

AGREEMENT FOR PROVISION OF GASOLINE AND DIESEL FUEL

THIS AGREEMENT is made this _____ day of _____, 2018, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **SOUTHERN COUNTIES OIL CO., a California Limited Partnership, DBA SC FUELS**, a California limited partnership, herein after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove City Council approval dated _____.
2. CITY desires to utilize the services of CONTRACTOR to Monitor, Provide and Deliver fuel to the City of Garden Grove for vehicles and equipment to the following locations:
 - a. Municipal Service Center located at 13802 Newhope Street, Garden Grove, CA 92843
 - b. Garden Grove Police Department located at 11301 Acacia Parkway, Garden Grove, CA 92840
3. CONTRACTOR is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination** This contract shall remain in effect for three (3) years from the date of execution with an option to extend said agreement an additional two (2) years, for a total performance period of five (5) years. Option years shall be exercised one (1) year at a time, at the sole option of the CITY. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for fuel delivered to date in accordance with the Proposal which is attached as Attachment "B" and is hereby incorporated by reference. Contractor is required to present evidence to support the amount of fuel delivered.
2. **Services to be Provided.** The services to be performed by CONTRACTOR shall consist of tasks as set forth in the Scope of Services & Specifications. The Scope of Services & Specifications are attached as Attachment A, and are incorporated herein by reference. Proposal and this Agreement do not guarantee any specific amount of work, provided that fuel shall be delivered to the following locations:
 - a. Municipal Service Center located at 13802 Newhope Street, Garden Grove, CA 92843

- b. Garden Grove Police Department located at 11301 Acacia Parkway, Garden Grove, CA 92840

The Scope of Services & Specifications: Attachment "A" (hereinafter referred to as CONTRACTOR's "Proposal") and is incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work or purchase.

3. **Compensation.** CONTRACTOR shall be compensated as follows:

- 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) the amount of One Million Dollars (\$1,000,000.00), per year, payable in arrears and in accordance with the Proposal Pricing in Attachment "B". The total amount of this agreement shall not exceed \$5,000,000.00 over the five year term of this agreement. Pricing is to be based on the Oil Price Information Service (OPIS) Gasoline & Diesel Rack Average Daily AM prices benchmark plus the discount/adder adjustments listed in the Proposal Pricing Sheet included in Attachment "B" based on the "per gallon" amount of fuel ordered and delivered.
- 3.2 **Payment.** For fuel delivered under this Agreement, payment shall be made per invoice for fuel delivered.
- 3.3 **Records of Expenses.** Reserved.
- 3.4 **Termination.** CITY and CONTRACTOR shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to the amount of fuel delivered.

4. **Insurance Requirements.**

- 4.1 **COMMENCEMENT OF WORK.** CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance and provide a Waiver of Subrogation in favor of the City.
- 4.2 **Workers' Compensation Insurance.** For the duration of this Agreement, CONTRACTOR shall maintain Workers Compensation Insurance in the amount and type required by California law, if applicable. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.

4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:

- (a) Commercial general liability in the amount of \$5,000,000 per occurrence; coverage to include XCU (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY. Endorsements for primary and non-contributory.
- (b) Automobile liability in the amount of \$5,000,000 combined single limit; Policy must be endorsed to delete pollution exclusion. (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (c) Automobile pollution in an amount of \$5,000,000 per occurrence; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (d) Excess liability, following form, coverage shall be provided for any underlying policy that does not meet the insurance requirements set forth herein (claims made and modified occurrence policies are not acceptable). Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-Class VII or better, as approved by the CITY.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

MSC 90 Endorsement for the policy under section 4.3 (c) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds. CONTRACTOR shall provide to CITY proof of

insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (d) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds under the excess liability policy. CONTRACTOR shall provide to CITY proof of insurance stating the excess liability policy follows form, additional insured endorsement forms, and the schedule of underlying policies with policy numbers that conform to CITY's requirements, as approved by the CITY. Information for the excess policy only needs to be provided if the underlying policies do not meet the policy limits set forth herein.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be in excess of the CONTRACTOR's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.
6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONTRACTOR shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work or services performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements.

