Commercial General Liability Insurance acceptable to the City in an amount not less than One Million Dollars per occurrence combined single limit Bodily Injury and Property Damage coverage.
2. Vendor shall carry standard form Commercial Automobile Liability Insurance acceptable to the City in an amount not less than Five Million Dollars per occurrence combined single limit Bodily Injury and Property Damage coverage. Vendor shall also provide a MCS-90 endorsement for carriers who transport property in interstate commerce, including, but not limited to, hazardous materials, pursuant to the Motor Carrier Act of 1980 and the rules and regulations of both the Federal Highway Administration and the Interstate Commerce Commission.
3. Vendor shall obtain and maintain, during the life of the agreement, Workers' Compensation Insurance, covering all of its employees on the project with a company satisfactory to City. Vendor shall be responsible for the insurance coverage as herein provided of all employees of said Vendor.
4. For all insurance provided above, policies shall provide that the same cannot be canceled except upon thirty days' written notice to City.
5. Except for Workers' Compensation, all insurance provided above shall name the City of San Leandro, its officers, agents and employees as an additional insured and shall include cross liability in favor of the City, its officers, agents and employees.

6. A certificate of insurance shall be furnished to the City as evidence of the above coverages and conditions prior to the commencement of work. Any statements that relieve the insurance company from liability if notice of cancellation is not sent are not acceptable.

7. Vendor agrees to provide City at or before the effective date of this contract with a certificate of insurance of the coverage required. The certificate shall be sent to City of San Leandro Purchasing Dept., via e-mail: dbrockman@ci.san-leandro.ca.us, via fax: 510-577-3312, or via mail: 835 E. 14th Street, San Leandro, CA 94577.

ATTACHMENT H - SANTA CLARA VALLEY WATER DISTRICT
FUEL PURCHASE AGREEMENT

This Fuel Purchase Agreement (the "Agreement") entered into as of _____ (the "Effective Date") by and between the Santa Clara Valley Water District, a California Special District, with offices at 5750 Almaden Expressway, San Jose, California 95118 ("District") and _____, with offices at _____ ("Vendor").

Whereas, District seeks and the Vendor agrees to sell and deliver, on an as requested basis, to the District unleaded gasoline (87 Octane) and Ultra Low Sulfur Diesel during the term of this Agreement.

Now therefore, the parties hereto agree as follows:

1. Purchase of Fuel On As-Requested Basis. This Agreement sets forth the terms and conditions pursuant to which Vendor will provide and deliver to the District, on an-as requested basis, unleaded gasoline and Ultra Low Sulfur Diesel (collectively referred herein as "Fuel"). Specific orders for Fuel will be pursuant to Section 2 of this Agreement. The Estimated Annual Usage Quantities of Fuel specified in the table below are estimated annual usages only, and nothing herein shall bind the District to purchase any specified amount of Fuel. It is further understood that the District shall not be obligated to purchase or pay for any amount of Fuel unless and until it is ordered and received by the District.

District Fuel Locations and Estimated Annual Gallons

Location	Estimated Annual Usage of 87 Octane Unleaded Gasoline (Gallons)	Estimated Annual Usage of Ultra Low Sulfur Diesel (Gallons)	Approximate Number of Gallons Per Delivery
5750 Alamden Expressway San Jose, CA 95118 – Tank No. 1(12,000 gallon tank)	NA	42,000	7,500-8,000
5750 Alamden Expressway San Jose, CA 95118 – Tank No. 2 (12,000 gallon tank)	NA	26,000	7,500-8,000
5750 Alamden Expressway San Jose, CA 95118 – Tank No. 3 (12,000 gallon tank)	85,000	NA	7,500-8,000
400 More Avenue Los Gatos, CA 95032-1111 – Tank No. 4 (1,000 gallon tank)	NA	2,500	500-700
400 More Avenue Los Gatos, CA 95032-1111 – Tank No. 7 (1,000 gallon tank)	5,000	NA	500-700
18300 Peet Road Morgan Hill, CA 95037-9312 Tank No. 10 (1,000 gallon tank)	NA	4,500	500-700
Penitencia, fire pump tank 3959 Whitman Way San Jose, Ca 95132-3168	NA	150	50
Rinconada, fire pump tank 400 More Avenue Los Gatos, Ca 95032-1111	NA	150	50

2. Orders and Deliveries. Vendor shall make Fuel deliveries within twenty-four hours after receipt of a verbal order from either the District's Equipment Management Unit Manager (or designee) or Water Utility Maintenance Unit Manager (or designee). In the event that the District has an emergency (e.g. disaster

occurrence), the District requires delivery within one hour. All deliveries (except those deliveries required by the District due to an emergency) are to be made between the hours of 9:00 am and 4:00 pm on business weekdays, excluding District observed holidays.

