

File No. 100694

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Sub-Committee: BUDGET AND FINANCE

Date: July 28, 2010

BOARD OF SUPERVISORS MEETING

Date: _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
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OTHER

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| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Andrea S. Ausberry

Date Friday, July 23, 2010

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Contract Amendment to the Fuel Contract to Increase the Total Not-to-Exceed Amount from
2 \$25,000,000 to \$50,000,000]

3 **Resolution approving the Third Amendment to the Agreement between the City and**
4 **Western States Oil (Contractor) increasing the total not-to-exceed amount of the contract**
5 **from \$25,000,000 to \$50,000,000 and extending the term for one year, pursuant to Charter**
6 **Section 9.118(b).**

7
8 WHEREAS, The Board of Supervisors approved Resolution No. 345-09 on August 11,
9 2009, authorizing a fuel contract for \$25 million with Western States Oil for one year, with four
10 one-year options to renew; and,

11 WHEREAS, The Office of Contract Administration entered into a one-year Agreement
12 with the Contractor for \$25 million, dated September 1, 2009, through August 31, 2010, for
13 gasoline, biodiesel, and diesel fuels; and,

14 WHEREAS, The Office of Contract Administration executed the First Amendment, which
15 did not require Board of Supervisors approval, to the contract on October 9, 2009 to add line
16 items 228 and 324, Red Dye Diesel for the San Francisco Fire Department and the Port for "over
17 marine waters"; and,

18 WHEREAS, The Office of Contract Administration executed the Second Amendment,
19 which did not require Board of Supervisors approval, to the contract on February 3, 2010 to add
20 line item 801, Methanol for the San Francisco PUC Oceanside Plant; and,

21 WHEREAS, The Agreement is approaching the contract amount of \$25 million and the
22 end of year one; and,

23 WHEREAS, The Office of Contract Administration and Contractor propose to enter into a
24 Third Amendment to increase the contract's not-to-exceed amount from \$25 million to
25 \$50 million and add an additional year to the Agreement from September 1, 2010 through

1 August 31, 2011; and,

2 WHEREAS, The San Francisco Charter Section 9.118(b) provides that when agreements
3 of \$10 million or more are amended to increase the not-to-exceed amount by \$500,000 or more,
4 then such amendment shall be subject to approval of the Board of Supervisors by resolution; and,

5 WHEREAS, the Agreement and the proposed Third Amendment are on file with the Clerk
6 of the Board of Supervisors in File No. 100694 which are hereby declared to be a part of this
7 resolution as if set forth fully herein; now, therefore be it,

8 RESOLVED, that the Board of Supervisors approves the Third Amendment to the
9 contract with Western States Oil as described above; and be it

10 FURTHER RESOLVED, that the Board of Supervisors authorizes the Office of Contract
11 Administration to increase the contract amount from \$25 million to \$50 million and extend the
12 contract for an additional year.

| | |
|--|--|
| Item 1 File 10-0694 | Department(s): Office of Contract Administration (OCA) |
| EXECUTIVE SUMMARY | |
| <p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would authorize the City and County of San Francisco, through the Office of Contract Administration (OCA), to approve the Third Amendment to authorize the execution of the first option in the agreement between the OCA and Western States Oil, to extend the agreement's not-to-exceed amount by \$25,000,000, for one year, from September 1, 2010 through August 31, 2011. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • The existing one year not-to-exceed \$25,000,000 agreement between OCA and Western States Oil provides for gasoline, diesel, and biodiesel, fuels for over 6,000 vehicles and over 700 pieces of equipment, including generators, used by City departments. The existing agreement expires on August 31, 2010 but includes four one-year options to extend the term of the agreement. The proposed Third Amendment would authorize the OCA to exercise the first option to extend the agreement by one year from September 1, 2010 through August 31, 2011. • Under the proposed Third Amendment, the OCA would be authorized to exercise the option to extend the term of the agreement by one year since the agreement with Western States Oil was competitively bid one year ago, the number of fuel suppliers is limited and has not changed, the existing agreement expires in approximately one month on August 31, 2010, and there are four options to extend the agreement which were included in the existing agreement, as previously approved by the Board of Supervisors. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The proposed resolution would authorize the execution of the first option in the existing agreement between OCA and Western States Oil in the not-to-exceed amount of \$25,000,000 for a one year period. • The proposed agreement would be funded from monies included in various City Departments' FY 2010-2011 budgets for purchasing fuel, including the Municipal Transportation Agency, the Public Utilities Commission, the Fire Department, the Department of Public Works, the Recreation and Park Department, and the City's Central Shops, which handles other City Departments' vehicle needs. • The Budget and Legislative Analyst notes that the annual cost of fuel under the first year of the agreement is projected to be \$20,690,073 and under the proposed Third Amendment is projected to be \$20,690,400, which is \$4,309,600, or 17.2 percent less than the proposed not-to-exceed annual amount of \$25,000,000 under the proposed Third Amendment of the existing agreement. • OCA advised that the proposed not-to-exceed first year option amount of \$25,000,000 includes a contingency amount of \$4,309,600 to cover (a) possible increases in SFMTA bus services, (b) increased usage of higher cost biofuels, and (c) volatility in fuel costs. <p style="text-align: center;">Recommendation</p> <p>Approve the proposed resolution.</p> | |