9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
- a. (Contractor)
SOUTHERN COUNTIES OIL CO. DBA SC FUELS
Attention: Patrick Barnecut, President
PO BOX 4159
ORANGE, CA 92863-4159
 - b. (Address of CITY) (with a copy to):
City of Garden Grove Garden Grove City Attorney
11222 Acacia Parkway 11222 Acacia Parkway
Garden Grove, CA 92840 Garden Grove, CA 92840
10. **CONTRACTOR'S PROPOSAL.** This Agreement shall include CONTRACTOR'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.
12. **Familiarity with Work/Services.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work or services to be performed; (2) it has investigated the site of the work or services and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work or services under this Agreement. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or services as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work or services will

be considered employees of CONTRACTOR. CITY will deal directly with and will make all payments to CONTRACTOR.

15. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
16. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR shall defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the sole negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR.

17. **Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefor by the Garden Grove City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the CITY.

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(Agreement Signature Block on Next Page)

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____

**"CITY"
CITY OF GARDEN GROVE**

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

**"CONTRACTOR"
SOUTHERN COUNTIES OIL CO., ^{a Calif. LP}
DBA SC FUELS ^{DWB}**

By: Edward A. Wonduga

Name: Edward A. Wonduga

Title: CFO

Date: 6/6/18

Tax ID No. 33-0488996

Contractor's License: _____

Expiration Date: _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

Oliver Wonduga
Garden Grove City Attorney

6-11-18
Date

ATTACHMENT "A"
CITY OF GARDEN GROVE
REQUEST FOR PROPOSAL S-1235
PROVIDE GASOLINE AND DIESEL
SCOPE OF SERVICES & SPECIFICATIONS

The City of Garden Grove seeks a contractor/vendor to provide the delivery of Unleaded Gasoline and Diesel fuel to existing underground storage tanks at the City's Municipal Service Center and Public Safety Facility.

ESTIMATED ANNUAL VOLUME OF FUEL PURCHASES

Unleaded 87 Octane – 225,000 gallons

Diesel – 32,000 gallons

Volume estimates are based on historical records.

DELIVERY LOCATIONS AND UNDERGROUND TANK SIZES

Municipal Service Center: 13802 Newhope Street, Garden Grove, CA 92843

- One (1) 20,000 gallon tank for unleaded fuel and
- One (1) 6,000 gallon tank for unleaded fuel

- One (1) 6,000 gallon tank for diesel fuel

Public Safety Facility: 11301 Acacia Parkway, Garden Grove, CA 92840

- One (1) 10,000 gallon tank for unleaded fuel

- One (1) 2,000 gallon tank for diesel fuel

DELIVERY REQUIREMENTS

Delivery must be made within two (2) working days after receipt of order. All purchases for underground storage tanks will be a full load.

Currently averaging one (1) - two (2) full load deliveries per month at both the Municipal Service Center and Public Safety Facilities.

ATTACHMENT "A"
REQUEST FOR PROPOSAL S-1235

PRICING AND INVOICING

The contract bid price shall include full compensation for providing all required services as specified in Scope of Services & Specifications. NO additional compensation will be allowed.

For purposes of payment, it shall be the Los Angeles California OPIS Gross 10AM EST Daily Rack Average with CAR report.

Pricing on the invoices shall indicate OPIS price for day of delivery and also the price being charged to City.

Delivery rate and total delivery charge shall be separate line item and shall not be combined with fuel costs when computing sales tax.

QUALITY OF FUELS

Fuel provided must meet the latest requirements of the California Air Resources Board (CARB) Phase 2 Reformulated Gasoline and Diesel.

Only major oil company quality fuels meeting the following specifications are to be quoted and/or awarded.

Gasoline shall be unleaded regular 87 Octane minimum.

Diesel Fuel shall be Type 2 Clear.

VENDOR/SUPPLIER RESPONSIBILITY

Vendor shall be held liable for any damage or criminal/civil citations which may occur as a result of any spills and/or accidents. In addition, the City reserves the right to cancel the agreement of the Vendor/Supplier, notwithstanding compliance with the procedures set forth herein, delivers in a negligent manner or who, under any circumstances, causes a spill while delivering.