The order for Fuel will designate the delivery facility and delivery date. Vendor will confirm the order immediately with the authorized District manager that placed the order by providing him/her with documentation confirming the delivery facility and delivery date. The District reserves the right to alter delivery dates and locations due to operational requirements

Each delivery driver who delivers Fuel to a particular District facility for the first time must make arrangements to meet with that facility's manager (i.e. Equipment Management Unit Manager or Water Utility Maintenance Unit Manager) prior to delivering the Fuel. The purpose of this initial meeting is to confirm the parties understanding regarding the specific requirements for dispensing Fuel to a particular storage tank and to discuss security concerns.

3. Pricing. The cost and other pricing terms that Vendor proposed to provide the Fuel to the District in Vendor's completed and signed bid form submitted in response to Bid Invitation document entitled "REVERSE AUCTION #_____ FOR FUEL" issued on August 14, 2009 shall remain in effect during the term of this Agreement. Said Vendor's completed and signed bid form and said Bid Invitation document are hereby incorporated into this Agreement by this reference.

4. Invoicing and Payment. The Vendor will provide the District with a bill of lading for each delivery, which must specify the number of gallons in the storage tank before and after dispensing the Fuel and temperature of Fuel when dispensed. Invoiced Fuel quantities shall be adjusted to standard temperature and pressure. The District will issue an open purchase after contract award. The District will pay vendor for a Fuel delivery approximately thirty (30) days after receipt of that Fuel and the correct original invoice, whichever arrives last. The Vendor shall mail invoice to the addresses specified on the open purchase order. All invoices must contain the correct pricing as specified in the Vendors' completed bid form. Invoices shall have a complete price breakdown reflecting all fees, and shall state the distribution point name, purchase order number, date of delivery, Fuel quantity delivered, and temperature of Fuel when dispensed.

5. Taxes. The Fuel called for under this Agreement is exempt from federal excise taxation by the United States Government. The District, if requested, will furnish a tax exemption certificate and any and all affidavits and documents that may be necessary to establish such exemption.

6. Compliance with Laws and Standard of Care. Vendor shall provide all necessary resources to deliver and dispense the Fuel in compliance with all laws, including all applicable city, county, state, and federal regulations. Vendor shall also exercise commercially reasonable care in providing high quality service operations in fulfilling its obligations under this Agreement. This includes using proper and safe equipment and ensuring its personal are trained and competent.

7. Security Badges. Vendor must ensure that its drivers report to District Security so they can be issued a District security badge, which is required to access District storage tank facilities. Vendor must ensure that its drivers wear the security badge in a manner that makes it clearly visible to others at all times while on District property. The District may inspect any Vendor vehicles any time such vehicles are on District property.

8. Hazardous Chemicals and Wastes. The Vendor shall bear full and exclusive responsibility for any release by Vendor of hazardous or non-hazardous chemicals or substances during the course of performance of this Agreement. Vendor shall immediately report any such release to the appropriate person in charge of that facility. Vendor(s) shall be solely responsible for all claims and expenses associated with the response

to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against the District and its officers, agents and employees as a result of such release and shall hold harmless, indemnify and defend the District and its officers, agents and employees from any claims arising from such release. For purposes of this section only, the term "claims" shall include (a) all notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction and (b) any claim, cause of action, or administrative or judicial proceeding brought against the District, its directors, or employees, or for any loss, cost (including reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including the District.

9. Term. The term of this Agreement is 3 years from the Effective Date of this Agreement. The District may, at its option and with the approval of the Vendor, extend the period of this Agreement for an additional one-year period. Vendor shall be notified in writing by the District of the District's intention to extend the term of the Agreement at least thirty days prior to the expiration of the original 3-year term of this Agreement.

10. Termination. The District may terminate this Agreement for any reason or no reason by providing Vendor with at least 30 days prior written notice. Notwithstanding the foregoing, District may terminate this Agreement immediately if Vendor delivers Fuel in a negligent or careless manner, or causes a Fuel spill at any District facility.

11. Non-Exclusive Clause. The parties agree that this Agreement does not establish an exclusive contract between the District and Vendor nor does it constitute a commitment by the District, whether expressed or implied, to contract with Vendor to supply any amount of fuel to the District during the term of this Agreement. The District reserves its right to contract with other parties to supply it with fuel at any time.

12. Indemnification. To the fullest extent permitted by law, Vendor shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, directors, and employees from and against all claim, damages, losses and expenses, including but not limited to attorney fees and cost, relating to this Agreement. The amount and type of insurance coverage required under this Agreement shall in no way be construed as limiting the scope of indemnity in this Section 9. The scope of this indemnification does not extend to the District's negligence.

13. Insurance. Vendor represents and warrants that it satisfies the insurance requirements specified in Exhibit A, which is hereby incorporated into this Agreement by this reference. In addition to insurance coverage set forth in Exhibit A of this Agreement, Vendor shall provide maintain Pollution Liability Coverage during the term of the Agreement in the amount of $2,000,000.