MANDATE STATEMENT/ BACKGROUND**Mandate Statement**

In accordance with Charter Section 9.118(b), City agreements with anticipated expenditures of \$10,000,000, or more or amendments to such City agreements with anticipated expenditures of more than \$500,000 are subject to approval by the Board of Supervisors.

Award of Existing Agreement to Western States Oil

On March 27, 2009, the Office of Contract Administration (OCA) issued an Invitation to Bid for a new agreement to provide the City and County of San Francisco with gasoline, diesel and biodiesel fuel for over 6,000 vehicles and over 700 pieces of equipment, including generators, used by City Departments including the Municipal Transportation Agency, the Public Utilities Commission, the Fire Department, the Department of Public Works, the Recreation and Park Department, and the City's Central Shops, which handles all other Department vehicle needs including the Police Department and Airport.

OCA received four bids and awarded the City's primary fuel provider¹ agreement to Western States Oil on August 26, 2009 as the lowest bidder, based on fixed prices expressed as a markup or markdown from the daily price per gallon published by the industry group, known as the Oil Price Information Services (OPIS).² The bid prices are fixed for the entire term of the agreement, including options to extend, and include all overhead and/or delivery of fuel costs. OCA multiplied each bidder's markdown or markup price per gallon for each type of fuel by the City's estimated number of gallons consumed per year, resulting in the total bid price.

The existing agreement between the OCA and Western States Oil, which was previously approved by the Board of Supervisors, for a one year not-to-exceed amount of \$25,000,000 (a) assumed an average annual consumption of 9,052,000 total gallons of fuel, or an average price of \$2.76 per gallon, and (b) was consistent with the City's average expenditures on gasoline and diesel fuel in the two fiscal years preceding the existing agreement commencement date of September 1, 2009, The City expended \$24,416,512 on gasoline and diesel fuel in FY 2007-2008 and \$25,431,930 in FY 2008-2009.

¹ In addition to the City's primary vendor, the Invitation to Bid requested secondary and tertiary fuel vendors, as back-up fuel vendors in case of emergency or in case the primary vendor was not able to satisfactorily perform. Under the existing agreement, Western States Oil as the primary vendor receives 100 percent of the City's business for the various types of fuel. If the primary vendor cannot perform in whole or in part the responsibilities under the existing agreement, then the City's secondary fuel vendor, Nella Oil Company, LLC, would receive business from the City on an as-needed basis. The same process would apply to the tertiary fuel vendor, Golden Gate Petroleum. These secondary and tertiary fuel vendors entered into separate agreements with OCA. According to Ms. Olivier, there have been no significant problems with Western States Oil's performance, such that Western States Oil will continue to serve as the primary fuel provider under the proposed Third Amendment.

² The OPIS purchase price is a standard market purchase price for a particular fuel and is not controlled by the City or the fuel distribution vendor. While the markup or markdown price will remain fixed, the OPIS price per gallon fluctuates daily. Therefore, the actual price that the City pays for fuel fluctuates throughout the term of the agreement.

OCA structured the existing agreement to be for an initial term of one year, from September 1, 2009 through August 31, 2010, with four one-year options to extend. If all four options are exercised, the overall agreement would last for five years and would end on August 31, 2014.

On August 11, 2009, the Board of Supervisors approved the existing agreement with Western States Oil (Resolution No. 345-09), which, as stated above, includes four one-year options to extend. Under the existing agreement since September 1, 2009, Western States Oil has provided gasoline, diesel and biodiesel fuel for use by City departments.

The previous contractor which provided fuels to the City was Golden Gate Petroleum (see Fiscal Impact section below).

First and Second Amendments to the Existing Agreement

On October 9, 2009, OCA executed the First Amendment to the existing agreement to add line items 228 and 324, Red Dye Diesel³ for the San Francisco Fire Department and the Port for "over marine waters". On February 12, 2010, OCA executed the Second Amendment to the agreement to add line item 801, Methanol⁴ for the San Francisco Public Utilities Commission's (PUC) Oceanside Plant.

In accordance with Charter Sections 9.118(b) and (c), because the First and Second Amendments had no impact on the length or cost of the existing agreement with Western States Oil, the first two Amendments were not subject to Board of Supervisors approval.

