

File No. 130688

Committee Item No. 14

Board Item No. 35

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 07/24/2013

Board of Supervisors Meeting

Date: July 30, 2013

Cmte Board

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| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" 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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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission |
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Completed by: Victor Young

Date July 19, 2013

Completed by: Victor Young

Date _____

1 [Agreement - Golden Gate Petroleum - Not to Exceed \$94,000,000]

2
3 **Resolution authorizing the Purchaser and Director of Office of Contract**
4 **Administration to execute an agreement with Golden Gate Petroleum for diesel,**
5 **biodiesel, and gasoline fuel, for an amount not to exceed \$94,000,000 for the term**
6 **of September 1, 2013, through August 31, 2016, with two one-year options to**
7 **extend for a total of five years, pursuant to Charter Section 9.118(b).**

8
9 WHEREAS, The Office of Contract Administration issued Contract Proposal
10 70883 in May 2013 for diesel, biodiesel, gasoline and propane; and

11 WHEREAS, The Office of Contract Administration intends to award the
12 primary contract for diesel, biodiesel and gasoline for all City departments to Golden
13 Gate Petroleum, with an estimated amount of \$94 million during the initial term; and,

14 ~~WHEREAS, The contract will have a term of three years, from September 1,~~
15 2013 to August 31, 2016, with two one-year options to extend for a total of five years;
16 and

17 WHEREAS, Charter Section 9.118(b) requires Board approval by resolution of
18 contracts estimated to exceed \$10 million; now, therefore, be it

19 ~~RESOLVED, That the Board of Supervisors authorizes the Purchaser and~~
20 Director of Office of Contract Administration to award a the contract to Golden Gate
21 Petroleum, for a not to exceed amount of \$94,000,000, in substantially the form on file
22 with the Clerk of the Board in such final form as approved by the Purchaser and Director
23 of Office of Contract Administration and the City Attorney; and, be it

FILE NO. 130688

RESOLUTION NO.

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FURTHER RESOLVED, That within thirty (30) days of the contract being fully executed by all parties, the Purchaser and Director of Office of Contract Administration shall provide the final contract to the Clerk of the Board for inclusion into the official file (File No. 130688).

Item 14 File 13-0688	Department(s): Office of Contract Administration (OCA)
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EXECUTIVE SUMMARY**Legislative Objectives**

- The proposed resolution would approve (a) the award of a contract between the City, through OCA, and Golden Gate Petroleum to provide gasoline, biofuels and diesel fuel to the City, in an amount not-to-exceed \$94,000,000 for the three-year period from September 1, 2013 through August 31, 2016, and (b) two one-year options, or up to a maximum term of five years.

Key Points

- The \$94,000,000 not-to-exceed three-year agreement with Golden Gate Petroleum includes a projected cost of fuel of \$85,101,252 and a total contingency amount of \$8,898,748 in order to address possible increases in market prices or changes in usage by Departments.
- Although the OCA had one additional option under the existing agreement with Western States Oil through August 31, 2014, the final one-year option was not exercised, and the existing agreement will terminate after the third one-year extension, on August 31, 2013.
- The proposed agreement was awarded to Golden Gate Petroleum through a competitive bid process. Bid prices are fixed as a mark-up or a mark-down from market prices for the entire term of the agreement, including options to extend, and include all overhead and/or delivery of fuel costs.
- The proposed agreement differs from the existing agreement in that the existing agreement uses the Oil Price Information Services (OPIS) index for just San Francisco, whereas the proposed agreement references the average of three SF Bay Area Locations (San Francisco, Richmond and San Jose) as a benchmark for fair market prices.

Fiscal Impact

- The proposed agreement for the initial three-year not-to-exceed amount of \$94,000,000 is consistent with the City's actual expenditures on gasoline and diesel fuel in Calendar Year 2012; and would be funded from monies included in various City Departments' FY 2013-14 and FY 2014-15 budgets for purchasing fuel. The proposed agreement is an indefinite quantity contract, such that City departments are not obligated to purchase any specific quantities.
- Separate from this legislation, OCA will also be entering into secondary and tertiary fuel supplier contracts for less than \$10 million to serve as standby resources for the City's fuel needs. Under existing standby agreements, the City has never purchased fuel.

Policy Consideration

- The proposed contract assumes that the City's overall fuel consumption rates will continue at approximately the same rate as occurred in 2012, at an average rate of \$3.693 per gallon. However, the Healthy Air and Clean Transportation Ordinance (HACTO) phases out high polluting diesel buses, reduces the City's overall vehicle fleet, replaces older inefficient vehicles, encourages the use of bicycles, and facilitates the development of alternative fuels to reduce emissions. Given that HACTO is likely to result in the reduction of the City's fuel consumption, the total actual consumption of fuel may be less than the amount projected in the proposed agreement.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT/ BACKGROUND**Mandate Statement**

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

Background

According to Mr. Hermilo Rodis, Purchaser at the Office of Contract Administration (OCA), the OCA has an existing contract with Western States Oil, previously awarded through a competitive bid process, as the City's primary fuel (gasoline, biodiesel and diesel fuel) contractor for a total not-to-exceed amount of \$107.5 million. The existing contract was for an initial one-year term from September 1, 2009 through August 31, 2010, and included four one-year options to extend, or through August 31, 2014. The City has exercised three of the four one-year options, such that the existing contract with Western States Oil expires August 31, 2013.

The average cost per gallon of fuel charged by Western States Oil to the City, based on the Calendar Year 2012 data, was approximately \$3.693 per gallon. This agreement provides fuel for over 7,000 City vehicles and pieces of equipment, including generators, used by City Departments.

Mr. Rodis advises that the OCA also has an existing agreement, previously awarded through a competitive bid process, with Flyers Energy, LLC (previously Nella Oil Co. LLC), which serves as the City's secondary fuel contractor to provide fuel for a not-to-exceed amount of \$9 million for the four-year term from September 1, 2009 through August 31, 2013. No fuel has been purchased by the City under this secondary agreement.