14. Equal Opportunity. The District is an equal opportunity employer and requires its contractors to have and adhere to a policy of equal opportunity and non-discrimination. In the performance of the Agreement, the Vendor will comply with all applicable federal, state, local laws and regulations, and will not discriminate against any subcontractor, employee, or applicant for employment, in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff rates of pay, or other forms of compensation, or against any other person, on the basis of race, color, religion, ancestry, gender, national origin, age (over 40), marital status, medical condition (including cancer), pregnancy, parental status, the exercise of family care leave rights, political affiliation, sexual orientation, gender identity, special disabled veteran status, Vietnam Era veteran and all other Veteran status, or because of a physical or mental disability (including HIV and AIDS). The Vendor's policy must conform with applicable state and federal guidelines including the Federal Equal Opportunity Clause, "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations," Title VII of the Civil Rights Act of 1964 as amended; the American's with Disabilities Act of 1990; the Rehabilitation Act of 1973 (sections 503 and 504); California Fair Employment and Housing Act (Government Code section 12900 et. Seq.); California Labor Code sections 1101 and 1102. Vendor shall designate a specific person responsible for assuring nondiscrimination and non-

harassment as provided in the Agreement. That named individual shall investigate all complaints directed to them by District. District shall refer complaints in writing, and investigations will be deemed concluded only upon submission of a written investigation report from the Vendor to the District. The scope of such investigations shall include not only officers, employees, and agents of the Vendor, but also all subcontractors, sub-Vendors, material men, and suppliers of the Vendor. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, Vendor shall take prompt, effective disciplinary action against the offender. Failure to take appropriate action may be considered a material breach of this Agreement.

15. Independent Contractor. Notwithstanding any provision hereof, for all purposes of the Agreement each party shall be and act as an independent contractor and not as partner, joint venturer, or agent of the other and shall not bind nor attempt to bind the other to any contract. Vendor is an independent contractor and is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including, but not limited to, Workers' Compensation Insurance.

16. Choice of Law and Venue. Both parties agree that the Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with the Agreement shall lie exclusively in the state or federal District Court located in County of Santa Clara, California.

17. Non-Assignment. Vendor shall not assign the Agreement without the prior written approval of the District

18. Severability. If any portion of the Agreement shall be held invalid or unenforceable, the remainder of the Agreement shall remain effective and enforced to the greatest extent permitted by law.

19. Non-Waiver. Neither the District's acceptance of, or payment for, any item or service received by the District under this Agreement, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of the Agreement.

20. Entire Agreement. This Agreement, which includes the Exhibit A, Vendor's completed and signed bid form submitted in response to the Bid Invitation document entitled "REVERSE AUCTION #_____ FOR FUEL", and said Bid Invitation document, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to Agreement's Effective Date.

Exhibit A

INSURANCE REQUIREMENTS

Please refer to the insurance requirements listed below.

Vendor shall provide its insurance broker(s)/agent(s) with a copy of these requirements and warrants that these requirements have been reviewed by Vendor's insurance agent(s) and/or broker(s), who have been instructed by Vendor to procure the insurance coverage required herein. All Certificates of Insurance complete with copies of all required endorsements shall be sent to: Contract Administrator, Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA 95118.

In addition to certificates, Vendor shall furnish District with copies of original endorsements affecting coverage required by this appendix. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by District before work commences. In the event of a claim or dispute, District has the right to require Vendor's insurer to provide complete, certified copies of all required pertinent insurance policies, including endorsements affecting the coverage required by these specifications.

Vendor shall, at its sole coast and expense, procure and maintain during the entire period of this Agreement the following insurance coverage(s). Those which have an "X" indicated in the space before the insurance are required to be procured and maintained by the Vendor.

_x_ Commercial General/Business Liability Insurance with coverage as indicated:

_x_ $2,000,000 per occurrence / $2,000,000 aggregate limits for bodily injury and property damage

___ $_____ per occurrence bodily injury / $_____per occurrence property damage

___ $_____ aggregate for bodily injury and property damage

_x_ Coverage for X,C,U hazards MUST be evidenced on the Certificate of Insurance

_x_ If the standard ISO Form wording for "OTHER INSURANCE", or other comparable wording, is not contained in Vendor's liability insurance policy, an endorsement must be provided that said insurance will be primary insurance and any insurance or self-insurance maintained by District, its Directors, officers, employees, agents or volunteers shall be in excess of Vendor's insurance and shall not contribute to it.