DETAILS OF PROPOSED LEGISLATION

Under the proposed resolution, the proposed Third Amendment would authorize the OCA to exercise the first of the four one-year options included in the existing agreement as previously approved by the Board of Supervisors to extend the term of the agreement with Western States Oil by one year, from September 1, 2010 through August 31, 2011 in a not-to-exceed amount of \$25,000,000. The proposed not-to-exceed \$25,000,000 amount for the first one-year option would allow Western States Oil to continue to serve as the primary City provider of gasoline, diesel and biodiesel fuel for over 6,000 vehicles and over 700 pieces of equipment, including generators, used by City Departments.

³ According to Ms. Pamela Olivier, Senior Purchaser with OCA, Red Dye Diesel is a diesel fuel with red pigment added that can only be used in non-road driven vehicles and equipment, such as lawn mowers and generators. As Red Dye Diesel cannot be used on roads, it is not taxed as heavily and therefore the City realizes a significant savings over regular diesel fuel. Average tax savings to the City of Red Dye Diesel versus regular diesel is about \$.42/ gallon.

⁴ According to Ms. Olivier, Methanol is a colorless, toxic, flammable liquid used as an antifreeze, a general solvent, a fuel, and a denaturant for ethyl alcohol. Methanol may be used to produce biodiesel.

FISCAL IMPACTS

The proposed resolution authorizes the proposed Third Amendment of the existing agreement to execute the first one-year option under the existing agreement in the not-to-exceed amount of \$25,000,000 payable by OCA to Western States Oil.

As discussed above, the agreement's first year not-to-exceed amount of \$25,000,000 as set forth in the existing agreement, was based on competitive bids received by the OCA. The amount of \$25,000,000 was based on the City's average annual consumption of 9,052,000 gallons of fuel at average price of \$2.76 per gallon.

Prior to the commencement date of the existing agreement on September 1, 2009, the City expended \$24,416,512 for all fuels in FY 2007-2008 and \$25,431,930 in FY 2008-2009 under the previous agreement between the OCA and Golden Gate Petroleum.⁵

According to Ms. Pamela Olivier, Senior Purchaser with OCA, and as shown in Table 1 below, the City has expended \$17,241,673 on the Western States Oil existing agreement from September 1, 2009 through June 30, 2010.

| TABLE 1: Fuel Costs Under the Current Agreement with Western States Oil September 1, 2009 through June 30, 2010 | | | | |
|--|---------------------|------------------|--------------------------------|--------------------------------|
| Fuel Type | Amount (in gallons) | Cost per gallon* | Total Cost (without Sales Tax) | Total Cost with 9.5% Sales Tax |
| Biodiesel 5 | 122,992 | \$ 2.49 – 2.50 | \$306,447 | \$335,560 |
| Biodiesel 20 | 2,198,057 | \$ 2.50 – 2.91 | \$5,642,212 | \$6,178,222 |
| Biodiesel Red Dye 5 | 9,904 | \$ 2.63 – 2.64 | \$26,136 | \$28,619 |
| Biodiesel Red Dye 20 | 30,998 | \$ 2.75 – 2.75 | \$85,388 | \$93,500 |
| Diesel UL | 2,397,452 | \$ 1.96 – 2.70 | \$5,146,598 | \$5,635,525 |
| Diesel Red Dye | 92,497 | \$ 2.15 – 2.71 | \$215,151 | \$235,590 |
| Unleaded | 1,775,321 | \$ 2.23 – 2.53 | \$4,170,663 | \$4,566,876 |
| Premium | 62,778 | \$ 2.43 – 2.59 | \$153,225 | \$167,781 |
| Total | | | \$15,745,820 | \$17,241,673 |
| *Due to the fluctuation in prices, the total cost listed by fuel type was calculated by adding the monthly invoices. | | | | |
| Source: Office of Contract Administration | | | | |

OCA has not yet received invoices for July and August of 2010. Ms. Olivier advised that based on the invoices received for the first ten months of the existing agreement, the projected cost for the last two months, from July 1, 2010 through August 31, 2010 is \$3,448,400, including Sales

⁵ Under the previous agreement, Golden Gate Petroleum served as the primary fuel contractor for the San Francisco Bay Area for a total not-to-exceed amount of \$75,000,000 for three years, from May 1, 2006 through April 30, 2009.

Tax.⁶ Therefore, the total estimated cost during the first year of the agreement is projected to be \$20,690,073 (\$17,241,673 plus \$3,448,400).

Ms. Olivier advised that the projected cost, under the proposed Third Amendment to execute the first option to extend the existing agreement, from September 1, 2010 through August 31, 2011, is \$20,690,400 and is based on a straight-line projection using average monthly costs incurred under the existing agreement.⁷

According to Ms. Olivier, the funding source for the proposed Third Amendment are monies included in the City Departments' FY 2010-2011 budgets for purchasing fuel including the Municipal Transportation Agency, the Public Utilities Commission, the Fire Department, the Department of Public Works, the Recreation and Park Department, and the City's Central Shops, which handles other City Department vehicle needs.