Although the OCA had one additional option under the existing agreement through August 31, 2014, the final one-year option was not exercised, and the existing agreement will terminate after the third one-year extension, on August 31, 2013. A new Invitation to Bid was issued by OCA on February 19, 2013, for an agreement effective September 1, 2013 to provide gasoline, biodiesel and diesel fuel for over 7,000 total vehicles and pieces of equipment, including generators, used by City Departments. According to Mr. Rodis, OCA chose to implement a competitive bid process instead of extending the final one-year option under the existing agreement in order to ensure that the City continues to obtain its needed fuels at the lowest possible cost.

Based on the competitive Invitation to Bid, OCA received seven offers to provide the needed gasoline and fuel to the City. Based on OCA's evaluation of the seven vendors' 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),¹ OCA issued a notice of conditional

¹ 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

award to Golden Gate Petroleum on June 27, 2013 as the lowest bidder. The bid prices are fixed as a mark-up or a mark-down from OPIS prices for the entire term of the agreement, including options to extend, and include all overhead and/or delivery of fuel costs. OPIS prices are subject to variation according to the market price of fuel.

DETAILS OF PROPOSED LEGISLATION

Based on the competitive Invitation to Bid above, the proposed resolution would approve (a) the award of a contract between the City, through OCA, and Golden Gate Petroleum to provide gasoline, biodiesel and diesel fuel to the City, in an amount not-to-exceed \$94,000,000 for the three-year period from September 1, 2013, through August 31, 2016, with (b) two one-year options to extend, or up to a maximum term of five years.

Under the proposed contract, Golden Gate Petroleum would be the primary City provider of gasoline, diesel and biodiesel fuel for the City's over 7,000 vehicles and pieces of equipment, including generators.

Comparison of Existing to Proposed City-Wide Fuel Contracts

The existing agreement with Western States Oil specified an initial term of only one year with four one-year options to extend the agreement, or a total of five years. The proposed agreement with Golden Gate Petroleum specifies an initial term of three years with two one-year options to extend the agreement, for the same total term of five years. Mr. Rodis advises that the shorter initial term under the existing agreement was driven by the possibility of sourcing a local biodiesel contractor within the initial year, which did not materialize.

The existing agreement also differs from the proposed agreement in that the existing agreement uses the OPIS index for just San Francisco, whereas the proposed agreement references the average of three SF Bay Area Locations (San Francisco, Richmond and San Jose). Mr. Rodis advises that the reason for changing is that an average of Bay Area prices from OPIS would be more representative of fair market value than prices from a single location.

According to Mr. Rodis, OCA will also be entering into separate secondary and tertiary fuel supplier contracts which will not be subject to Board of Supervisors approval as each of those contracts are expected to be less than \$10 million.² Such secondary and tertiary contracts will serve as standby resources in the event that Golden Gate Petroleum is unable to deliver the City's needed gasoline, biodiesel and diesel fuel according to the terms of this proposed agreement.

fluctuates daily. Therefore, the actual price that the City pays for fuel fluctuates throughout the term of the agreement.

² Based on the competitive bid prices, the secondary contractor will be Western States Oil and the tertiary contractor will be SC Fuels.

FISCAL IMPACTS

The proposed resolution authorizes the OCA to enter into a proposed three-year agreement with Golden Gate Petroleum for a not-to-exceed amount of \$94,000,000. The \$94,000,000 not-to-exceed three-year agreement includes a base amount of \$85,101,252 and a 10.5% contingency amount of \$8,898,748 in order to address possible increases in OPIS market prices or changes in usage by Departments. According to Mr. Rodis, the most likely source of variation in City fuel use is the SFMTA, which uses approximately 65% of the gasoline, diesel and biodiesel fuel consumed by City departments.

According to Mr. Rodis, the funding source for the proposed agreement is monies included in the City departments' annual budgets from FY 2013-2016 for purchasing gasoline, diesel and biodiesel fuel, subject to appropriation approval by the Board of Supervisors.

The proposed agreement is an indefinite quantity contract, such that City departments are not obligated to purchase any specific quantities.

As shown in Table 1 below, a projected total quantity of 7,681,018 gallons of gasoline, diesel and biodiesel fuel at approximately \$3.693 per gallon reflects the total average yearly fuel expenditure of \$28,367,084 for each of the years under the proposed three-year agreement. The projected cost for the full three-year period of the agreement is three times this yearly cost of \$28,367,084, or \$85,101,252. As noted above, OCA has added a contingency amount of 10.5 percent of \$85,101,252, which is \$8,898,748, for a proposed total agreement not-to-exceed amount of \$94,000,000.

Gallons	Average Price/Gallon	Total Yearly Cost	Three-year Cost	10.5% Contingency	Proposed Agreement Amount
7,681,018	\$3.693	\$28,367,084	\$85,101,252	\$8,898,748	\$94,000,000

Therefore, as shown in Table 1 above, the proposed agreement for the initial three-year not-to-exceed amount of \$94,000,000 (a) assumes a continued average annual consumption of 7,681,018 total gallons of fuel at an average price of \$3.693 per gallon, and (b) is consistent with the City's actual expenditures on gasoline and diesel fuel in Calendar Year 2012.

POLICY ISSUE

Healthy Air and Clean Transportation Ordinance

The proposed resolution would approve a new contract with Golden Gate Petroleum for a total not-to-exceed \$94,000,000 for a period of three years based on an assumption that the City's overall fuel consumption rates will continue at approximately the same rate as occurred in 2012, at an average rate of \$3.693 per gallon. However, the Budget and Legislative Analyst notes that

on November 18, 2010, the Board of Supervisors approved the Healthy Air and Clean Transportation Ordinance (HACTO), which is intended to assist the City in achieving its air pollution and greenhouse gas reduction goals (Ordinance 278-10; File 10-1009). HACTO specifically contains provisions for phasing out high polluting diesel buses, reducing the City's overall vehicle fleet; replacing older inefficient vehicles with high energy efficient vehicles, encouraging the use of bicycles, and facilitating the development of alternative fuels in order to reduce such overall emissions. Given that HACTO is likely to result in the reduction of the City's fuel consumption over the next three years, the Budget and Legislative Analyst notes that the total annual consumption of fuel under the proposed contract, which will extend for three years, may be less than the 7,681,018 annual gallons of fuel being projected by the City, as reflected above in Table 1. However, given the volatility of fuel prices over the last several years, the Budget and Legislative Analyst does not recommend a reduction in the proposed not-to-exceed \$94,000,000 contract with Golden Gate Petroleum.