_x_ Auto Liability Insurance with coverage as indicated:

_x_ $1,000,000 combined single limit for bodily injury and property damage

___ $_____ per person / $_____ per accident for bodily injury

___ $_____ per occurrence for property damage

___ $500,000 combined single limit for bodily injury and property damage

___ Garagekeepers extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the contractor, regardless of where the vehicles are kept or driven

_x_ Professional/Errors and Omissions Liability with coverage as indicated:

_x_ $1,000,000 per claim / $2,000,000 aggregate

___ $5,000,000 per claim / $5,000,000 aggregate

Vendor must maintain Professional/Errors & Omissions Liability coverage for a period of three years after the expiration of this Agreement. Vendor may satisfy this requirement by renewal of existing coverage or purchase of either prior acts or tail coverage applicable to said three year period.

_x_ Workers' Compensation Insurance

___ Including $1,000,000 each accident Employers' Liability (Part B)

_x_ Additional Insured Endorsement(s) for Commercial General/Business Liability coverage naming the Santa Clara Valley Water District, its Directors, officers, employees and agents as additional insured.

(NOTE: additional insured language on the Certificate of Insurance is NOT acceptable without a separate endorsement such as Form CG 20 10)

_x_ The Certificate of Insurance MUST provide 30 calendar days notice of cancellation, (10 calendar days notice for non-payment of premium). NOTE: the following words must be crossed out or deleted from the standard cancellation clause: "...endeavor to..." AND "...but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

___ All subcontractors used must comply with the above requirements except as noted below:

_____

_____

With respect to all coverages noted above, the following additional requirements apply:

1. Vendor's insurance shall be primary with respect to any other insurance which may be carried by Santa Clara Valley Water District.

2. The insurance procured by Vendor for the benefit of Santa Clara Valley Water District shall not be deemed to release or limit any liability of Vendor. Damages recoverable by Santa Clara Valley Water District for any liability of Vendor shall, in any event, not be limited by the amount of the required insurance coverage.

Please mail the certificates and endorsements to:

Contract Administrator

Santa Clara Valley Water District

5750 Almaden Expressway

San Jose, CA 95118

IMPORTANT: On the certificate of insurance, please note either the name of the project or the name of the District contact person or unit for the Agreement.

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days written notice to the certificate holder named to the left.

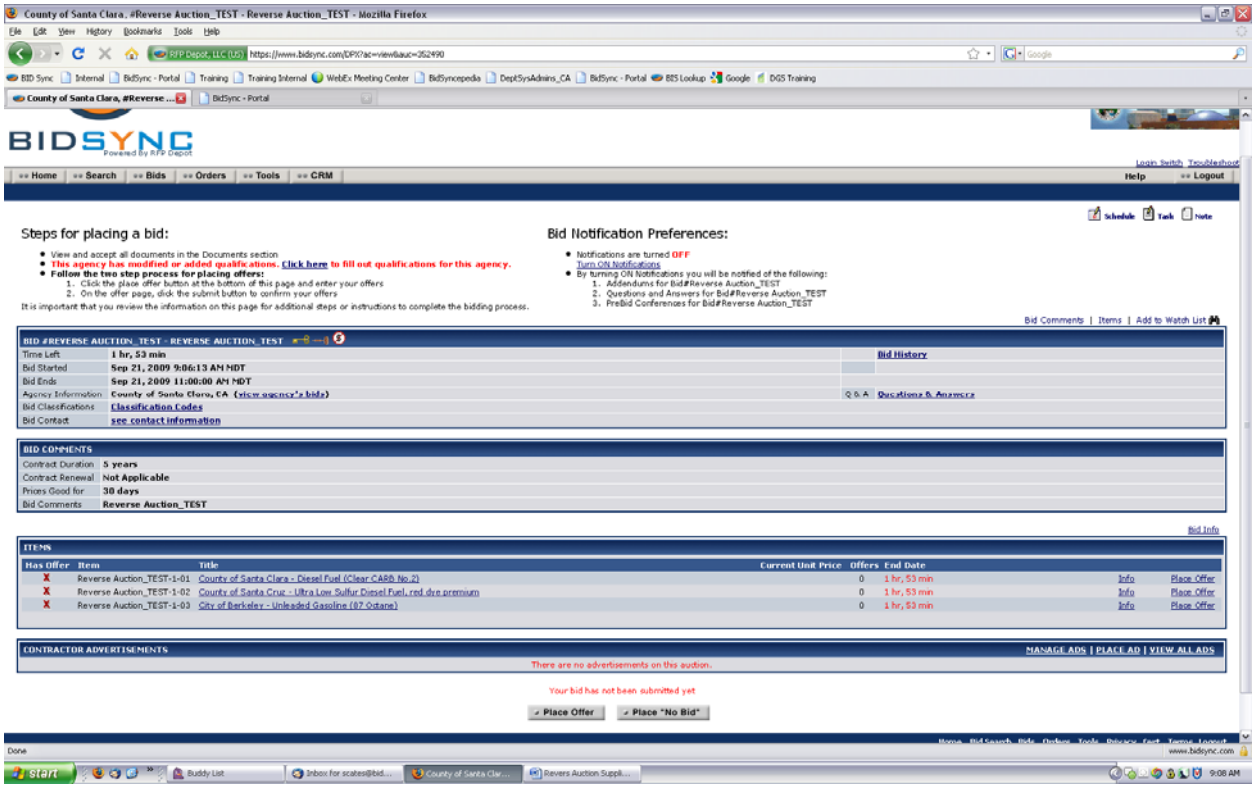
If your insurance broker has any questions please advise him/her to call Mr. David Cahen, District Risk Management Administrator at (408) 265-2607, extension 2213.

