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County of Santa Clara
Office of the County Executive
Procurement Department
150 West Tasman Drive
San Jose, CA 95134
Telephone 408-491-7400 ● Fax 408-491-7496

AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND VALLEY OIL COMPANY
FOR ULTRA-LOW SULFUR DIESEL AND RENEWABLE DIESEL UP TO 4000 GALLONS AND SMALL TANKS

This agreement is entered into by and between the County of Santa Clara (the County) and Valley Oil Company (Contractor or Supplier) (the Agreement), for Ultra-Low Sulfur Diesel and Renewable Diesel Up to 4000 Gallons and Small Tanks.

The effective date of the Agreement is January 12, 2021. The parties, intended to be bound, mutually agree as follows:

KEY PROVISIONS

AGREEMENT TITLE:	Ultra-Low Sulfur Diesel and Renewable Diesel Up to 4000 Gallons and Small Tanks
AGREEMENT NUMBER:	CW2239575
INITIAL AWARD DATE:	January 12, 2021
AGREEMENT TERM:	January 12, 2021 through January 11, 2024, unless terminated earlier or otherwise amended with option by County to renew for two additional one-year periods.
COMMODITY NAME / CODE:	Bulk Fuel / 405
AUTHORIZED USER:	Facilities and Fleet 2265 Junction Ave San Jose, CA 95131
COUNTY DEPARTMENT CONTACT:	Dennis Brooks, Fleet Manager Facilities and Fleet (408) 468-8901; dennis.brooks@faf.sccgov.org
SUPPLIER:	Valley Oil Company 785 Yuba Drive

	Mountain View, CA 94041
SUPPLIER CONTACT:	Mike Taft, Manager (650) 967-2253; mike.taft@valleyoil.com
SUPPLIER NUMBER:	1010820
PURPOSE:	To establish a contract with Valley Oil Company for Ultra-Low Sulfur Diesel and Renewable Diesel Up to 4000 Gallons and Small Tanks
TAX STATUS:	Taxable
PAYMENT TERMS:	Net 45
TOTAL AGREEMENT VALUE:	**Not to Exceed $2,500,000;** *Contractor understands that this Not to Exceed amount does not represent a commitment by County to Contractor.*
COUNTY CONTRACT ADMINISTRATORS:	Samuel Hirsch, Buyer II (408) 491-7485; samuel.hirsch@prc.sccgov.org Chaz Miyamoto, Buyer I (408) 491-7468; chaz.miyamoto@prc.sccgov.org
REFERENCES:	The following is incorporated and constitutes a material part of the Agreement: Exhibit A: County of Santa Clara Standard Terms and Conditions for Exhibit B: Product and Price Schedule Exhibit C: Requirements and Specifications Exhibit D: Insurance Requirements (B-2) Exhibit E: Federally Required Contract Provisions

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

COUNTY OF SANTA CLARA

DocuSigned by:
Teresa Cox 1/11/2021
3A5DF4E90991401...
Teresa Cox Date
Senior Strategic Sourcing Officer

DS DS
ck

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

CONTRACTOR

By: DocuSigned by:
Mike Taft
D6B044758A80400...

Print: Mike Taft

Title: Manager

Date: 1/11/2021

APPROVED AS TO FORM AND LEGALITY

DocuSigned by:
Sara J Ponzio
4B974B9E089D4D9...
Sara J. Ponzio
Deputy County Counsel

Date 1/11/2021

EXHIBIT A
COUNTY OF SANTA CLARA STANDARD TERMS AND CONDITIONS

DEFINITIONS

a. "County Confidential Information" shall include all material, non-public information (including material, non-public County Data) appearing in any form (including, without limitation, written, oral or displayed), that is disclosed, directly or indirectly, through any means of communication by County, its agents or employees, to Contractor, its agents or employees, or any of its affiliates or representatives.
b. "County Data" shall mean data and information received by Contractor from County. County Data includes any information or data that is transported across a County network, or that resides in a County-owned information system, or on a network or system under the control and management of a contractor for use by County. As between Contractor and County, all County Data shall remain the property of County.
c. "Deliverables" means goods, services, software, hardware, information technology, telecommunications technology, enhancements, updates, new versions or releases, documentation, and any other items to be delivered pursuant to this Agreement, including any such items furnished incident to the provision of services.
d. "Documentation" means manuals and other printed materials (including updates and revisions) necessary or useful to the County in its use or maintenance of the Deliverables provided pursuant to this Agreement.
e. When used in this Agreement, "days" shall refer to calendar days unless stated otherwise.

1. NON-EXCLUSIVE AGREEMENT

The 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.

2. DELIVERABLES

Contractor agrees to provide the County all Deliverables on terms set forth in the Agreement, including all Exhibits that are attached to the Agreement and incorporated, as well as all necessary equipment and resources. However, this Agreement does not provide authority to ship Deliverables. 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, electronically or in mailings, attached to invoices or with any deliverables 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 timely provide to the County, all documentation and manuals relevant to the Deliverables to be supplied, at no additional cost. Such documentation shall be delivered either in advance of the delivery of Deliverables or concurrently with the delivery of Deliverables.

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 Deliverables 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 Deliverables and services. County does not guarantee any minimum orders.

3. 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.

4. 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.

5. PRICING

Unless otherwise stated, prices shall be fixed for the term of the Agreement, 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 B of the 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.

6. 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 the County's authorized representative.

7. 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. If 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.

8. 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.

9. 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.

10. 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.

11. 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 County's authorized representative 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 County's authorized representative shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse performance by Contractor.

12. INVOICING
Contractor shall invoice according to Exhibit B of the 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.

13. PAYMENT
The County's standard payment term shall be Net forty-five (45), unless otherwise agreed to by the parties. Payment shall be due Net forty-five (45) days from the date of receipt and approval of correct and proper invoices.

Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

14. OTHER PAYMENT PROVISIONS
Notwithstanding anything to the contrary, County shall not make payments prior to receipt of service or goods (i.e. the County will not make "advance payments"). Unless specified in writing in an individual 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 on an ongoing basis.

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 Purchase Order 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 #94730482K. 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.

15. LATE PAYMENT CHARGES OR FEES
The Contractor acknowledges and agrees that the County will not pay late payment charges.

16. 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.