RECOMMENDATION

Approve the proposed resolution.

City and County of San Francisco

Office of Contract Administration




Edwin M. Lee
Mayor

Jaci Fong
Director and Purchaser
Purchasing

June 24, 2013

To: Angela Calvillo
Clerk of the Board

From: Jaci Fong, Director of the Office of Contract Administration (OCA) and Purchaser 


Subject: Resolution Approving a Contract Over \$10 million with Golden Gate Petroleum for Diesel, Biodiesel and Gasoline

The Office of Contract Administration is submitting a resolution that would authorize OCA to award a contract with Golden Gate Petroleum diesel, biodiesel and gasoline for \$94 million.

The contract with Golden Gate Petroleum will have an initial term of three (3) years, with a possibility of two (2) one year extensions, for a total of five (5) years. The proposed amount is based on our estimates of the volume of business the City would do with the vendor during the proposed initial three (3) year term of the contract.

If you have any questions or require additional information, please contact Hermilo Rodis on my staff at 554-6263.

Enclosures

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 JUN 26 PM 9:26


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



CONTRACT AWARD

Indefinite Quantity

Golden Gate Petroleum
Attn: Dennis O'Keefe
1340 Arnold Drive# 231
Martinez, CA 94553

Date: August XX, 2013
Buyer's Name: Hermilo Rodis
Term Contract: 70883
Type: Indefinite quantity
Not-to-exceed amount: \$94,000,000

The City and County of San Francisco does hereby accept your offer to furnish the articles indicated below. Such Articles are to be delivered in the manner and the form and at the times and prices set forth in the above numbered Contract Proposal, but only after receipt of order properly certified by the Controller of the City and County of San Francisco.

For furnishing and delivering **Fuel, Diesel, Biodiesel, & Gas** .

For the term September 1, 2013 through August 31, 2016.

Items: Primary: 101 thru 106, 201 thru 204, 301 thru 330, 401 thru 428 and
701 thru 715.

Payment Terms: Net 30

Acknowledge receipt and acceptance of this Contract Award in the space below. Return to Purchaser, 1 Dr. Carlton B. Goodlett Place, Room 430, San Francisco, CA, 94102-4685. DUPLICATE COPY IS FOR YOUR FILES.

As the duly appointed Purchaser
of the City and County of San Francisco

Date

RECEIPT OF THE ABOVE IS HEREBY ACKNOWLEDGED:

Contractor _____

By _____
Signature Title

Print Name _____

Date _____

CONTRACT PROPOSAL (Indefinite Quantity)
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

SIGN AND RETURN THIS PAGE

Contract Proposal No.
70883

Bids will be opened in:

City Hall, Room 431, at 2 p.m., March 25, 2013 **Fuel, Diesel, Biodiesel,
Gas & Propane**

Sign the bid; put it in the envelope, and write the Contract Proposal Number on the outside. Sign and return this page. Return other pages as indicated. Do not include sales or excise taxes in bid prices.

Upon receipt of a Contract Acceptance, the undersigned hereby agrees to furnish all articles or services within the dates specified, in the manner and at the prices stated, in accordance with the advertisement, specifications, proposal, and bid and contract conditions, all of which are made part of the contract proposal, and together, with the executed Contract Acceptance constitute the Contract between the City and the undersigned when authorized by a Purchase Order, City Blanket Purchase Order, or City Blanket Purchase Order Release certified by the Controller. In the event of any conflict between the contractual documents mentioned above, the order of precedence for resolving such conflict shall be: (1) Contract Acceptance; (2) City Blanket Purchase Order; (3) Purchase Order; (4) City Blanket Purchase Order Release.

Name under which business is conducted: _____

If you are in the City's vendor file, enter your vendor number: _____

If you are not in the City's vendor file, enter the following: _____

Mailing address: _____

City, State, ZIP: _____

Telephone: _____

E-mail address: _____

Print name: _____

Sign here: _____

PRE-BID CONFERENCE
A Pre-Bid Conference will be held on **Wednesday, March 6, 2013 at 10:00 a.m., Rm. 431-A, City Hall.**
Each bid **must** be accompanied by a bid bond, or money order, or a cashier's check, or certified check, in the amount of **\$1,000.00** payable to the City and County of San Francisco to serve as security that, upon award, the bidder will enter into a contract with the City. Personal or company checks will not be accepted. (See Special Condition No. 84)

Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2013 Through August 31, 2016

BID AND CONTRACT CONDITIONS

Getting paid for goods and/or services from the City:

1. Beginning January 2012, all City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments.
2. Electronic payments are processed every business day and are safe and secure.
3. To sign up for electronic payments, visit www.sfgov.org/ach.
4. The following information is required to sign up:
 - a. The enroller must be their company's authorized financial representative.
 - b. The company's legal name, main telephone number and all physical and remittance addresses used by the company
 - c. The company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor)
 - d. The company's bank account information, including routing and account numbers

If you have questions, please email: ACH.Support@sfgov.org

Terms Related To Bidding

1. **When Bids Are Due; Bid Opening Procedures.** Bids must be delivered before time set for bid opening. Bids will be opened by Purchasing at the hour and place stated on the first page of this bid in the presence of bidders who attend, and bid prices will be read upon request as time permits. Bidders may inspect the bids after award.
2. **Alternates.** When the name of a manufacturer, brand or make, with or without model number, is used in describing any item in this document, bids for similar articles will be considered unless otherwise stated. Purchasing shall be the sole judge as to whether such alternate articles are acceptable. Unless bidder states to the contrary, articles offered will be assumed to be the specific articles named in this document. If not offering the specific article named, bidder should enclose with its bid full information, specifications and descriptive data on items offered. Purchasing reserves the right to permit deviations from the specifications if any article offered is substantially in accord with Purchasing's specifications and is deemed by Purchasing to be of as good quality and as fully satisfactory for its intended use, Bidder is responsible for identifying any deviations from Purchasing's specifications.
3. **Articles Furnished.** Articles and services must comply with applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code. In addition, if an electrical item has not been tested by a lab approved by City's Department of Building Inspection (DBI) or Department of Public Works (DPW), Contractor shall notify the requesting department before delivery by writing the department at the "Deliver to" address on the front of the Purchase Order. Approved testing labs are posted on Purchasing's website at <http://www.sfgov.org/oca/>.

Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2013 Through August 31, 2016

BID AND CONTRACT CONDITIONS

When a non-tested item is delivered, the department will request approval from DPW. If the department is unable to obtain approval, City reserves the right to cancel the transaction and return the item to Contractor, at no charge to City.

4. **Place of Manufacture.** No article furnished shall have been made in prison or by convict labor, except, for articles purchased for use by City's detention facilities.
5. **Condition of Article.** Articles offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein.
6. **Samples.** Articles offered as equal to "City sample" must fully conform thereto; "City samples" may be inspected at the place designated by Purchasing. Samples must be furnished as required in this document. Those submitted by successful bidders may be retained for testing or checked against deliveries, in which case allowance will be made to Contractor. Each sample shall be plainly marked in a durable manner with the name of the bidder, the contract proposal number, and the item number. Submitted sample will be deemed to be exactly what bidder proposes to furnish unless otherwise clearly indicated by the bidder in writing with the submittal of the sample. Sufficiency of sample will be determined by Purchasing. Do not enclose sample with bid, and do not wrap bid in package with sample.
7. **FOB Point.** F.O.B. destination in San Francisco, freight prepaid and allowed.
8. **Price List Discounts.** When bids are based on prices from a catalog or price list, bidder shall furnish copies of the catalog or price list as required herein. Contractor shall furnish additional lists as required. Bids will be considered for price lists offered other than specified provided the alternate price list can be readily compared on an overall basis with the specified price list. Bidder's price list discounts must remain firm during the term of the contract.
9. **Bidding on Separate Items and in the Aggregate.** Bidders may bid separately for any item unless otherwise provided. Bidders may make an offer on one, some or all items, unless otherwise provided.
10. **Prices.** Prices quoted must be fixed except as otherwise specified in this document. Any bid requiring receipt of order in less than 30 days will be unacceptable unless otherwise specified herein.
11. **Awards; Rejection of Bids.** Purchasing may make awards on one, some or all items in a bid. Purchasing reserves the right to reject any and all bids.
12. **Cash Discounts; Terms of Payment (Commodities and Equipment only).** Cash discount (discount for prompt payment) will be taken into consideration in determining the low bid under the following conditions:
 - Discount period must be at least 30 days. Example: "1%, 30 days. Net 31."
 - The maximum cash payment discount that will be considered when determining the lowest bid will be 2%.

Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2013 Through August 31, 2016

BID AND CONTRACT CONDITIONS

- The discount period will start upon date of completion or delivery of all items on any Purchase Order or other authorization certified by Controller, or upon date of receipt of properly prepared invoices covering such deliveries, whichever is later.
- Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing the City's check.

Whether or not the discount is taken into consideration in determining the low bid, it will be deducted from the invoice amount in accordance with the provisions above, unless otherwise provided by bidder. No additional charge shall accrue against City in the event that City does not make payment within any time specified by bidder.

13. Sunshine Ordinance. In accordance with Sec. 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, responses to RFPs and all other records of communications between City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Terms Related to the Contract

14. Inspection. All articles supplied shall be subject to inspection and rejection by Purchasing or any department official responsible for inspection.

15. Contract Interpretation; Choice of Law/Venue; Assignment. Should any questions arise as to the meaning and intent of the contract, the matter shall be referred to Purchasing, who shall decide the true meaning and intent of the contract. This contract shall be deemed to be made in, and shall be construed in accordance with the laws of, the State of California; the venue for all claims arising out of this contract shall be in San Francisco. This contract may be assigned only with the written approval of Purchasing.

16. Hold Harmless and Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Contract, including but not limited to, the use of Contractor's facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Contract, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an

Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2013 Through August 31, 2016

BID AND CONTRACT CONDITIONS

immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequences of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Contract.

17. Failure to Deliver. If Contractor fails to deliver an article or service of the quality, in the manner or within the time called for by this contract, such article or service may be bought from any source by Purchasing and if a greater price than the contract price be paid, the excess price will be charged to and collected from Contractor or sureties on its bond if bond has been required.

18. Budget and Fiscal Provisions. This Contract is subject to the budget and fiscal provisions of City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Contract will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Contract will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Contract in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Contract.

19. Default; Remedies. On and after any event of default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Contract or to seek specific performance of all or any part of this Contract. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any event of default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Contract or any other contract between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this Contract or any other contract. All remedies provided for in this Contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

20. Termination for Convenience. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City.

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21. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

22. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Contract, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Contract may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Contract entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

a. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

b. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extensions, renewal, or assignment of this Contract may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest by this Contract. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

c. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

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including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

25. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance. Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement. Enforcement. If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

26. MacBride Principles – Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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d. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

23. Use of City Opinion. Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor's performance under this contract without prior written permission of Purchasing.

24. Nondiscrimination; Penalties

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters,

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27. Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood product. If this order is for wood products or a service involving wood products: (a) Chapter 8 of the Environment Code is incorporated herein and by reference made a part hereof as though fully set forth. (b) Except as expressly permitted by the application of Sections 802(B), 803(B), and 804(B) of the Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood products, virgin redwood or virgin redwood products. (c) Failure of Contractor to comply with any of the requirements of Chapter 8 of the Environment Code shall be deemed a material breach of contract.