ATTACHMENT I – INTSRUCTIONS ON PARTICIPATING IN REVERSE AUCTION USING BIDSYNC

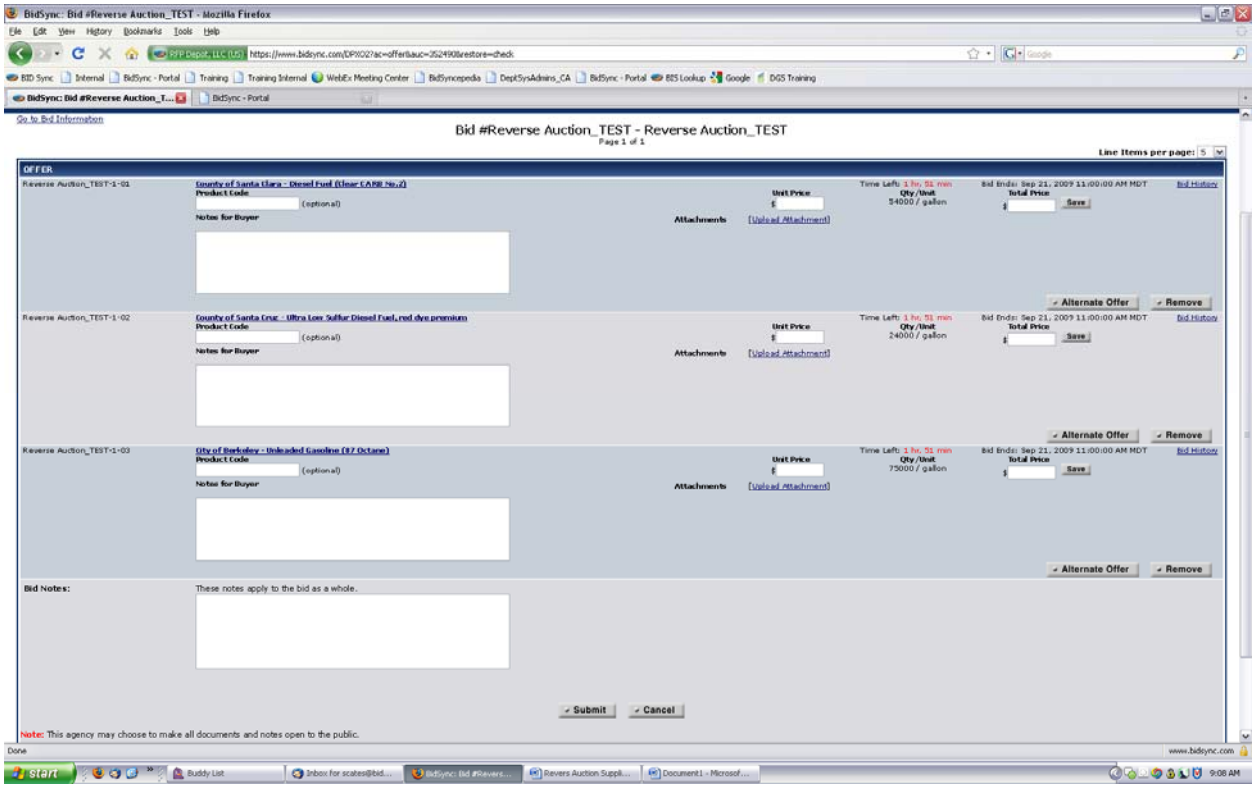
When you initially log into the system, using your username and password, the reverse auction bid will be listed under the "Bids about to End" section. Along with the title, a countdown of the time left will be displayed as well. The system will push out the bid five (5) minutes from the last offer made within the last five (5) minutes of the bid ending.