17. TERMINATION FOR CONVENIENCE
The County may terminate this Agreement or any order at any time for the convenience of the County, specifying the effective date and scope of such termination.
In no event shall the County be liable for costs incurred by the Contractor as a result of the termination or 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. If this Agreement is terminated, neither party may nullify obligations, if any, already incurred prior to the date of termination.

Termination for Convenience may be exercised anytime by and at the sole discretion of the County.

18. TERMINATION FOR CAUSE

County may terminate this Agreement or any order, in whole or in part, for cause upon thirty (30) 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 order.

In the event County terminates for cause under this provision, the Contractor shall be liable for any costs incurred by the County because of Contractor's default. 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 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 provision of this clause, the County has the option to make its notice of termination pursuant to the Termination for Convenience clause and the rights and obligations of the parties would be in accordance with that provision.

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 ten (10) days (or other specified time period by the County) to cure. If, within ten (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 this Agreement is terminated, neither party may nullify obligations, if any, already incurred prior to the date of termination.

Notwithstanding any of the above, if County determines that any action by Contractor contributes to the curtailment of an essential service or pose an immediate threat to life, health, or property, County may terminate this Agreement effective immediately without penalty or opportunity to cure upon issuing either oral or written notice to the Contractor.

19. 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. For the purpose of this Section,

bankruptcy shall mean the filing of a voluntary or involuntary petition of bankruptcy or similar relief from creditors; insolvency; the appointment of a trustee or receiver, or any similar occurrence reasonably indicating an imminent inability to perform substantially all the party's duties under this Agreement. If this Agreement is terminated, neither party may nullify obligations, if any, already incurred prior to the date of termination.

20. BUDGETARY CONTINGENCY
Performance and/or payment by the County pursuant to this Agreement is contingent upon the appropriation by the County of sufficient funds for Deliverables 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.

21. 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 County services or the County 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, within sixty (60) days of the request, and after return of same, Contractor shall destroy all copies thereof not turned over to County, all at no charge to County.

22. DISPUTES
Except as otherwise provided in this Agreement, any dispute arising under this contract that is not disposed of by agreement shall be decided by the County's authorized representative or designee, who shall furnish the decision to the Contractor in writing. The decision of the County's authorized representative or designee shall be final and conclusive. The Contractor shall proceed diligently with the performance of the contract pending the County's authorized representative or designee's decision. The County's authorized representative or designee shall not be required to decide issues that are legal or beyond his or her scope of expertise.

23. ACCOUNTABILITY
Contractor will be the primary point of contact for the performance of any subcontractors and assume the responsibility of all matters relating to the purchase of goods and/or services under

this Agreement, including payment issues. If such or similar issues arise, the Contractor must take immediate action to correct or resolve the issues.

24. 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. 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.

25. 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 acquiring entity or the new entity is legally required to:

(1) Honor all the terms negotiated in this Agreement and 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.

(2) 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. The County will not be required to pay any additional license or maintenance fee to an acquiring entity in order to continue with full use, benefit, and functionality of software licensed under this Agreement until expiration or termination.

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

26. COMPLIANCE WITH ALL LAWS & REGULATIONS APPLICABLE TO GOODS AND/OR SERVICES PROVIDED

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, 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 any Regulation applicable to the goods and/or services to be provided hereunder.

27. 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 ("Force Majeure Event").
Each party, as applicable, shall give the other party notice of its inability to perform and 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 a Force Majeure Event 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 effective immediately, upon written notice, in the event of non-performance by Contractor because of a Force Majeure Event. The County shall reserve the right to extend the agreement and time for performance at its discretion.

28. 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, 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, or employee of County, nor shall any such person be entitled to any benefits available or granted solely to employees of the County.

Contractor is responsible for payment to sub-contractors and must monitor, evaluate, and account for the sub-contractor(s) services and operations.

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

30. DAMAGE AND REPAIR BY CONTRACTOR
Any and all damages to County owned or leased property 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 within seventy-two (72) hours of the incident unless the County requests or agrees to an extension or another time frame. The cleanup 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 the 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 or designee. 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.

31. LIENS, CLAIMS, 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.

32. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS
Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

33. INDEMNITY
Contractor shall indemnify, defend, and hold harmless the 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. Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

34. 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 employees, agents and assigns 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 or other adjudicatory body awards as a result of any such claim.

35. WARRANTY
Any goods and/or services furnished under this Agreement 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 nonexclusive 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.

36. 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.

37. 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 may 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 payment adjustments set forth in any County audits. The Contractor shall pay to County the full amount determined to be due as a result of a County audit. This provision is in addition to other inspection and access rights specified in this Agreement.

38. 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 term 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 or applicable law.

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 a minimum, (i) the total contract release purchase order value for the County as a whole and individual County departments, and (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 and (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.

39. 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 reason for the termination.

40. COUNTY NO-SMOKING POLICY

Contractor and its employees, agents and subcontractors, shall comply with the County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within thirty (30) feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

41. FOOD AND BEVERAGE STANDARDS

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and

caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided

42. 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, if applicable, 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 thirty (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.

43. CALIFORNIA PUBLIC RECORDS ACT

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's 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 is required to respond to the CPRA request. If Contractor fails to obtain such remedy within the time the County is required to respond 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 attorney's 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.

44. CONFLICT OF INTEREST; POLITICAL REFORM ACT DISCLOSURE REQUIREMENT

If applicable, Contractor shall comply with all applicable requirements governing avoidance of impermissible client conflicts; and federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 *et seq*., the California Political Reform Act (California Government Code section 87100 *et seq*.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California

Code of Regulations section 18700 *et seq*.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not use any contractor or employ any person having such an interest. Contractor, including but not limited to contractor's employees, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under the Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Act are applicable to any individual providing service under the Agreement, Contractor shall, upon execution of the Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," as part of Contractor's service to the County under the Agreement. Contractor shall ensure that such individuals file Statements of Economic Interests within 30 days of commencing service under the Contract, annually by April 1, and within 30 days of their termination of service under the Contract.

45. SEVERABILITY

Should any part of this 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 similar or not, 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 County's authorized representative, or designee.

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; MERGER
This Agreement and its Exhibits and Attachments (if any) constitute 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 AND 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 a method described herein.

Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

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 the individuals identified in the Key Provisions of the Agreement as the County Contract Administrator and the Supplier Contact. 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 upon execution of the Agreement 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-sales 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 survive this 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.