28. Resource Conservation. Contractor agrees to comply fully with the provisions of Chapter 5 of the San Francisco Environment Code ("Resource Conservation"), as amended from time to time. Said provisions are incorporated herein by reference

29. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at [http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1). A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

30. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR UNDER THIS CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT.

31. Drug-Free Workplace Policy. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents, or assigns will be deemed a material breach of this Contract.

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32. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services; benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

33. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Contract, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

34. Bid Protests. Bid protests for purchases of Commodities in excess of \$50,000 shall be submitted and responded to in accordance with Rules and Regulations 21.3(i) pertaining to the San Francisco Administrative Code, Chapter 21.

35. Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

END OF BID AND CONTRACT CONDITIONS

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These terms and conditions supplement the City's Bid and Contract Conditions. In the event of a conflict between these conditions and the preceding Bid and Contract Conditions, these conditions take precedence.

- 36. Contract Term.** The contract period shall be for thirty-six (36) months. The term of this contract is the period from award execution date, approximately September 1, 2013, or the above stated term date whichever is later, through the last day of the month of a thirty-six (36) consecutive month period.
- 37. Contract Extension.** This contract may be extended, all or in part, for a period or periods up to one year by mutual agreement in writing. The maximum contract period shall be not more than seven (7) years.
- 38. Toll-Free Telephone Number.** A contractor located outside of San Francisco is encouraged to provide free telephone services for placing orders. This requirement can be met by providing a toll-free telephone number or accepting collect calls. The free service will be a consideration in evaluating this bid.
- 39. Cooperative Agreement.** Contractor agrees _____ or does not agree _____ (make a selection by an "X" mark) that during the term of this agreement and any authorized extension, the Director of Purchasing may allow other public agencies or non-profits made up of multiple public agencies to utilize this agreement to obtain some or all of the services and/or commodities to be provided by Contractor under the same terms and conditions as the City, pursuant to a Board of Supervisor Resolution.

40. Not used

41. LBE Ordinance. To qualify for a bid discount under the provisions of Admin. Code Chapter 14B, an LBE must be certified by the Human Rights Commission by the Bid Due date. The certification application is available from HRC (415) 252-2500, and on the web. HRC's home page is:

www.sf-hrc.org

Click on the "LBE Certification" tab.

42. Claim for Preference. To claim preference under the LBE Ordinance, see Bid Questionnaire attached.

43. LBE bid discount; brokerage services.

Pursuant to Section 14B.7 of the Administrative Code, a bid discount will only be awarded to an LBE directly responsible for providing materials, equipment, supplies or services to City as required by the Bid solicitation. An LBE will be deemed to be directly responsible for providing the required commodity or service only if it regularly does business as a manufacturer, or authorized manufacturer's representative, dealer or distributor, stocking distributor, franchisee, licensee, service provider, or has another direct agency relationship with the manufacturer or provider of the solicited commodity or service, and has been so certified by HRC. An LBE will be considered to be "regularly doing business", as that term is used in the foregoing paragraph, if in the normal course of business, it stocks, warehouses or distributes

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commodities to businesses or entities other than public entities having a local business preference program. Such a determination will be subject to audit by HRC. No preference will be given to an LBE engaging in brokerage, referral or temporary employment services not meeting this definition, unless those services are required and specifically requested by the department.

44. LBE Subcontracting.

a. **Subcontracting to LBEs.** Bidder is encouraged to make good faith efforts to award subcontracts to City and County of San Francisco-certified LBEs. This can be achieved through subcontracting, sub-consulting or supply opportunities. With the bid, the bidder is encouraged to provide a description of the type of good faith efforts the bidder estimates it may make under the contract.

b. **Examples of Good Faith Efforts.** "Good Faith Efforts" include but are not limited to the following:

- (1) Identifying and selecting specific products or services which can be subcontracted to certified LBEs.
- (2) Providing written notice to potential LBE subcontractors that Bidder will be bidding on this Contract and will be seeking subcontractors.
- (3) Advertising in one or more daily or weekly newspapers, trade association publications, trade oriented publications, trade journals, or other media specified by the City, for LBEs that are interested in participating in the project.
- (4) Following up on initial notices the Contractor sent to LBEs by contacting the LBEs to determine whether they were interested in performing specific parts of the project.
- (5) Providing interested LBEs with information about the scope of work.
- (6) Negotiating in good faith with the LBEs, and not unjustifiably rejecting as unsatisfactory proposals prepared by any LBEs, as determined by the City.
- (7) Where applicable, advising and making efforts to assist interested LBEs in obtaining insurance required by the City and the prime contractor.
- (8) Making efforts to obtain LBE participation that the City could reasonably expect would produce a level of participation sufficient to meet the City's goals and requirements.

c. **Examples of Subcontracting.** The following are examples of products which could be subcontracted under this Contract. The list is not intended to be exhaustive:

- (1) the products or services which the vendor in turn sells to the City, or components of those products; (see Page 1 of the bid sheet);
- (2) packing containers and materials used to ship the City's order;

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(3) services of the carrier who delivers the City's orders;

(4) Pro rata share of LBE spending which is part of the vendor's general and administrative expenses, if the vendor can show that the pro rata share can be reasonably allocated to this contract.

d. Reports. On a quarterly (January 1 – March 31, April 1 – June 30, July 1 – September 30, October 1 – December 31) basis, the Contractor will provide Purchasing with reports on LBE subcontracting under this Contract. The report must include a narrative description of the good faith efforts, if any, the Contractor has made during the quarter to provide subcontracting opportunities to LBEs and to meet the percentage goal.

e. HRC Data on LBEs. Contractor will obtain from HRC a copy of HRC's database of LBEs, and this or other information from HRC, shall be the basis for determining whether a LBE is confirmed with HRC. Contractor will obtain an updated copy of HRC's database at least **quarterly**. Please call HRC at (415) 252-2500.

45. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

46. Conflict of Interest. Through its execution of this Contract, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Contract.