TO PLACE AN OFFER:

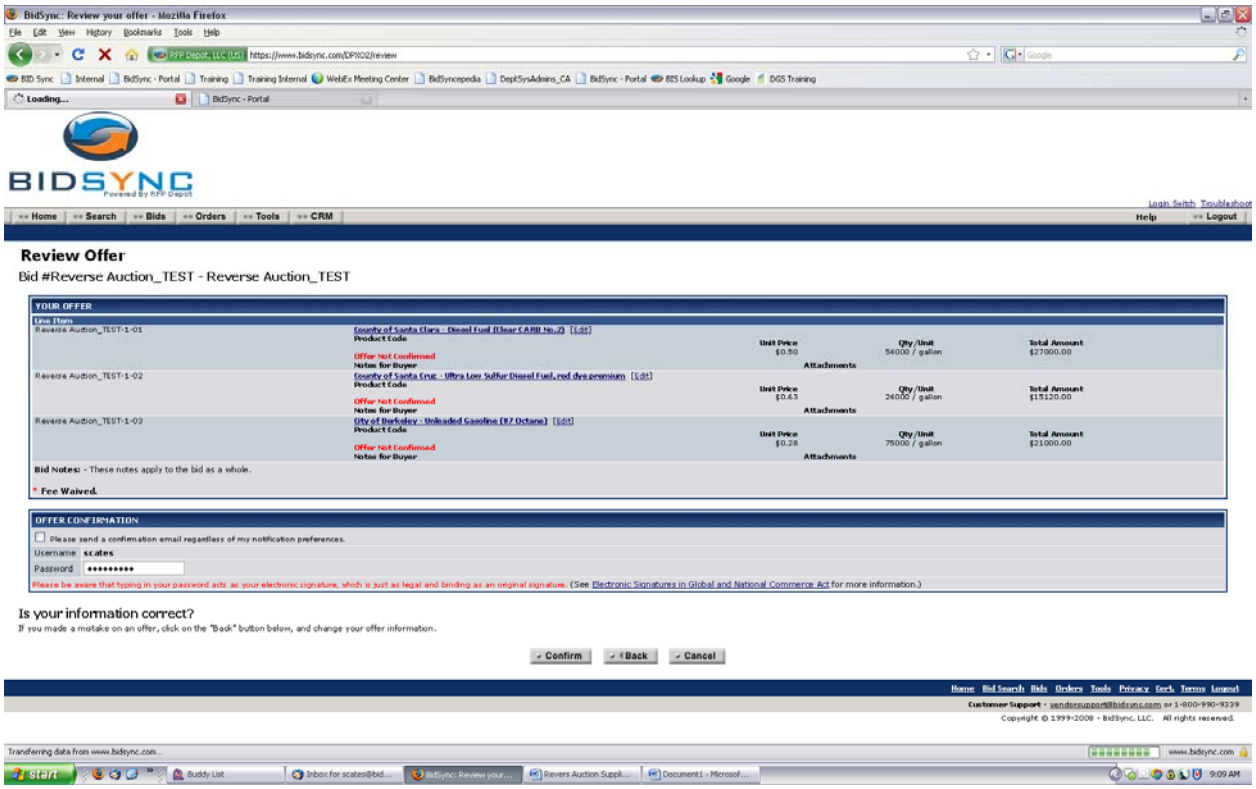
When you click on the title of the bid, you will be able to view the following Bid Information page. This page displays all of the information about the bid, including information per line item. To view details on each line item, you can click on the blue "Info" link. When you are ready to place your offer, you can select the "Place Offer" button located at the bottom of the screen.