57. THIRD PARTY BENEFICIARIES
This Agreement does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties

58. AUTHORITY
Each party executing the Agreement on behalf of such entity represents that he or she is duly authorized to execute and deliver this Agreement on the entity's behalf, including, as applicable, the Board of Supervisors, the Board of Directors, or Executive Director. This Agreement shall not be effective or binding unless it is in writing and approved by the County's authorized representative, or authorized designee, as evidenced by their signature as set forth in this Agreement.

59. LIVING WAGE
Unless otherwise exempted or prohibited by law or County policy, Contractors that contract with the County to provide Direct Services, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board Policy section 5.5.5.5 ("Living Wage Policy"), and their subcontractors, where the contract value is $100,000 or more, must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violate this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

(1) Suspend, modify, or terminate the Direct Services Contract.
(2) Require the Contractor and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
(3) Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Contractor certifies that it is currently complying with County Code Division B36 and the County's Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with County Code Division B36 and the County's Living Wage Policy with respect to applicable contracts.

60. CONTRACTING PRINCIPLES
All entities that contract with the County to provide services where the contract value is $100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws: (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the Agreement; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the Agreement, except where prohibited by federal or state laws, regulations or rules.

61. CONTRACTOR TRAVEL EXPENSES
Contractor shall be solely responsible for any travel fees or out of pocket expenses.

62. INFORMATION SECURITY COMPLIANCE

A. For purposes of this section, the following Definitions will apply:

(1) "Breach" means unauthorized access to, or use of, County Data or information security networks or systems that compromises confidentiality, integrity, and/or availability those systems or County Data.

(2) "Independent Penetration Testing," or "pen testing," means the County's practice - by using an independent third party - of testing a computer system, network or web application to find security vulnerabilities that an attacker could exploit

(3) "Risk Assessment" means the process by which the County's Information Security Office ("ISO") assesses (i) the Contractor's information security program, and related aspects, by identifying, analyzing, and understanding how the Contractor will store, process and transmit County Data; and (ii) the potential impact on the County of any security risks, weaknesses and threats related to safeguarding County assets and County Data. The Risk Assessment usually includes the ISO's evaluation of documentation provided by the Contractor.

B. Contractor shall do all of the following:

(1) Maintain or improve upon its information security posture at the time of the County's initial Risk Assessment as reasonably determined by the County. Contractor shall provide written notice to the County's Information Security Office ("ISO") of any changes or deficiencies to its information security posture.

(2) Protect the confidentiality, integrity, availability of the County's data and comply with any information security requirements provided to Contractor by the ISO for the entire term of the Agreement.

(3) Follow any updated security requirements for the remaining term of the Agreement if the County re-evaluates the Risk Assessment, conducts periodic audits, and/or completes annual Independent Penetration Testing.

(4) Upon discovering any Breach that could impact the County, whether caused by

Contractor, its officers, employees, contractors or agents or others, the Contractor shall notify the ISO at o365-iso-team@sccconnect.onmicrosoft.com within 24 hours. Contractor shall also comply with all of its other obligations in this Agreement relating to breaches and potential breaches.

63. COUNTY DATA

(1) Contractor shall not acquire any ownership interest in County Data (including County Confidential Information). As between Contractor and County, all County Confidential Information and/or County Data shall remain the property of the County. Contractor shall not, without County's written permission, use or disclose County Data (including County Confidential Information) other than in the performance of its obligations under this Agreement.

(2) Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, and protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users. Upon termination or expiration of this Agreement, Contractor shall seek and follow County's direction regarding the proper disposition of County Data.

(3) Contractor shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, and notifying County by phone or in writing within 24 hours of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users. If the initial notification is by phone, Contractor shall provide a written notice within 5 days of the incident. Contractor shall be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality, privacy, and information security requirements of this Agreement. Should County Confidential Information and/or legally protected County Data be divulged to unauthorized third parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code sections 1798.29 and 1798.82 at Contractor's sole expense. Contractor shall not charge County for any expenses associated with Contractor's compliance with these obligations.

(4) Contractor shall defend, indemnify and hold County harmless against any claim, liability, loss, injury or damage arising out of, or in connection with, the unauthorized use, access, and/or disclosure of information 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.

64. ACCESS TO COMPETITIVELY BID AGREEMENTS

Where the contract award is a result of a formal competitive solicitation, Contractor may opt to permit the use of this Agreement by other political subdivisions, municipalities, tax supported agencies and non-profit entities in the United States. Such participating agencies shall make purchases in their own name, make payments directly to the Contractor and shall be liable directly to Contractor holding the County of Santa Clara harmless.

If applicable, Contractor shall be required to maintain a list of cooperative entities using this Agreement. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

65. COMPLIANCE WITH ALL LAWS AND REGULATIONS INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION

Contractor's violation of this provision shall be deemed a material default by Contractor, giving County a right to terminate the Agreement. 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. 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.

(1) Compliance with All Laws. Contractor shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

(2) Compliance with Non-Discrimination and Equal Opportunity Laws: Contractor shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the foregoing, Contractor shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

(3) Compliance with Wage and Hour Laws: Contractor shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local Minimum Wage, Prevailing Wage, or Living Wage laws.

(4) Definitions: For purposes of this Section, the following definitions shall apply. A "Final Judgment, Decision, Determination, or Order" shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual's sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the

Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose's Office of Equality Assurance.

(5) Prior Judgments, Decisions or Orders against Contractor: By signing this Agreement, Contractor affirms that it has disclosed any final judgments, decisions, determinations, or orders that (a) were issued in the five years prior to executing this Agreement by a court or investigatory government agency and (b) found that Contractor violated an applicable wage and hour or pay equity law. Contractor further affirms that it has satisfied and complied with – or has reached agreement with the County regarding the manner in which it will satisfy – any such final judgments, decisions, determinations, or orders.