47. Non-Waiver of Rights. The omission by either party at anytime to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall in any way affect the right of the party to enforce such provisions thereafter.

48. Contractor's Default. If Contractor fails to fulfill its obligations under this contract proposal, whether or not said obligations are specified in this section, Purchasing reserves the right to: (a) terminate this contract at no cost to the City; (b) take action in accordance with Sections 17 and 19, or (c) exercise any other legal or equitable remedy.

49. Bankruptcy. In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the

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appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this contract shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it.

50. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights which City may have under applicable law.

51. Reports by Contractor

Each year, no later than February 15; Contractor shall submit a soft copy report of the total services ordered, by month, under this contract the preceding calendar year (January 1 – December 31). The report must be in a format acceptable to City and must list by department or location the following: (1) all items awarded under this contract; and, (2) total quantity and dollar value of each item ordered, including items for which there were no orders. A suggested format is shown on page 46. Contractor must also furnish a separate similar report for the total of all items ordered by the City which are not part of this contract. Emailed reports must not be larger than **10MB**.

Contractor shall email reports to:

OCAVendor.Reports@sfgov.org

Any report files larger than **10MB** must be submitted in electronic format on CD-ROM or USB drive and mailed to the address shown below with the term contract number and "Annual Vendor Reporting" clearly marked on the envelope/packaging.

Contractor shall mail the reports to:

OCA Vendor Reporting
Re: Term Contract No. 70883
Office of Contract Administration, Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685

52. Notice to Parties. All notices to be given by the parties hereto shall be in writing, and served by depositing same in the United States Post Office, postage paid and registered as follows:

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

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53. Subcontracting. Contractor is prohibited from subcontracting the direct supply of commodities under this contract unless such subcontracting is agreed to in writing by Purchasing. No party on the basis of this contract shall in any way contract on behalf of or in the name of the other party of this contract, and violation of this provision shall confer no rights on any party and any action taken shall be void.

54. Independent Contractor. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Contract. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Contract shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Contract referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Contract.

55. Severability. Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

56. Emergency - Priority 1 Service. ~~In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service. Contractor will make every good faith effort in attempting to deliver products using all modes of transportation available. Contractor shall provide a 24-hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for items and services ordered during an emergency and not covered under the awarded contract.~~

57. Not used

58. Term Bid - Quantities. This is a term, indefinite quantities contract. Unless otherwise specified herein, deliveries will be required in quantities and at times as ordered during the period of the contract. Estimated quantities are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may make minor purchases of items requested in City's advertisement for bids or

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contractor's bid from other vendors when Purchasing determines, in its sole discretion, that the City has an immediate need for such items or that it is not practical to purchase against this contract.

59. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence

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thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions. Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages. Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and

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substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

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60. Earned Income Credit (EIC) Forms. Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide the Earned Income Credit (EIC) Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which the applicable Contract or Contract Amendment becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in question); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of the Contract. Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract. If within 30 days after the Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under the terms of the Contract or under applicable law.

61. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

62. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this contract. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this contract, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

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63. Preservative-Treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

64. Not used

65. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

66. Graffiti Removal. (Not used)

67. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

END OF GENERAL CONDITIONS

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SPECIAL CONDITIONS

68. Purpose

The purpose of this contract is to provide the City with reliable sources of supply for gasoline, diesel, biodiesel and propane fuel for the City's trucks, cars, vehicles, equipment, and SFMTA coaches.

To ensure continuous and reliable sources of supply for fuel, the City may determine to award a primary as well as secondary and tertiary awards based on this bid # 70883 for all aggregates.

69. Pre-Bid Conference

A Pre-bid Conference will be held as follows:

Location: City Hall, Room 431-A
1 Dr. Carlton B. Goodlett Place
San Francisco, Ca 94102-4685

Date and Time: Wednesday, March 6, 2013 at 10:00 AM

Though not mandatory, attendance at the conference is strongly urged for all prospective bidders on this contract.

It is requested that bidder's questions concerning this Contract Proposal be submitted by mail, e-mail or fax at least 72 hours prior to the date and time of the Pre-bid Conference and directed to:

Hermilo Rodis, Purchaser
City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Goodlett Place
San Francisco, CA 94102-4685

Fax No. 415-554-6717 Att: Hermilo Rodis
E-mail: hermilo.rodis@sfgov.org

Please reference Contract Proposal No. 70883.

The Pre-bid Conference will begin at the time specified, and company representatives are urged to arrive on time. Topics already covered will not be repeated for the benefit of late arrivals. Failure to attend the Pre-bid Conference shall not excuse the successful bidder from any obligations of the contract. Written Change Notice will execute any change or addition to the requirements contained in this Contract Proposal, as a result of the Pre-bid Conference. It is the responsibility of the bidder to check for any change notice, which will be posted on the City's Bid and Contracts website:

<http://mission.sfgov.org/OCABidPublication>

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SPECIAL CONDITIONS (Continued)