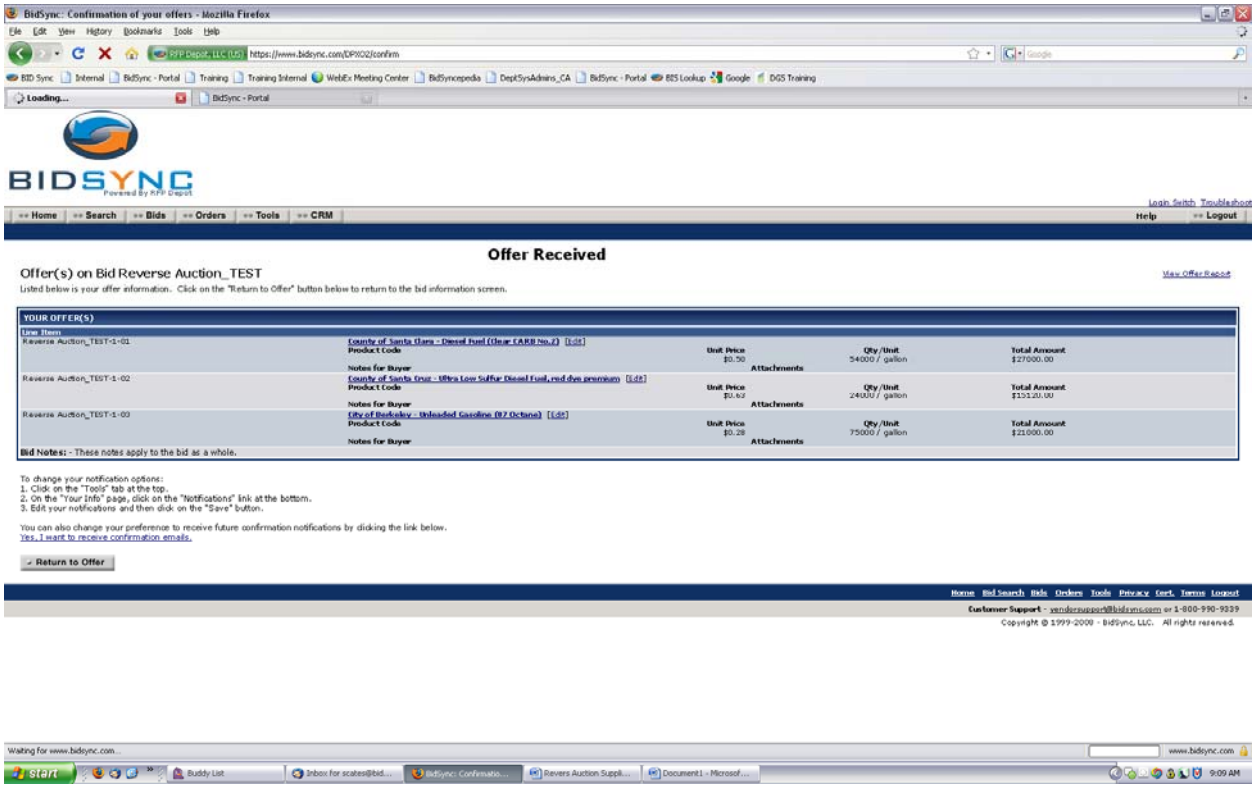
Once you click on the “Place Offer” button – the following screen will appear allowing you to place your offer per line item. Once you insert a price for the line item, click the “Save” button to make sure that the system saves your offer price in case of a power failure. Once you have entered all your pricing, click on the “Submit” button located at the bottom of the screen.



The final step to placing your offer is to make sure all the information is correct. If you need to change any information, you can click on the "Back" button and adjust your pricing. If all the information is correct, you will need to insert your password and click "Confirm".