(6) Violations of Wage and Hour Laws or Pay Equity Laws During Term of Agreement: If at any time during the term of this Agreement, Contractor receives a Final Judgment, Decision, Determination, or Order rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Contractor shall promptly satisfy and comply with any such Final Judgment, Decision, Determination or Order. Contractor shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment, Decision, Determination, or Order against it within 30 days of the Final Judgment, Decision, Determination, or Order becoming final or of learning of the Final Judgment, Decision, Determination, or Order, whichever is later. Contractor shall also provide any documentary evidence of compliance with the Final Judgment, Decision, Determination, or Order within 5 days of satisfying the Final Judgment, Decision, Determination, or Order. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

(7) Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Contractor's records, Contractor shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County's request, Contractor shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Section, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Contractor's normal business hours upon no less than 10 business days' advance notice.

(8) Pay Equity Notification: Contractor shall (1) directly provide each employee working in California and each person applying for a job in California with a written copy of any applicable pay equity Laws, or (2) electronically disseminate the text of applicable pay equity Laws to each California employee and job applicant, either directly or by posting a copy in conspicuous places available to employees and applicants. Such notification shall occur at least once during the term of this Agreement and, if this Agreement is a multi-year Agreement, at least annually thereafter.

(9) Material Breach: Failure to comply with any part of this Section shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion,

exercise any or all remedies available under this Agreement and/or at law. County may, among other things, take any or all of the following actions:
(i) Suspend or terminate any or all parts of this Agreement.
(ii) Withhold payment to Contractor until full satisfaction of a Final Judgment, Decision, Determination, or Order.
(iii) Offer Contractor an opportunity to cure the breach.

(10) Subcontractors: Contractor shall impose all of the requirements set forth in this Section on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment, Decision, Determination, or Order for violation of an applicable wage and hour Law promptly satisfies and complies with such Final Judgment, Decision, Determination, or Order.

66. LICENSE GRANT
Contractor grants to County a perpetual, non-exclusive, royalty-free, fully paid-up license to use the Software for its business activities, which includes fulfilling its mission of providing services to the public. This includes the right to use licensed software in backup, disaster recovery, and testing environments.

67. CLICK-THROUGH AGREEMENTS AND CONTRACTOR POLICIES
(1) No provisions of any shrink-wrap or any click-through agreement (or other form of “click to accept” agreement) that may routinely accompany any products or services acquired under this Agreement shall apply in place of, or serve to modify any provision of this Agreement, even if a user or authorized officer of County purports to have affirmatively accepted such shrink-wrap or click through provisions. Without limiting the foregoing, no “terms of use,” “privacy policy” or other policy on Contractor’s website or application (collectively, “Policies”) or another website that may routinely accompany any products or services acquired under this Agreement shall apply in place of or serve to modify any provision of this Agreement.

(2) For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap, click-through provisions or Policies (irrespective of the products or services that such provisions attach to) and any term or condition of this Agreement, the relevant term or condition of this Agreement shall govern to the extent of any such conflict. Only the provisions of this Agreement as amended from time to time, and executed by the parties, shall apply to County and or authorized user

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EXHIBIT B
Product and Price Schedule

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

A. PRICING TABLE

#	Product Description	Range of Quantity Ordered	UOM	Fixed Margin off OPIS Daily Contract Average Rack Price
1	Ultra-Low Sulfur Diesel and Renewable Diesel	0-1500	Gallon	+$0.1100
2	Ultra-Low Sulfur Diesel and Renewable Diesel	1501-4000	Gallon	+$0.0400
3	Ultra-Low Sulfur Diesel and Renewable Diesel Small Tank	1500	Gallon	+$0.2490

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

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EXHIBIT C
Requirements and Specifications

Contractor shall provide Ultra-Low Sulfur Diesel and Renewable Diesel Up to 4000 Gallons and Small Tanks to the County of Santa Clara in accordance with the terms and conditions of this Agreement.

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

A. BACKGROUND

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

B. OBJECTIVES

Contractor must be capable of:

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

C. DEFINITIONS

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

D. SPECIFICATIONS AND SUPPLIER RESPONSIBILITIES

1. Technical Specifications

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

1.1.1 Regular Unleaded Gasoline

1.1.1.1 Minimum Octane Rating of 87 which shall be determined by using the R+M/2 Method.

1.1.1.2 Comply with the requirements of American Society of Testing Materials (ASTM) D418151 latest version.

1.1.2 CARB Specification ULSD #2

1.1.2.1 All diesel fuel sold for vehicular use in California must meet a 15-ppm maximum sulfur limit (Ultra Low) in addition to meeting all the current low aromatics CARB diesel specifications

1.1.3 CARB Specification ULSD #2 – Red

1.1.3.1 The same specifications as CARB ULSD #2 except for the red dye and dyeing process to donate usage for tax-exempt purposes.

1.1.4 "Renewable hydrocarbon diesel" means a diesel fuel that is produced from nonpetroleum renewable resources but is not a mono-alkyl ester and which is registered as a motor vehicle fuel or fuel additive under 40 CFR Part 79.

1.1.4.1 The renewable diesel fuel shall conform to California Code of Regulations (CCR) Title 4, Division 9, Chapter 6, Article 5, Section 4149.

1.1.4.2 The renewable diesel fuel shall also meet the requirements of the California Code of Regulation, Title 13, Division 3, Chapter 5, Article 2, Section 2281 (sulfur content) and Section 2282 (aromatic hydrocarbon). Alternative diesel formulations must be certified by CARB. Evidence of such fact shall be available to the County of Santa Clara if requested.

1.1.4.3 The renewable diesel fuel shall meet the requirements of Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Subarticle 7, of California Code of regulations (CCR), Sections 95480 through 95490 (collectively referred to as "LCFS") applies to any transportation fuel, as defined in section 95481, that is sold, supplied, or offered for sale in California, and to any person who, as a "regulated party" defined in section 95481 and specified in section 95484(a), is responsible for a transportation fuel in calendar year. LCFS regulation became effective on January 12, 2010.

1.1.4.3.1 Note: County of Santa Clara is end user and will not assume the role as a "regulated party."

1.1.4.4 The carbon intensity of the fuel shall be no more than 50 g CO2e/MJ as determined by the Low Carbon Fuel Standard (LCFS), Title 17, Division 3, Chapter 1, Subchapter 10, Article 4, Subarticle 7, of California Code of Regulations (CCR), Section 95486.