Vendor shall have title to and bear risk of loss of or damage to the Items purchased hereunder until they are delivered in conformity with this agreement at the F.O.B. point specified herein, and upon such delivery title shall pass, except for loss or damage result from Vendor's negligence. Passing of title upon such delivery shall not constitute acceptance of the item by the City.

ATTACHMENT "A"
REQUEST FOR PROPOSAL S-1235

It is the responsibility of the Vendor/Supplier to have the delivering driver measure each fuel tank using a measuring stick as well as the City's Veeder Root system before and after each delivery.

All deliveries shall be made between **7:00 am to 5:00 pm Monday through Friday**, except when orders state that the deliveries must be made at a different time.

TEMPERATURE CORRECTION

Vendor shall correct or adjust gasoline and diesel deliveries so as to be stated, billed, and paid for on the basis of such gasoline and diesel fuel at sixty (60) degrees temperature, using methods that are accepted as being in general use for this method of adjusting volumetric quantities to temperature conditions.

MATERIAL SAFETY DATA SHEETS

In compliance with Title 8 of the California Code of Regulations (OSHA), the City requires two (2) copies of the U.S. Department of Labor – Material Safety Data sheet for item(s) purchased. The material safety data sheet shall be submitted to the using department at the time of delivery.

SOURCE GUARANTEE

Vendors who do not own refineries shall have contracts or written irrevocable commitments to contract with refiners which are capable of supplying products which meet fuel specifications in the quantities listed herein.

Contracts or commitments must guarantee supply in the required amounts for the term of any contract resulting from the RFP. Failure to include source guarantee documentation may void response if the City has no prior experience with the vendor.

RECORD KEEPING

Vendor shall maintain records of the City's purchases and make them available for audit and inspection. Vendor shall record the quantities, cost, delivery locations, and taxes for each delivery. Vendor shall provide the City with a copy of such records within ten (10) days of the City's request. Vendor shall provide the City with Quarterly and Year-End Fuel Reports (Quantity Purchased) as part of the contract.

ATTACHMENT "A"
REQUEST FOR PROPOSAL S-1235

TAXES

The City is exempt from Federal Excise taxes and no payment shall be made for any personal property taxes levied on the Vendor or on any taxes levied on employee wages.

The City will only pay for any state and local sales or use taxes on the products pursuant to this contract.

OPTIONAL ITEMS

Please provide an annual cost for providing fuel management services as part of this contract. The item listed as OPTION A in ATTACHMENT "B" will not be used to **score the pricing section of this RFP process** since it is optional for the CITY. However, at its sole discretion, the City may elect to include (OPTION A) as part of the contract based on budgeted funds. ***All proposers are required to provide pricing for OPTION A or provide an explanation as to why they are unable to provide this optional service.***

Those proposers who do not provide pricing for **all items** listed on ATTACHMENT "B"/PROPOSAL PRICING SHEET risk the chance of their proposal being deemed as NON-RESPONSIVE.

ATTACHMENT "B"
CITY OF GARDEN GROVE
REQUEST FOR PROPOSALS S-1235
PROVIDE GASOLINE AND DIESEL
PROPOSAL PRICING SHEET

Regular Unleaded Gasoline

Gasoline prices (four decimal places, i.e. 0.0000)

87 OCTANE

Bulk fuels full truck and trailer	Delivery size: 7,000+ gallons
OPIS Plus	_____ 0.0000 _____ cents per gallon
Or Minus	_____ 0.1310 _____ cents per gallon
Delivery	_____ 0.0306 _____ cents per gallon
Other (specify)	_____ 0.0000 _____ cents per gallon
Applicable Discount(s)	_____ 0.0000 _____ cents per gallon
Total OPIS +	_____ -0.1004 _____ net cents per gallon

Smaller Tank less than full truck Delivery size: 3,500 – 6,999 gallons

OPIS Plus	_____ 0.0000 _____ cents per gallon
Or Minus	_____ 0.1210 _____ cents per gallon
Delivery	_____ 0.0611 _____ cents per gallon
Other (specify)	_____ 0.0000 _____ cents per gallon
Applicable Discount(s)	_____ 0.0000 _____ cents per gallon
Total OPIS +	_____ -0.0599 _____ net cents per gallon

Large bulk deliveries exceeding 7,000 gallons could include a combined load of gasoline and diesel.