Amount of the Proposed Amendment Exceeds Projected Fuel Costs by Approximately 17 percent

Under the proposed Third Amendment, the total cost to execute the first one-year option is projected to be \$20,690,400, which is \$4,309,600 or 17.2 percent less, than the proposed not-to-exceed amount of \$25,000,000.

Ms. Olivier advised that the \$25,000,000 not-to-exceed annual agreement includes a contingency amount of \$4,309,600 for a "cushion of additional dollars" in order to address: "(a) possible increases in the San Francisco Municipal Transportation Agency (SFMTA) bus services, given that the SFMTA uses approximately 60 percent of the City's fuel purchases, (b) possible increased usage of higher cost biofuel purchases, given that biofuel costs are approximately \$0.40 per gallon more than other fuels, and (c) volatility of fuel market costs per gallon over the past several years. Ms. Olivier also advised that the total fuel cost projections were based on the initial ten months of fuel usage under the existing agreement and did not include the two months of summer fuel prices, which historically tend to be higher.

POLICY CONSIDERATION

OCA structured the existing Western States Oil agreement to be for an initial term of one year, with four one-year options to extend, in order to provide OCA with the flexibility to either (a) extend the existing agreement or alternatively (b) rebid a new diesel and gasoline fuel agreement, based on the future needs of the City. OCA provided the following explanation for its decision not to re-bid the existing agreement and to exercise the first one-year option with Western States Oil to continue as the City's primary fuel provider: "This contract was competitively bid last year, and includes four options to extend the agreement, as previously approved by the Board of Supervisors. Further, the number of fuel suppliers is limited and has not changed. We (OCA)

⁶ This amount reflects the total spent on the agreement to date of \$17,241,673 (rounded up to \$17,242,000) divided by ten months and multiplied by two months: $\$17,242,000/10 = \$1,724,200/\text{month}$. $\$1,724,200 \times 2 = \$3,448,400$ for July and August 2010.

⁷ $\$1,724,200$ (see footnote No. 6 above) per month \times 12 months = \$ 20,690,400.

presently have a good price, qualified vendor, and satisfied end users. Rather than re-bidding a contract that is working, with great prices, we need to direct our limited staff resources toward our contracts that require our attention.”

Given that (a) the OCA represents that the number of fuel suppliers is limited and has not changed since the existing agreement was competitively bid one year ago when Western States Oil was selected, (b) the existing agreement expires in approximately one month on August 31, 2010, and (c) the existing agreement, as previously approved by the Board of Supervisors, includes four one-year options to extend the term, the Budget and Legislative Analyst recommends approval of the proposed resolution.

RECOMMENDATION

Approve the proposed resolution.

City and County of San Francisco
 Office of Contract Administration
 Purchasing Department
 City Hall, Room 430
 1 Dr. Carlton B. Goodlett Place
 San Francisco, CA 94102-4685



Contract Modification 3

Fuel, Diesel, Biodiesel, and Gas

Western States Oil
 Attn: Bob Brown
 P.O. Box 1307
 San Jose, CA 95107

Date: August 16, 2010
 Buyer Name: Pamela Olivier
 Term contract: 70882
 City Blanket No: BPSF00003406
 Type: Indefinite quantity
 Not-to-exceed amount: \$50,000,000

The history of this contract and its modifications is as follows:

| Modification | Start date | End date | Amount | Other changes |
|-------------------|------------|-----------|--------------|--|
| Original contract | 09/01/09 | 08/31/10 | \$25,000,000 | |
| 1 | No Change | No Change | No Change | Add Items 228 and 324 |
| 2 | No Change | No Change | No Change | Add Item 801, and special conditions pertaining to item 801 (methanol) |
| 3 | 09/01/10 | 08/31/11 | \$25,000,000 | Increase NTE Reduce biodiesel mark-up Extend one year |

This modification 3 changes the contract as follows:

- Increases the not-to-exceed amount from \$25 million to \$50 million
- Biodiesel discount off mark-up of margin by 3%
- Extends contract for one year, from 09/01/10 through 08/31/11

All other terms and conditions remain the same.

Approved by the City:

 Naomi Kelly, Director of OCA and Purchaser

 Date

Approved by Contractor:

 Signature

 Date

Name and title

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

| | |
|---|--|
| City Elective Officer Information <i>(Please print clearly.)</i> | |
| Name of City elective officer(s): Members, San Francisco Board of Supervisors | City elective office(s) held: Members, San Francisco Board of Supervisors |
| Contractor Information <i>(Please print clearly.)</i> | |
| Name of contractor: Western States Oil | |
| <i>Please list the names of: (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i> | |
| Thomas A. Lopes, Chairman of the Board Stephen T. Lopes, CEO/CFO Jeffrey M. Lopes, Chief Operating Officer | |
| The corporate ownership is 50% Stephen T. Lopes and 50% Jeffrey M. Lopes None of the directors control or sponsor any political committee. There is no sub-contractor listed on the bid. | |
| Contractor address: 1790 South Tenth Street, San Jose, CA 95112 | |
| Date that contract was approved: | Amount of contract: \$25 Million |
| Describe the nature of the contract that was approved: For furnishing and delivering Fuel, Diesel, Biodiesel, and Gas | |
| Comments: File #090916, Res. \$345-09 was approved 8/20/09 for \$25 M. This is a mod request for an additional \$25 | |