1.1.4.5 SAVE

1.1.5 Storage Life: Fuel shall not deteriorate in ordinary storage and shall not form excessive gum, resin, or deposits.

2. Service Locations

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

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

3. Fuel and Fuel Delivery Requirements

3.1 Orders and Locations

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

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

3.1.3 The following locations take deliveries by transport:

3.1.3.1 FAF Fleet Management, 2265 Junction Ave. San Jose

3.1.3.2 Roads West Yard, 11031 Doyle Rd. San Jose

3.1.3.3 Roads South Yard 13550 Diessner, San Martin

3.1.3.4 Roads East Yard. 1505 Schallenberger Rd. San Jose

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

3.1.3.6 14200 Chapman Road, Leandro, CA 94578

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

3.3 If metering is not accomplished from the delivery vehicles at the time of delivery, a highway transportation receipt (H.T.R.), issued at the point where the fuel order was loaded in the delivery vehicle, shall be delivered to the ordering Department. At minimum the H/T/R. shall show the date fuel loaded, carrier, truck numbers, quantity and type of fuel loaded, and temperature when loaded.

3.4 All deliveries shall be temperature corrected to 60 degrees Fahrenheit.

3.5 All delivery trucks shall comply with the California Environmental Protection Agency Air Resources Board approved certified Phase II Vapor Recovery Equipment Requirements. Proof of compliance will be supplied by the awarded vendor when requested by the County. There are many other smaller Back-up Power Generators that tanks do not need to meet the EVR requirements, but at times the vendor may need to service these locations too.

3.6 Delivery dates and times must be coordinated with the County end user Department. All deliveries shall be made Monday through Friday between the hours of 8:00 a.m. to 5:00 p.m. unless special delivery restrictions or instructions are required by the requested County end- user Department.

3.7 Urgent Deliveries

3.7.1 It shall be expected that vendor shall deliver any urgent fill orders placed by the County and participating agencies within twelve (12) hours of the time order is placed with no additional cost.

3.7.2 Urgent deliveries are not anticipated to occur often and shall be kept to a minimum by the end-user Department placing the order.

3.7.3 There are no minimum requirements for urgent deliveries.

3.7.4 All urgent deliveries shall occur during normal delivery hours of 8:00 a.m. to 5:00 p.m. unless special delivery instructions apply by the requesting Department.

3.8 Emergency Deliveries

3.8.1 During a state of emergency, in which a natural disaster or other type of declared emergency, County of Santa Clara is a first responder to said emergency. As a result, the County and any other participating agencies of this contract, will have a priority status on available fuel.

3.8.2 It shall be expected that vendor shall deliver any emergency fill orders placed by the County and participating agencies within four (4) hours of the time order is placed with no additional cost to the County.

3.8.3 Emergency deliveries are not anticipated to occur often and shall be kept to a minimum by the end-user Department placing the order.

3.8.4 There are no minimum requirements for emergency deliveries.

3.8.5 Emergencies deliveries shall be placed by phone from the ordering department with confirmation by electronic mail or facsimile by the same ordering Department.

3.9 Standing Time – The County will not be charged any additional fees for the time it takes the Contractor to fuel the County's off-road equipment or generator tanks.

3.10 Spillage

3.10.1 The County has a "zero" leakage standards for fuel transfer operations.

3.10.2 The Contractor shall provide equipment for and training of truck drivers to minimize the chance of spillage during connection and disconnection of hoses and during the transfer of fuel.

3.10.3 The vendor shall ensure that all equipment, tools and procedures used follow all applicable specifications and regulations governing such operations.

3.10.4 In the event of leakage or spillage, it shall be the vendor's responsibility to effect immediate containment, cleanup, and disposal and restoration activities in accordance with applicable State of California laws and regulations and subject to County's satisfaction.

3.10.5 All material associated with such clean-up shall be removed by the Contractor.

3.11 Safety Data Sheet – It is required by law that all hazardous materials must be identified and be accompanied with a "Safety Data Sheet" (SDS) at the delivery site.

3.12 Substitutions – Contractor will not be allowed to substitute any product with any other without the consent of the County end-user Department placing the order. If substitute products are delivered without approval, it will be the responsibility of the vendor to collect product at no charge or penalty to the County.

4. Electronic Transactions in Ariba Network

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

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

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

5. Reports

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

5.1 Spend Reports – Expenditures against the Agreement, including ability to provide total spend by the County, total spend for contracted services and products, and total spend by date.
5.2 Usage Reports – Includes but shall not be limited to the cumulative contract activity and any other analytical information as mutually agreed upon.
5.3 Upon request and as mutually agreed upon by County and Contractor, Contractor shall provide additional reports on items that are not contained in the spend or usage reports.

6. Invoicing

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

E. COUNTY RESPONSIBILITIES

1. County shall issue a CRPO to the Contractor for all contracted products to be ordered against this Agreement.

1.1 CRPO issuance may need to be processed upon delivery of products by Contractor. For these instances, County shall issue CRPO's after delivery of products and receipt of invoice.

1.2 County shall not process any invoices for payment until goods are delivered and received.

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EXHIBIT D
Insurance Requirements (B-2)

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 contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

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

a. 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

b. General liability coverage shall include:

1. Premises and Operations

2. Products/Completed.

3. Personal Injury liability

4. 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

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

2. 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 this Agreement, at the option of County.

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Exhibit E
COUNTY OF SANTA CLARA FEDERALLY REQUIRED CONTRACT PROVISIONS

The federally-required contract provisions listed below are made a part of the Contractor's Contract with the County.

The term "Contractor", as used throughout this document shall mean the contractor identified in the Contract as Contractor, Provider, Consultant, or similar term.

The term "Contract" as used throughout this Exhibit shall mean the contract or other agreement, with exhibits, into which this Exhibit is incorporated.

The term "State" as used throughout this document shall mean the State of California and include any of its departments or agencies.

These federally required contract provisions will collectively be referenced as the "FEMA Contract Terms."

The terms and conditions of the Contract and the FEMA Contract Terms should be read to operate in concert, except where directly in conflict. In the event of a conflict between the terms of the Contract and the FEMA Contract Terms, and unless otherwise stated within the terms of this Exhibit, the FEMA Contract Terms shall govern and prevail.

A. No Obligation by the Federal Government

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.

B. Access to Records

(1) Upon request, the Contractor agrees to provide the County, State, Federal Emergency Management Agency (FEMA) Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) Upon request, the Contractor agrees to provide the FEMA Administrator or the FEMA Administrator's authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.