Please include any split load charges in the "Other" category if needed.

ATTACHMENT "B"
CITY OF GARDEN GROVE
REQUEST FOR PROPOSALS S-1235
PROVIDE GASOLINE AND DIESEL
PROPOSAL PRICING SHEET

Diesel – Type 2 Clear

Diesel prices (four decimal places, i.e. 0.0000)

Bulk fuels full truck and trailer	Delivery size: 7,000+ gallons
OPIS Plus	<u>0.0000</u> cents per gallon
Or Minus	<u>0.0360</u> cents per gallon
Delivery	<u>0.0324</u> cents per gallon
Other (specify)	<u>0.0000</u> cents per gallon
Applicable Discount(s)	<u>0.0000</u> cents per gallon
Total OPIS +	<u>-0.0036</u> net cents per gallon

Smaller Tank less than full truck	Delivery size: 3,500 – 6,999 gallons
OPIS Plus	<u>0.0000</u> cents per gallon
Or Minus	<u>0.0260</u> cents per gallon
Delivery	<u>0.0616</u> cents per gallon
Other (specify)	<u>0.0000</u> cents per gallon
Applicable Discount(s)	<u>0.0000</u> cents per gallon
Total OPIS +	<u>0.0356</u> net cents per gallon

OPTION A: Fuel Management Services 0.00 (Included in fuel pricing) per year

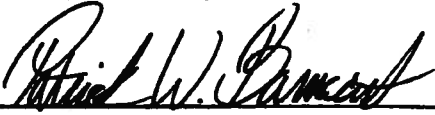
Please provide an annual cost for providing fuel management services as part of this contract. The above item listed as OPTION A will not be used to **score the pricing section of the RFP process/determine the lowest, responsible bidder** since it is optional for the CITY. However, at its sole discretion, the City may elect to include the above item (OPTION A) as part of the contract based on

ATTACHMENT "B"
CITY OF GARDEN GROVE
REQUEST FOR PROPOSALS S-1235
PROVIDE GASOLINE AND DIESEL
PROPOSAL PRICING SHEET

budgeted funds. All proposers are required to provide pricing for OPTION A or provide an explanation as to why they are unable to provide this optional service.

Those proposers who do not provide pricing for all items listed on ATTACHMENT "B"/ PROPOSAL PRICING SHEET risk the chance of their proposal being deemed as NON-RESPONSIVE

The undersigned hereby certifies that this Proposal is genuine and is not sham or collusive, or made in the interest or in behalf of any person not herein named, and that the undersigned has not directly or indirectly induced or solicited any other bidder to put in a sham bid, or any other person, firm or corporation to refrain from bidding, and that the undersigned has not in any manner sought, by collusion, to secure for himself an advantage over any other bidder.

BY: 
(Signature)

714-744-7140

Telephone Number

Patrick W. Bamecut
(Type or Print Name)

President
(Title)

koepk@scfuels.com
(Email Address)

Southern Counties Oil Co., a California
Limited Partnership dba SC Fuels
(Company Name)

State of California Secretary of State

CERTIFICATE OF STATUS

ENTITY NAME: SOUTHERN COUNTIES OIL CO., A CALIFORNIA LIMITED PARTNERSHIP

FILE NUMBER: 199133000002
FORMATION DATE: 11/25/1991
TYPE: DOMESTIC LIMITED PARTNERSHIP
JURISDICTION: CALIFORNIA
STATUS: ACTIVE (GOOD STANDING)

I, ALEX PADILLA, Secretary of State of the State of California, hereby certify:

The records of this office indicate the entity is authorized to exercise all of its powers, rights and privileges in the State of California.

No information is available from this office regarding the financial condition, business activities or practices of the entity.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of February 2, 2018.

ALEX PADILLA
Secretary of State