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

| | |
|---|---|
| Filer Information <i>(Please print clearly.)</i> | |
| Name of filer: Clerk of the San Francisco Board of Supervisors | Contact telephone number: (415) 554-5184 |
| Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102 | E-mail: bos.legislation@sfgov.org |

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

City and County of San Francisco
 Office of Contract Administration
 Purchasing Department
 City Hall, Room 430
 1 Dr. Carlton B. Goodlett Place
 San Francisco, CA 94102-4685



Contract Modification 1

Fuel, Diesel and Gas

Western States Oil
 Attn: Bob Brown
 P.O. Box 1307
 San Jose, CA 95107

Date: October 9, 2009
 Buyer Name: Howard Tevelson
 Term contract: 70882
 Type: Indefinite quantity
 Not-to-exceed amount: \$25,000,000

The history of this contract and its modifications is as follows:

| Modification | Start date | End date | Amount | Other changes |
|-------------------|------------|-----------|-----------|---------------------|
| Original contract | 09/01/09 | 08/31/10 | No Change | |
| 1 | No Change | No Change | No Change | Add items 228 & 324 |

This modification 1 changes the contract as follows:

Per Special Conditions 81 – Additional Items, the following items have been added to the contract. (See Attachment “A”)

Items: Primary: 228 and 324

All other terms and conditions remain the same.

Approved by the City: *Naomi Kelly* 10-16-09
 Naomi Kelly, Director of OCA and Purchaser Date

Approved by Contractor: *[Signature]* 10-28-09
 Signature Date

Name and title: *Robert Brown Special Agent*

Attachment "A"
 Contract 70882
 Fuel, Diesel and Gas
 Western States Oil
 October 9, 2009

Per Special Conditions 81 – Additional Items, the following have been added to the contract.

| Type | Est. annual usage (gallons) | Item | Delivery quantity (gallons) | Mark Up/ Down |
|---------------------------------------|--------------------------------|------|--------------------------------|------------------|
| Fire Department over marine waters | | | | |
| Red Dye Diesel | 7,000 | 228 | all gallons | +.33 |
| Port over marine waters | | | | |
| Red Dye Diesel | 5,000 | 324 | all gallons | +.33 |



Feb. 8. 2010 2:34PM W ern States Oil Co.
 Feb. 8. 2010 10:09AM

No. 9403 P. 1
 No. 81/2 Y. 2

City and County of San Francisco
 Office of Contract Administration
 Purchasing Department
 City Hall, Room 430
 1 Dr. Carlton B. Goodlett Place
 San Francisco, CA 94102-4685



Contract Modification 2

Fuel, Diesel and Gas

Western States Oil
 Bob Brown
 P.O. Box 1307
 San Jose, CA 95107

 E-mail: bbrown@lubeoil.com

Date February 3, 2010
 Buyer Name: Jeannie Louie
 Term contract 70882
 City Blanket No. BPSF00003605
 Type: Indefinite quantity
 Not-to-exceed amount: \$25,000,000

The history of this contract and its modifications is as follows:

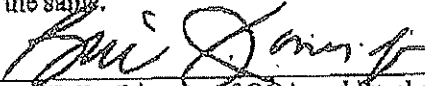
| Modification | Start date | End date | Amount | Other changes |
|-------------------|------------|----------|-----------|---------------------|
| Original contract | 09-01-09 | 08-31-10 | No Change | |
| 1 | n/c | n/c | n/c | Add Items 228 & 324 |
| 2 | 2-3-10 | n/c | n/c | Add Item 801 |


This modification 2 changes the contract as follows:

Per Special Condition 81 – Additional Items, the following item and Special Conditions 89 through 108 have been added to the contract. (See Attachment "B").

Item: Primary: 801

All other terms and conditions remain the same.

Approved by the City:  2-4-10
 Naomi Kelly, Director of OCA and Purchaser Date

Approved by Contractor:  2-8-10
 Signature Date

Name and title: Robert Brown Spec Acq Mgr.