(4) In compliance with the Disaster Recovery Act of 2018, the County of Santa Clara

and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

C. Procurement of Recovered Materials

(1) In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are United States Environmental Protection Agency-designated items unless the product cannot be acquired—

i. Competitively within a timeframe providing for compliance with the Contract performance schedule;

ii. Meeting Contract performance requirements; or

iii. At a reasonable price.

(2) Information about this requirement along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, http://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

D. Department of Homeland Security (DHS) Seal, Logo and Flags.

The Contractor shall not use the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials without specific FEMA approval.

E. Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

F. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 USC Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

G. Equal Employment Opportunity

If the Contract is for construction work, the provisions of this Section G shall apply. During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for

employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this

Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance

has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

H. Clean Air Act and the Federal Water Pollution Control Act

The provisions of this Section H apply to contracts exceeding $150,000. Clean Air Act
(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA. Federal Water Pollution Control Act
(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

I. Byrd Anti-Lobbying Amendment

Contractors who apply or bid for an award of $100,000 or more shall file the certification required by the Byrd-Anti-Lobbying amendment. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification:

APPENDIX A, 44 C.F.R. PART 18- CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____
Signature of Contractor’s Authorized Official

_____
Name and Title of Contractor’s Authorized Official

_____
Date

J. Contract Work Hours and Safety Standards Act

The provisions of this Section J apply to contracts over $100,000 that involve the employment of mechanics and laborers.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph
(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

K. Debarment and Suspension

(1) This Contract may be a covered transaction for purposes of 2 C.F.R. pt. 180

and 2 C.F.R. pt. 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

L. Termination for Cause

If the Contract value exceeds $10,000, to the extent the Contract does not provide for termination for cause outside of this Exhibit, and in addition to any right to terminate for convenience as described in the Contract, the County may, after providing five days' written notice, terminate the Contract for the Contractor's failure to perform or observe any term, covenant, or condition of the Contract.

M. Remedies

In the event of a breach by the Contractor of any term, covenant, or condition of the Contract, the County shall have the right to pursue all available remedies at law or equity. Except as expressly provided elsewhere in this Contract, each party's rights and remedies under this Contract are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

N. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

If this Contract was awarded in a competitive procurement, Contractor engages subcontractors to perform work under the Contract, and the Contract is for $10,000 or above, Contractor shall place qualified small and minority businesses and women's business enterprises on solicitation lists used in the procurement; solicit small and minority business and women's business enterprises; divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; establish delivery schedules, where the requirement permits, which encourage participation by small and

minority businesses and women's business enterprises; and use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

O. Subcontracts

To the extent applicable, the Contractor shall include the provisions of this Exhibit in all subcontracts.

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County of Santa Clara
Office of the County Executive
Procurement Department
130 West Tasman Drive
San Jose, CA 95134
Telephone 408-491-7400

FIRST AMENDMENT TO AGREEMENT # CW2239575
BY AND BETWEEN THE COUNTY OF SANTA CLARA AND
VALLEY OIL COMPANY

This is the First Amendment to the Agreement between the County of Santa Clara ("County") and Valley Oil Company ("Contractor") entered into on January 12, 2021 provide for Ultra-Low Sulfur Diesel and Renewable Diesel Up to 4000 Gallons and Small Tanks for the County.

This Agreement is amended as follows effective September 15, 2023:

1. Key Provision, AGREEMENT TERM**,** on page # 1 is hereby revised to read as follows:

This Agreement commences on January 12, 2021 and expires on January 11, 2025, with one (1) one-year option to extend the term which may be exercised in the County's sole and absolute discretion (subject to the termination provisions set forth below).

2. Key Provision, AUTHORIZED USERS**,** on page # 1 is hereby revised to read as follows:

1. Facilities and Fleet (FAF)
   2265 Junction Ave
   San Jose, CA 95131

2. Parks and Recreation Department (PRK)
   298 Garden Hill Dr
   Lost Gatos, CA 95032

3. County of Santa Clara Health System (CSCHS):

   a) Santa Clara Valley Medical Center
      751 South Bascom Ave
      San Jose, CA 95128

   b) O' Connor Hospital
      2105 Forest Ave
      San Jose, CA 95128

c) St. Louise Regional Hospial
9400 No Name Uno
Gilroy, CA 95020

d) De Paul Health Center
18550 Depaul Dr #109
Morgan Hill, CA 95037

3. Key Provision, COUNTY CONTRACT CONTACT on page # 1 is hereby revised as follows:

David Worthington, Fleet Manager
(408) 468-8901; david.worthington@faf.sccgov.org

4. Key Provision, COUNTY CONTRACT ADMINISTRATORS, on page #2 is hereby revised to read as follows:

Samuel Hirsch, Procurement Contracts Specialist
(408) 491-7485; samuel.hirsch@prc.sccgov.org

Ralph Murrieta, Buyer I
(408) 491-7489; ralph.murrietajr@prc.sccgov.org

5. Add the following provision to the EXHIBIT A, "COUNTY OF SANTA CLARA STANDARD TERMS AND CONDITIONS," as follows:

68. COVID-19 REQUIREMENTS (IF APPLICABLE)

Contractor shall comply with all County requirements relating to COVID-19 for persons who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County, including but not limited to vaccination, as applicable and periodically updated, and available at https://procurement.sccgov.org/doing-business-county/contractor-vaccinations and incorporated herein by this reference. If applicable, Contractor shall complete the Contractor Certification of Compliance with COVID-19 Vaccine Requirements ("Certification"), attached hereto as Exhibit F. Contractor shall comply with the requirements of this Section for the entire term of this Agreement.

Contractor shall comply with all reasonable requests by County for documentation demonstrating Contractor's compliance with this Section. Failure by Contractor to comply with any of the requirements of this Section (including but not limited to vaccination and masking requirements and completion and submittal of the Certification) is a material breach of this Agreement, and the County may, in its sole discretion terminate this Agreement immediately or take other action as the County may determine to be appropriate.

6. Add EXHIBIT F, “CONTRACTOR CERTIFICATION OF COMPLIANCE WITH COVID-19 VACCINE REQUIREMENTS”, attached hereto and incorporated herein by this reference.

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

Prepared by Lisa Plascencia Buyer II at (408) 491-7439 or lisa.plascencia@prc.sccgov.org.