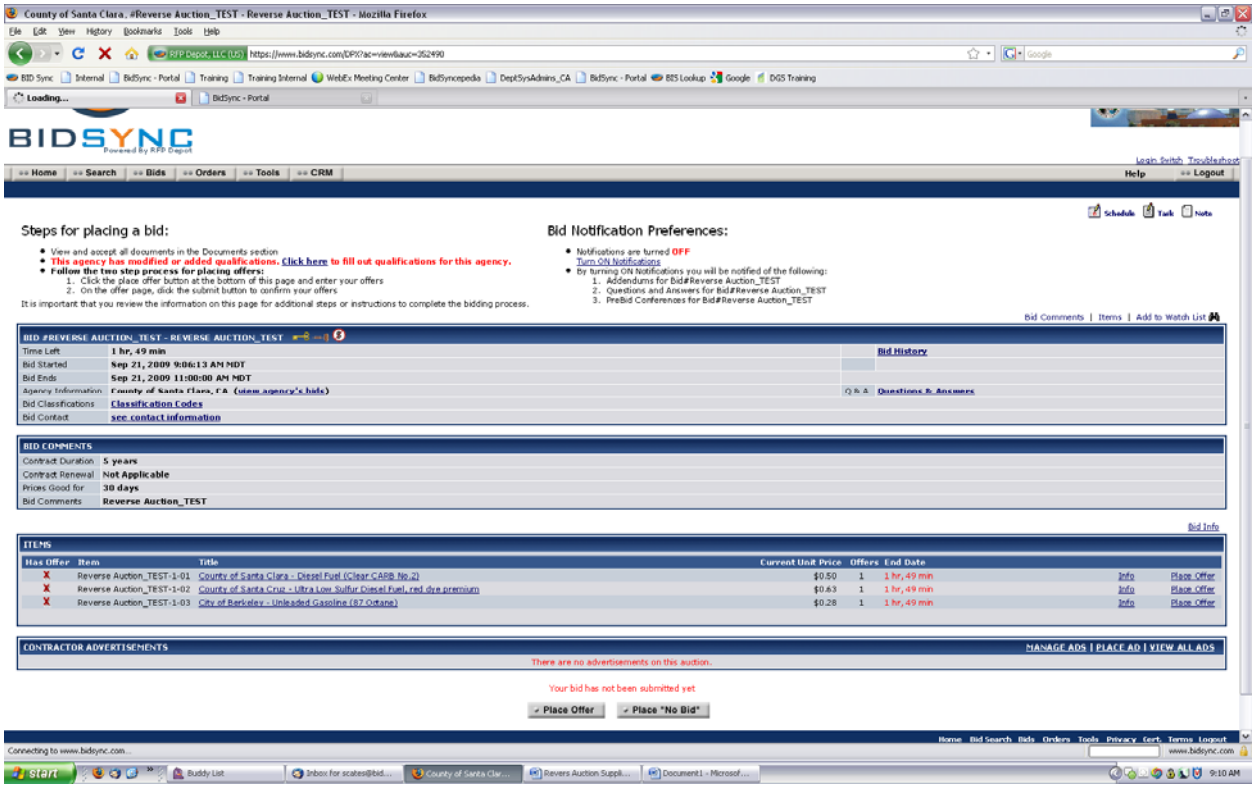


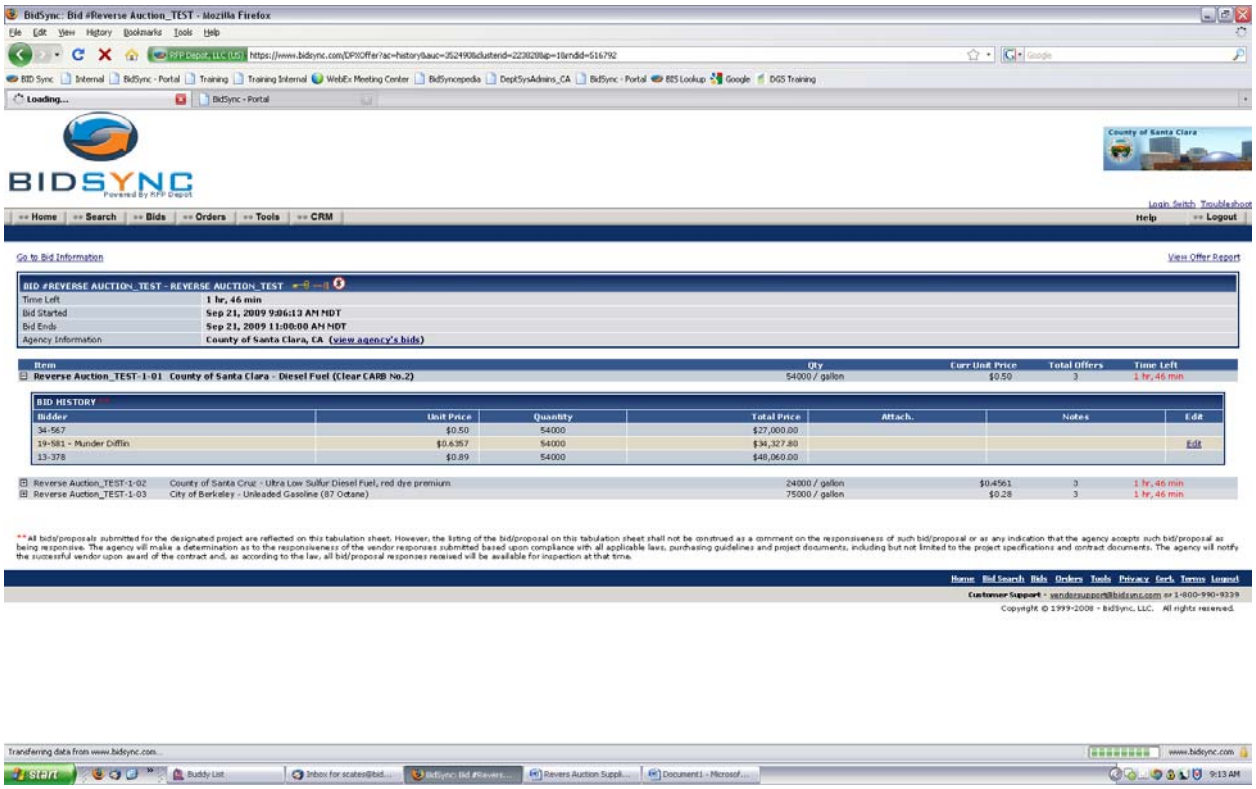
Once you click on the “Confirm” button, the following screen will display your offer details. At this point you can click on “Return to Offer” if you want to place another offer or you can return to another section of the website. If you place another offer – your most recent offer will the final offer that will be displayed for the agency buyer.



TO VIEW OFFERS MADE BY OTHER SUPPLIERS:

If you are not the first supplier who has placed the first offer, when you login and view the Bid Information page – you will notice that on a Reverse Auction bid, the very first offer will always be displayed for you to view. To place an offer on the bid, you will need to click on "Place Offer" and follow the instructions as listed above.



As other suppliers place their offer, you will be able to view the offers per line item. Without expanding the line item details, the system will display the lowest offer that has been placed in the system. To view specific details on each line item, you can click on the plus sign to expand the line item.

On a Reverse Auction bid, all the suppliers are assigned a random number that identifies them in the bidding details. You will be able to see the number that is assigned to you when you expand the line item details. No one is able to view a specific supplier's name as all the numbers are randomly assigned.