ATTACHMENT B"
Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2009 Through August 31, 2010

Price

| Item | Location | Product | Est. Annual Qty in Gallons | Unit of Measure | Contractor Fixed Mark-up Cost |
|------|-----------------------------------|----------|-------------------------------------|--------------------|-------------------------------------|
| 801 | SFPUC Oceanside Plant (OSP) | Methanol | 5,000 | gallons | \$.65 |

ATTACHMENT B"
Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2009 Through August 31, 2010

NOTE: The following additional new item, #801, specifications and requirements in this attachment are for supplying and delivering Methanol to the San Francisco Public Utilities Waste Water Enterprise. The additional item, specifications, requirements, and prices will be added under the City's Contract Award #70882, Fuel, Diesel, Biodiesel, Gas, and Propane Contract per Special Condition 81, "Additional Items". The contract term of Contract 70882 is from September 1, 2009 through August 31, 2010. All Bid and Contract Conditions 1 through 35 and General Conditions 36 through 67 of Contract Proposal 70882 shall apply to this contract attachment. The following additional Special Conditions will apply to the specifications and requirements for the supply of Methanol as stated herein.

89. Purpose

The purpose of this contract is to furnish and deliver Methanol to the San Francisco Public Utilities Commission Waste Water Enterprise Oceanside Plant.

90. Specifications

The Contractor shall be responsible for timely delivery of methanol to the City and County of San Francisco Oceanside Plant.

A. Methanol

Methanol Technical Grade to be delivered to Oceanside Plant (OSP) in San Francisco as specified below.

Formula CH₃OH

Components:

| | |
|-----------------------|---|
| CH ₃ OH | 99.99% w/w (weight of solvent/weight of solute ratio) |
| Water | 0.01% w/w |
| Acetone | <0.001% ppm |
| Acetone and Aldehydes | <0.003% ppm |
| Other Alcohols | <0.001% w/w |
| Total Sulfur | <0.5 ppm |
| Chlorides | <0.5 ppm |
| Iron | <0.01ppm |
| Specific Gravity | 0.7923 @ 20 °C |

B. Methanol Storage Totes

1. The Contractor shall furnish and deliver two (2) 550-gallon stainless steel tote (total 1,100 gallons) containers to designated SFPUC site.

ATTACHMENT B"
Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2009 Through August 31, 2010

2. The Contractor shall warrant and provide totes in good operating condition through the contract period and any extensions issued thereafter. The methanol storage totes shall be International Bulk Container (IBC) stainless steel. Containers shall be leak proof, contaminant free, and be capable of withstanding seismic and wind requirements applicable to the installation location.
3. The Contractor shall warrant and provide all necessary filling and safety piping, fittings, and valving for the methanol totes.
4. The City will provide a grounding rod on-site for the storage totes.
5. Contractor shall furnish tank and related accessories, as needed, on an equipment rental basis with equipment rental fee if applicable.
6. Storage totes shall meet all Cal-OSHA, EPA, UL, and Fire code requirements. Contractor must comply and be in accordance with Cal/ OSHA Title 8 and any and all other local State and Federal regulatory safety requirements.
7. The stainless steel totes will be the sole property of the contractor.

91. Bidder's/Contractors Qualifications and Requirements

- A. Contractor must have in-depth technical knowledge and experience in the products covered by the contract. Contractor must have and maintain, throughout the contract term, and any extension thereof, stocking levels of (25 %) on all products and articles required by the WWE. Failure to maintain adequate stock may result in the Purchaser invoking the Contractor's Default clause (General Condition No. 48) of the contract.
- B. Contractor will be responsible for providing technical support and assistance to the City. The Contractor must be available to answer questions and offer any assistance required personnel, during City business hours (7:00 A.M. – 5:30 P.M).
- C. Additionally, contractor must have appropriate DOT permits for transport of methanol (a Class 3 hazardous material). Bidder shall provide evidence that they are in possession of all applicable local, state, and federal permits.
- D. Contractor's warehouse facility shall comply with Title III of the Americans with Disabilities Act Regulations (including Title 3 Accessibility Guidelines), and Title 24, State of California Building Code (California Accessibility Regulations) regarding handicapped persons' accessibility.
- E. The City may require Contractor to provide within seven (7) working days from the date they are requested to do so, information and documentation requested by Purchaser, including but not limited to: sources of supply, distribution, dealership or agency

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agreements and authorizations from manufacturer's they claim to represent, lines of credit with financial institutions from manufacturer's they claim to represent, lines of credit with financial institutions and suppliers, numbers of employees, trade references and any other information to determine the Contractor's fitness to supply the contract requirements.

- F The City reserves the right to inspect Contractor's place of business, including Contractor's existing stock during the contract term, to aid Purchaser in determining Contractor's ability to satisfy the terms and conditions of the contract.

92. Contractor's Responsibility

- A. The Contractor, must submit with their quote, a statement to the effect that they are fully cognizant of all the factors involved in furnishing and delivering Methanol. Such factors, include, but are not limited to, complete familiarity with the layout of the City's facilities for storage of the product concerned and the concomitant requirements for transferring from Contractor's truck to City facility.
- B. The Contractor for the product shall be responsible for all costs incurred (equipment damage and or labor charges to correct problem or problems) due to impurities present in the delivered product. Contractor shall inform City department immediately of product quality problems and replace the delivered product, at no additional cost, within 24 hours of notification to the SFPUC facility.