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

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

COUNTY OF SANTA CLARA

DS
ck

DocuSigned by:
Matthew Hada 9/13/2023
CEA090A27EB84EA...
Matthew Hada Date
Director of Procurement

APPROVED AS TO FORM AND LEGALITY

DocuSigned by:
Robert Nakamae 9/13/2023
797E74E07E0345C...
Robert Nakamae Date
Deputy County Counsel

CONTRACTOR

By: DocuSigned by: Jon Buck
21E97F210B3043F...

Print: Jon Buck

Title: Business Development

Date: 9/13/2023

EXHIBIT F
CONTRACTOR CERTIFICATION OF COMPLIANCE WITH COVID-19 VACCINE REQUIREMENTS
(Version Effective September 27, 2022)

Contractor Information:

Contractor name:	Name of Contractor representative:
Valley Oil Company	Jon Buck
Contractor phone number:	**Contractor email address:**
650-967-2253	jon.buck@valleyoil.com

Contractor Certification. On behalf of Contractor, I hereby certify that:

1. Contractor has reviewed and is in compliance with all current County requirements regarding COVID-19 vaccination applicable to contractor's personnel working at County facilities, including but not limited to the requirements in the County's memorandum regarding COVID-19 Vaccine Requirement for County Personnel ("County Vaccine Policy"), the County's memorandum regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, all current State and County Health Officer orders, and any other County requirements. These memoranda and current County policies are accessible at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations>. Contractor understands that it is responsible for reviewing and maintaining compliance with all subsequent revisions or amendments to State and County orders and requirements regarding COVID-19.

2. As of the date signed below:

    a. Contractor understands that it must confirm, and has confirmed, that all of contractor's personnel (including any subcontractor personnel) who routinely perform services for the County onsite and share airspace with or proximity to other people at an indoor County facility as part of their services for the County[1] are:

        i. Fully vaccinated against COVID-19 as defined and required in the County Vaccine Policy;[2] **or**

[1] As established in the County's Memorandum Regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, contractors performing work at closed construction sites are not required to comply with the County's vaccination requirements, but must comply with all applicable federal, state, and local public health laws, including but not limited to any vaccination, testing, and masking requirements.

[2] County departments are required by law to implement any State-issued requirements, including ones that are more restrictive than the County's internal policies. As of the date of this policy, the California Department of Public Health (CDPH) requires that workers in health care facilities, as well as specified workers in custodial settings, obtain a COVID-19 booster dose. Thus, contractor personnel subject to this CDPH booster requirement are expected to comply with it, in addition to the County's policy. The exemption process in Section C of the County Vaccine Policy shall apply to any requests for exemption from the State booster requirement.

ii. Have a legally sufficient and approved medical, disability, or religious exemption from vaccination that has been granted by contractor.

b. Contractor has verified and will continue to verify the vaccination status of all staff working on site at any County facility, and has obtained proof of vaccination from its staff in a form consistent with the California Department of Public Health's Vaccine Records Guidelines and Standards.

3. If contractor seeks to send any personnel who are not fully vaccinated to work indoors at any County facility because the contractor has granted them an exemption, contractor shall notify the County in writing by providing a list of any such personnel to the COVID-19 Designee for the department that manages the facility where the contractor personnel will be working at least 96 hours in advance of any such personnel arriving onsite so that the department has sufficient time to determine whether it will approve the contractor's requests that its personnel work onsite and, if approved, can ensure that the contractor has complied with all applicable COVID-19 safety requirements for unvaccinated individuals, including, where appliable, regular testing and the use of a fit-tested N95 mask.[3] Notice must be separately provided to each department that manages a facility where contractor seeks to assign personnel to work onsite.

4. If any of contractor's personnel are noncompliant with vaccination or testing requirements, contractor will notify the County Department for which they are providing services immediately and will not permit those personnel to go onsite at a County facility without express written permission from the County.

5. Contractor will comply with all reasonable requests by the County for documentation demonstrating the contractor's compliance with this Certification.

I verify the truth and accuracy of the statements in this Certification under penalty of perjury under the laws of the State of California.

Jon Buck	Business Development
Name of authorized representative of Contractor	Title
DocuSigned by: Jon Buck 21E97F210B3043F...	9/13/2023
Signature	Date

[3] If contractor sends personnel who are not fully vaccinated, it is contractor's obligation to ensure that it has any necessary authorization under the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 *et. seq.*, and under any other laws to share this information with the County.

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County of Santa Clara
Office of the County Executive
Procurement Department
130 West Tasman Dr.
San Jose, CA 95134
Telephone 408-491-7400 ● Fax 408-491-7495

**SECOND AMENDMENT TO AGREEMENT # CW2239575
BY AND BETWEEN THE COUNTY OF SANTA CLARA AND
VALLEY OIL COMPANY**

This is the Second Amendment to the Agreement between the County of Santa Clara ("County") and Valley Oil Company ("Contractor") entered into on January 12, 2021, to provide for Ultra-Low Sulfur Diesel and Renewable Diesel Up to 4000 Gallons and Small Tanks for the County.

This Agreement is amended as follows effective September 27, 2024:

1. Key Provision, AGREEMENT TERM, on page # 1 is hereby revised to read as follows:

   "This Agreement commences on January 12, 2021, and expires on January 11, 2026, unless terminated earlier or otherwise amended."

2. Key Provision, PAYMENT TERMS, on page # 2 is hereby revised as follows:

   NET 30

3. EXHIBIT A: "COUNTY OF SANTA CLARA STANDARD TERMS AND CONDITIONS," is hereby revised as follows:

   a. Section 13 is hereby deleted in its entirety and replaced with the following:

      13. PAYMENT
      County's standard payment term shall be Net Thirty (30), unless otherwise agreed to by the parties. Payment shall be due Net Thirty (30) days from the date of receipt and approval of correct and proper invoices. Payment is deemed to have been made on the date County mails the warrant or initiates the electronic funds transfer.

   b. Section 33, is hereby deleted in its entirety and replaced with the following:

      33. INDEMNITY
      Notwithstanding any other provision of this Agreement, Contractor shall indemnify, release, hold harmless, and defend, with counsel approved by County, County and its officers, agents, and employees from any claim, demand, suit, judgment, liability, loss, injury, damage, or expense of any kind (including attorneys' fees and costs) arising out of, or in connection with, performance of this Agreement by Contractor and/or its officers, agents, employees, or sub-contractors, excepting only loss, injury, or

damage caused by the sole negligence or willful misconduct of personnel employed by County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for County as allowed by law. Contractor shall reimburse County for all costs, attorneys' fees, expenses, and liabilities incurred with respect to any litigation or process in which Contractor contests its obligation to indemnify, defend, and/or hold harmless County under this Agreement and does not prevail in that contest.

c. Section 44, is hereby deleted in its entirety and replaced with the following:

44. CONFLICTS OF INTEREST; POLITICAL REFORM ACT

Contractor shall comply, and require its employees, agents, and subcontractors to comply, with all (1) applicable requirements governing avoidance of impermissible client conflicts; and (2) federal, state and local conflict of interest and disclosure laws and regulations including, without limitation, California Government Code section 1090 et seq., the California Political Reform Act (California Government Code section 87100 et seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not use any contractor or employ any person having such an interest. Contractor, including but not limited to Contractor's employees, agents, and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Act are applicable to any individual providing service under the Agreement, Contractor shall, upon execution of this Agreement, provide County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, that could be substantively involved in "mak[ing] a governmental decision" or "serv[ing] in a staff capacity" and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position, (2 CCR 18700.3), as part of Contractor's service to County under this Agreement. Contractor shall immediately notify County of the names and email addresses of any additional

individuals later assigned to provide such service to County under this Agreement in such a capacity.

Contractor shall immediately notify County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to County. Contractor shall ensure that all such individuals identified pursuant to this paragraph understand that they are subject to the Act and shall conform to all requirements of the Act and other applicable conflict of interest and disclosure laws and regulations and shall file Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

d. Section 55, is hereby deleted in its entirety and replaced with the following:

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 survive this Agreement, shall survive the termination or expiration of this Agreement, including but not limited to all terms (1) providing for indemnification of County; (2) relating to the California Public Records Act; (3) relating to County Data; and (4) relating to Contractor's obligations upon termination or expiration of this Agreement, including but not limited to those listed in the "Disentanglement" Section.

e. Section 67, is hereby deleted in its entirety and replaced with the following:

67. CLICK-THROUGH AGREEMENTS AND CONTRACTOR POLICIES
(1) No provisions of any shrink-wrap or any click-through agreement (or other form of "click to accept" agreement) that may routinely accompany any products or services acquired under this Agreement shall apply in place of, or serve to modify any provision of this Agreement, even if a user or authorized officer of County purports to have affirmatively accepted such shrink-wrap or click through provisions. Without limiting the foregoing, no "terms of use," "privacy policy" or other policy on Contractor's website or application (collectively, "Policies") or another website that may routinely accompany any products or services acquired under this Agreement shall apply in place of or serve to modify any provision of this Agreement.

(2) For the avoidance of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap, click-through provisions or Policies (irrespective of the products or services that such provisions attach to) and any term or condition of this Agreement, the relevant term or condition of this Agreement shall govern to the extent of any such conflict. Only the provisions of this Agreement as amended from time to time, and executed by the parties, shall apply to County and or authorized user.

(3) The parties acknowledge that County and or authorized users may be required to click "Accept" as a routine condition of access to services through Contractor's website or other application. Such click-through provisions or Policies on Contractor's website shall be null and void for County and/or each such authorized user and shall only serve as a mechanical means for accessing such services.

f. Section 68, is hereby deleted in its entirety and replaced with the following:

68. COVID-19 REQUIREMENTS (IF APPLICABLE)
Contractor shall comply with all County requirements in effect relating to COVID-19 for persons who routinely perform services for County onsite and share airspace with or proximity to other people at a County facility as part of their services for County as set forth in a County Health Order (or similar directives) available at https://covid19.sccgov.org/home, and incorporated herein by this reference. Contractor shall comply with all reasonable requests by County for documentation demonstrating Contractor's compliance with this Section.

g. Add the following section:

69. LEVINE ACT COMPLIANCE
Contractor will comply and will ensure that its agents (as that term is defined under 2 Cal. Code Regs. § 18438.3(a)) and its subcontractors identified in Contractor's proposal responding to a County solicitation and/or identified in this Agreement ("Subcontractors") comply, with California Government Code section 84308 ("Levine Act") and the applicable regulations of the Fair Political Practices Commission concerning campaign disclosure (2 California Code of Regulations sections 18438.1 – 18438.8), which (1) require a party to a proceeding involving a contract to disclose on the record of the proceeding any contribution, as defined by Government Code section 84308(a)(6), of more than $250 that the party or their agent has made within the prior 12 months, and (2) prohibit a party to a proceeding involving a contract from making a contribution, as defined by Government Code section 84308(a)(6), of more than $250 to any County officer during the proceeding and for 12 months following the final decision in the proceeding. Contractor agrees to submit any disclosures required to be made under the Levine Act at the Office of the Clerk of the Board of Supervisors website at http://www.sccgov.org/levineact, and Contractor shall require Subcontractors to do the same. If this Agreement is to be considered or voted upon by the County's Board of Supervisors, Contractor shall complete the Levine Act Contractor Form: Identification of Subcontractors and Agents, and if applicable, shall ensure that any Subcontractor completes the Levine Act Subcontractor Form: Identification of Agents, and Contractor must submit all such forms to the County as a prerequisite to execution of the Agreement.

4. EXHIBIT F, "CONTRACTOR CERTIFICATION OF COMPLIANCE WITH COVID-19 VACCINE REQUIREMENTS," is deleted in its entirety.

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

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

By signing below, signatory warrants and represents that they executed this Amendment in their authorized capacity, that they have the authority to bind the entity listed below to contractual obligations and that by their signature on this Amendment, the entity on behalf of which they acted, executed this Amendment.

COUNTY OF SANTA CLARA

DS
ck

DocuSigned by:
Matthew Hada 9/24/2024
CEA090A27EB84EA...
Matthew Hada Date
Director of Procurement

APPROVED AS TO FORM AND LEGALITY

DocuSigned by:
Robert Nakamae 9/23/2024
797E74E07E8345C...
Robert Nakamae Date
Deputy County Counsel

CONTRACTOR

By: DocuSigned by: Jon Buck
21E97F210B3043F...

Print: Jon Buck

Title: Business Development

Date: 9/23/2024