70. Specifications

- a. **With the exception of propane, all fuel deliveries under this contract shall be temperature adjusted to 60 degrees F.**
- b. **Gasoline**-Regular unleaded and Premium unleaded shall meet all the requirements of the latest ASTM for gasoline. Regular unleaded Gasoline must have a minimum of 87 Octane content. Premium unleaded must have a minimum of 91 Octane content. All applicable Federal or State requirements shall apply during the term of this contract including 1996 CARB Phase III regulations of reformulated gasoline or latest, Sections 2250 through 2276 of Title 13.
- c. **Diesel- CARB # 2 Ultra-Low Sulfur**- The diesel fuel must be a petroleum distillate conforming to the latest ASTM standards. The CARB # 2 diesel must conform to a maximum sulfur content of 15 parts per million. All applicable Federal or State requirements shall apply during the term of this contract including Sections 2281 through 2284 of Title 13.
- d. **Propane**- Propane fuel shall meet odorized commercial grade specification with a composition containing no more than 15 % Propylene. The product must meet all Federal and State regulations, the latest ASTM standards, and shall pass any corresponding N.G.P.A.-L.G.P. tests.
- e. **Biodiesel**
 1. Biodiesel shall be comprised of mono-alkyl esters of long chain fatty acids derived from recycled or virgin vegetable oils, or animal fats, and produced using the transesterification process. The delivered product may be made up of one or a combination of these feedstock sources based on feedstock specifications, cost, location of the production facilities, and other factors, based on direction from the City. Biodiesel shall be produced at facilities that have received or are applying for BQ-9000 Certification as Biodiesel Producers, or from producers that can demonstrate similar fuel quality control protocols ensuring that biodiesel production shall consistently meet or exceed ASTM D-6751 specifications. **For purposes of this contract, yellow-grease derived biodiesel (YGME) shall be used for all types of biodiesel fuel. Should the need arise for the purchase of soy derived biodiesel (SME), written approval is necessary from the purchaser.**
 2. Biodiesel blends shall be blended according to industry standards or specifications provided by the City, prior to delivery, with petroleum-based diesel fuel, with the blend designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend. Biodiesel and biodiesel blends shall be handled, transported, stored and delivered by brokers and distributors that have received or are applying for BQ-9000 Certification as Biodiesel Marketers, or through brokers and distributors demonstrating similar fuel quality control protocols ensuring biodiesel consistently maintains the fuel quality of product received from the biodiesel producer.
 3. Biodiesel and biodiesel blended in a biodiesel mixture shall be compatible for use with all

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SPECIAL CONDITIONS (Continued)

heavy, medium and light duty diesel engine applications in City vehicles and facilities. Biodiesel and biodiesel blends shall in no way harm existing and future diesel engines, City storage tanks, and fuel delivery systems.

4. All biodiesel and all biodiesel blended in a biodiesel mixture shall conform to the latest version of ASTM D-6751 (currently ASTM D-6751-12) for pure biodiesel and ASTM D-7467 (currently ASTM D-7467-10) for biodiesel blends up to 20%. All biodiesel and all biodiesel blended in a biodiesel mixture shall meet more stringent levels for the following specifications included in ASTM D-6751 so that delivered biodiesel meets at least the national averages obtained by the National Renewable Energy Lab (NREL, March 2008) for samples of biodiesel product collected in NREL's country wide survey conducted in 2007:

API Gravity: 28-33

Cloud Point: 34 Deg F maximum (Winter months of November through March)

Cloud Point: 40 Deg. F maximum (Non-winter months of April through October)

Cold Soak Filterability Test: 200 seconds maximum

Copper Strip Corrosion: conform to B rating

Diglyceride content: 0.2% mass maximum

Karl Fischer Water: 800 ppm maximum

Kinematic Viscosity: 3.0-6.0 mm²/sec (40 Deg. C)

Methyl Ester Content: 97% mass

Monoglyceride content: 0.4% mass maximum

Oxidation Stability by Rancimat: 5 hour minimum

Phosphorous Content: 0.0004% mass maximum

Sulfur: 10 ppm maximum

Total Acid Number: 0.4% maximum

Total Glycerin: 0.18% maximum

Triglyceride content: 0.1% mass maximum

5. All petroleum distillate diesel fuel blended in a biodiesel mixture shall be CARB #2 Ultra-Low Sulfur Fuel and shall conform to the technical specifications as set forth above. Samples of delivered blends will be periodically tested by the City to ensure that the vendor has properly blended the fuel and that the Biodiesel content measured by gas chromatography matches the vendor's bill of lading.

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SPECIAL CONDITIONS (Continued)

6. All potential bidders are encouraged to review the "NREL Biodiesel Handling and Use Guide 4th Addition" prior to submitting bids. The guide can be found at <http://www.nrel.gov/vehiclesandfuels/nprf/pdfs/43672.pdf>. The chosen vendors will be required to comply with and follow these guidelines and any updates thereto. Vendor is required to produce documentation that every relevant employee has read and understood the NREL guide.
7. The city will provide the vendor with a 30 day written notification if it plans to start using other biodiesel mixtures, and whenever it plans to switch from one blend of biodiesel to another.

SAMPLES AND TESTING

8. No later than 5 business days before any delivery to the City, Vendor agrees to provide the City with a copy of the producer's "Certificate of Analysis for Biodiesel" (in accordance with IRS regulations) for each batch of biodiesel (defined as an individual rail car of B100 or similar volume of biodiesel obtained from a single storage tank at the point of production or distribution) certifying that such biodiesel meets the standards of the most recent version of ASTM D-6751. The City may refuse to accept delivery of any biodiesel for which such certificate has not been provided.
9. Vendor agrees to quarantine and conduct industry standard sampling of each batch of biodiesel to assure quality before delivering any biodiesel to the City. The vendor agrees to follow prescribed sampling protocols (provided by the City) to collect top/middle/bottom samples of Biodiesel from each rail car or storage tank and combine the individual samples into a single composite sample (1000 ml) and deliver samples to a laboratory selected by the City. The City may request testing of ASTM criteria for the testing values as listed in Item 4 of Section 70 "Specifications". The City will share the results of each biodiesel fuel quality status report with the vendor and notify the vendor immediately if there is any indication of unacceptable test results for the fuel. Vendor agrees to withhold all fuel deliveries of blended biodiesel to the City until such fuel quality status reports are deemed "PASS" by the City, and until all required delivery documentation, specified by the City, is received and approved. If the test results indicate that the biodiesel does not meet any specification required by this contract, the City may refuse to accept the fuel.
10. The City may, at any time, take a sample of fuel from any truck making a delivery of a biodiesel mixture, and have the sample tested by an independent testing laboratory to determine compliance with the specifications given herein and with delivery documentation provided by the vendor. If the test analysis of any fuel sample shows that the biodiesel mixture does not comply with the specifications, vendor shall pay all City costs of making said test analysis and the City shall have the right to refuse to accept the fuel. In the event that fuel has already been delivered, Vendor agrees to move any non-conforming fuel from City tanks and replace it with fuel meeting City specifications at no charge to the City.