93. Delivery Requirements

- A. Methanol will be delivered to:

Oceanside Water Pollution Control Plant
3500 Great Highway
San Francisco, California 94132

Monday through Friday, 7:00 AM to 5:00 PM

- B. Deliveries to be made by tank truck (The words "tank truck" as used herein shall be understood to mean a tractor trailer unit with trailer-mounted metal tank suitably constructed to contain the fuels as described above). The tank truck shall be labeled and constructed to meet all the requirements of the California State Highway Patrol, the Interstate Commerce Commission and any and all local jurisdictions having control over said tank truck operation.
- C. On the first initial delivery, Contractor will deliver two (2) empty methanol totes to City's site. Contractor shall unload the totes. City staff will set totes in place at City designated area. Upon City staff setting and securing totes in place, Contractor will fill

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the totes with methanol. A City representative must be present when the totes are unloaded and totes are filled with methanol by Contractor.

- D. During each shipment, Contractor shall refill the totes as required. It is estimated that refill will be required every 26-28 business days. The City representative will contact contractor with 48 hours advance notice to deliver the next shipment.
- E. Deliveries are to be made within 24 hours from when the orders are placed.
- F. The Contractor shall not refill methanol totes until a SFPUC employee is present. A metering devise must be presented at the time of delivery and a signed bill of lading must be presented to the SFPUC employee at the time of delivery.
- G. The Contractor will be responsible for the repair of any SFPUC owned roads, equipment or facilities that are damaged due to the improper unloading of the product by the vendor.
- H. All deliveries will be FOB Destination, freight prepaid and allowed.
- I. Any failure to deliver the methanol as requested will be subject to General Condition 17, Failure to Deliver. If Contractor fails to deliver methanol in the manner or within the time frame called for by this contract or, as requested by the City department, the City may purchase the fuel from another source on the open market. If the City has to pay a greater price, the excess price will be charged to and collected from the Contractor.

94. Contractor's License

- A. If delivery is made by the Contractor, the Contractor shall be licensed under the State of California, Public Utilities Commission with either a Highway Carrier Contract Permit, a Common Carrier Certificate or a Cal PUC T Number. These permits and/or certificates must not be currently under probation or suspension as set forth by the State of California, Department of Consumer Affairs.
- B. In addition, the City and County of San Francisco requires the Contractor to submit an updated copy of identification (i.e. California's Driver's License) of each truck driver to ensure recognition upon delivery. The Vendor will notify the representative(s) of the San Francisco Public Utilities Commission; Wastewater Enterprise Division with the name of the driver prior to delivery.

95. Security Measures for Delivery of Methanol

Contractor shall adhere to the following security measures for the delivery of Methanol:

- A. Contractor shall send to the Wastewater Enterprise clear photographs with the names of the drivers making the deliveries.

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- B. Wastewater Enterprise shall be notified by phone and e-mail to a distribution list (provided by the City to the Contractor after Contract Award), before the truck leaves the terminal, with the name of the driver, this will allow us to match up the driver and photograph with his identification when he arrives.
- C. The manifests will contain the name and amount of chemical being delivered, name of driver, along with the meter numbers.
- D. Discrepancies could result in the loads being refused, certainly will result in delay of product being off loaded until discrepancies are satisfactorily resolved. The City's operator would notify the supervisors of the discrepancies

96. Safety

- A. The Contractor shall provide the delivery location one (1) complete set of: tote labels (e.g., identification and NFPA hazard labels) and Material Safety Data Sheets. Totes must meet all CAL-OSHA requirements. The totes shall be identified by bonded labels indicating the chemical being stored. An NFPA diamond-shaped hazard identification symbol shall also be included on each tote. Identification lettering shall be a minimum of 12 inches high and shall be plainly visible. Labels shall conform to the appropriate Fire Code and NFPA 704 for size and color. The hazardous material symbol shall be provided on all tanks.
- B. The Contractor will be responsible for all equipment safety requirements.
- C. Contractor is responsible for providing spill response (i.e., spill containment) during transport. Spill response should be completed within 4 hours of a reported spill.
- D. Contractor shall have an approved "Spill Contingency Plan" filed with the SFPUC WWE.
- E. All cost associated with any leaks, spills, and cleanup during delivery, connection, filling, disconnection will be borne by the Contractor All cost associated with any spill and cleanup will be borne by the Contractor.

97. Material Safety Data Sheet

All products required by this Contract must meet all applicable City, State, and Federal requirements pertaining to hazardous substances.

- A. Prior to award, Contractor must provide a completed Material Safety Data Sheet (MSDS) for products required by this contract. Contractor must provide such documents with their bid.
- B. MSDSs are subject to approval by SFPUC Safety Department.

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- C. Failure to provide MSDS documentation may result in application of General Condition 48 Contractor's Default.
- D. MSDS forms must be submitted with all deliveries.

98. Regulatory Requirements

All items covered under this contract proposal must comply fully with all specifications stated in the contract proposal as well as all applicable local, state, federal, and ASTM standards. The latest revisions of all standards shall apply to this contract

99. Certificate of Analysis

- A. Certificate of Analysis shall be submitted with the Bill of Landing at the time of each delivery.
- B. The Certificate of Analysis shall contain the following:
- Product Lot Number
 - Percent (%) by weight CH₃OH
 - Specific Gravity
 - Date of Manufacturing
- C. Failure to supply the required Certificate of Analysis at the time of each delivery may be grounds to reject said delivery.
- D. Contractor shall not charge the City any costs associated with the rejected delivery or deliveries.

100. Alternates

No substitutes or alternates products will be considered.

101. Estimated Annual Usage of Product

The estimated annual usage of methanol for the Oceanside location from award date to August 31, 2010 is 5,000 gallons.

Estimated Annual Usages must not be construed as the City's commitment to purchase said amount. The City does not guarantee that the purchases against the contract will match or exceed the estimated product in weight or volume, in any given year for the term of the contract and any extension issued thereafter.

102. Price

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- A. Prices will be based on Contractor's fixed mark up or fixed margin (i.e. Contractor's overhead costs, profit, etc) and cost of the methanol. Contractor's fixed margin is to be firm for the term from award date through August 31, 2010, as well as for any and all option year extensions.
 - B. Prices for the methanol will be based on the cost of the methanol from Contractor's suppliers at time when each order is placed by the City. Price must be in the same proportion as adjusted by Contractor's suppliers. Contractor shall provide a copy of methanol supplier's invoice and other direct costs to substantiate the cost of methanol for each order placed.
 - C. The City shall reject payment of any invoices received without appropriate documentation not provided in a timely manner for the cost of the methanol.
 - D. Price shall be a delivered price, FOB Destination.
 - E. Price for equipment rental, if any, shall remain firm for the duration of the contract and any extensions issued thereafter.
 - F. Only prices that appear on City Contract Proposal Bid Sheets will be considered. No other pages with prices or attached price list, catalog prices, will be considered.
 - G. All taxes that are authorized by law and that can be documented may be added to the invoice.

103. Awarded Items

- A. If during the term of the contract, a contract item is determined to be unacceptable for a particular use, and such is documented by a City Department and as determined by Purchasing, it is understood and agreed that the item will be canceled and removed from the contract without penalty to the City. The City's sole obligation to the vendor is payment of deliveries made prior to the cancellation date. City shall give the vendor ten days' notice prior to any cancellation. The City will purchase the required replacement item from any source and in the manner as determined by Purchasing.
- B. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, it will be the responsibility of the Contractor to search the marketplace and find an acceptable equal substitute in the time required for delivery and at the contract price.
- C. Contractor must notify Purchasing by certified mail, 30 days in advance of any changes in the description of article, brand, product code or packaging. Any changes made without the approval of Purchasing will constitute default and result in the City invoking General Condition No. 19.

104. Ordering

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- A. Items to be furnished under this contract shall be ordered through a release from the appropriate Citywide Blanket Purchase Order by City departments during the effective period of the contract.
- B. All invoices for payments shall show the Citywide Blanket Purchase Order number, complete description of item, quantity and contract price.
- C. WWE staff will place orders for Methanol delivery by phone. Orders shall be delivered within 24 hours of receipt of a telephone order.

105. Payment

- A. The City agrees to pay for all products in accordance with the prices quoted and subject to any applicable discount provisions contained in said contract. Payments shall be made by the City to Contractor in arrears, for **completed orders**, throughout the term of the contract.
- B. Invoices submitted by the Contractor must be in a form acceptable to Purchasing and Controller. All amounts paid by the City to the Contractor shall be subject to the audit by the City.

106. Insurance

Prior to award, the successful bidder or bidders will be required to furnish evidence of insurance as follows:

- a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
 - (1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and,
 - (2) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - (3) Commercial Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable, and a MCS 90 endorsement.
 - (4) Pollution Liability Insurance with limits not less than \$5,000,000 each occurrence, and CA 9948, Broaden Pollution Coverage Endorsement.

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- b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:
- (1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
 - (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:
- Director, Office of Contract Administration
Purchasing Division
City and County of San Francisco
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685
- d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

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- h. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.
- i. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

107. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions.

108. Submittal Instructions

Contractor to return all required documents, which include:

- A. Company letter agreeing to specifications and requirements of this attachment
- B. Prices for fixed mark-up, estimated cost of methanol, and storage equipment (if any)
- C. All questionnaires and forms including completed and signed

FOR MORE INFORMATION, call:

Jeannie Louie, Supervising Purchaser
(415) 554-3166