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SPECIAL CONDITIONS (Continued)

ADDITIVES

11. The City may desire to use certain additives in its biodiesel mixtures, including, but not limited to NOx additives, antioxidants, and biocides. The City may provide a list of approved additives along with required blending techniques. The City may require certain additives to be blended, using City specifications, at the production source. Vendor agrees that it shall manage these requirements and provide all such additives as requested by the City at vendor's cost with no markup as demonstrated and agreed to in writing in advance of any delivery that includes such additives. The vendor may be required to show proof of the cost involved.

71. Bidder's/Contractors Qualifications and Requirements

- a. In order to receive consideration, Bidder/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, an adequate stocking level of on all products required by all City departments to ensure delivery, on a regular basis and when there are emergency requirements. 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 through Contractor's own personnel, equipment and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor must provide personnel with in-depth technical knowledge of the products the Contractor is providing under this contract, to answer questions and offer any assistance required by City personnel, during City business hours (7:00 A.M. – 5:00 P.M.).
- c. Contractor must maintain stock as specified in other sections of this contract and adequate facilities to allow for immediate deliveries of orders placed by the City Departments on an emergency basis.
- d. The City may require Contractor to provide within seven (7) working business 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 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.
- e. The City reserves the right to reject any bid on which information submitted by Bidder fails to satisfy the City and/or Bidder is unable to supply information and documentation within the period of time requested.

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- f. The City reserves the right to inspect Contractor's place of business, including Contractor's existing stock prior to award or during the contract term, to aid Purchaser in determining Contractor's ability to satisfy the terms and conditions of the contract.
- g. Contractor must maintain normal business hours of at least 7:00 A.M. to 5:00 P.M., Monday through Friday throughout the term of the contract, and be open at all times during that period.
- h. Contractor must be capable of producing usage reports required under General Condition No. 51 of this contract.
- i. **Extra requirements for Propane**
 - 1. Furnish tanks and related accessories, as needed, for a rental,-maintenance,-equipment fee if applicable, determined by the size of tank as offered in by successful bidder. Fees will be shown on lines 1001-1008 of the bid sheets. Any tank size not listed, when required, will be furnished at a mutually agreed upon fee between the contractor and the Contract Administrator in accordance with General Condition No. 81 "Additional Items".
 - 2. Deliver, install and maintain at locations that may require them, propane fuel tanks, pumping units, motors, metering devices, hoses and hookups to the various City facilities and to any new facilities that may be added during the term of this contract. At no additional cost to the City the contractor shall perform initial installation, testing of the tanks and equipment, and train City personnel as required. Contractor must comply in accordance with Cal/ OSHA Title 8 and any and all other local State and Federal regulatory safety requirements.

72. Delivery

- A. Contractor making deliveries to locations situated over Marine Waters (see locations listed in Special Condition (73) must comply with the following:
 - 1. California Department of Fish and Game, Office of Oil Spill prevention, must be notified no less than four (4) hours and no more than twelve (12) hours prior to any fuel transfer over Marine Waters.
 - 2. Contractor must have valid California State Department of Fish and Game Certificate of Financial Responsibility.
 - 3. Contractor must have an approved "Oil Spill Contingency Plan" filed with the Office of Oil Spill Prevention of the California Department of Fish and Game.
 - 4. Contractor must have an "Oil Spill Response Organization" under contract or proof of ownership in enough equipment to contain and clean-up entire contents of tank truck.
 - 5. Contractor must be in compliance with the oil transfer regulations of the California Department of Fish and Game (OSPR).

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SPECIAL CONDITIONS (Continued)

6. Contractor must provide a 150 foot flexible hose to make deliveries to the two Fire Boats docked at Pier 22 ½.

- B. Contractor shall make deliveries as required by various City departments to the locations listed in this document, in the quantities and frequencies individually requested and within the time required, so as not to interrupt City services and operations. The City has many delivery locations. Contractor must be able to deliver to all the locations within the aggregate bid upon that are listed in Special Condition 73. Additional locations may be added during the term of the contract. Vendor shall not charge beyond what is in their bids for expedited delivery.

Any failure to deliver the fuels as requested will be subject to General Condition 17, Failure to Deliver. If Contractor fails to deliver gasoline, diesel, bio-diesel and propane 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.

When deliveries of several products are combined to provide for a full-tank trailer-load to one location, the full-tank trailer price shall apply.

- C. 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.

Designated tank trucks will be mandated for only the purpose of biodiesel, diesel No. 2 and biodiesel mixtures (the tank truck that delivers biodiesel should be used for only biodiesel or diesel No. 2 and not gasoline or other products to assure quality control). The vendor shall provide the City with documentation certifying that the biodiesel mixture tank truck satisfies the requirements of this paragraph.

D. Delivery requirement for SFMTA

1. The San Francisco Municipal Transportation Agency (SFMTA) operates about 600 Diesel Coaches. To serve the public's transportation needs, SFMTA requires that adequate supplies of Diesel Fuel be on hand at all times. The Contractor shall schedule deliveries of Diesel Fuel under a "keep full" plan which will maintain fuel tank levels at all SFMTA delivery locations at between **three-quarters (75%) full and (90%) full**. This requirement will normally require deliveries to SFMTA locations seven (7) days a week, and may require more than one delivery per day to a specific delivery point when actual usage exceeds the average.
2. SFMTA uses the "mytankgauge" system to measure the fill status of its tanks. "Mytankgauge" is a web based program that will be made available to the winning

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bidder. Vendor shall use Mytankgauge to manage the MTA account to ensure that MTA tanks are kept full as described above. Vendor shall ensure that all delivery staff are trained in the use of Mytankgauge. Vendor's delivery staff shall measure the fill status of each tank before making any delivery and upon completing any delivery.

3. Vendor shall immediately suspend any delivery creating an alarm condition at any MTA facility. Any delivery resulting in a tank exceeding 90 % capacity shall be considered an overfill.
4. With regards to biodiesel mixtures, SFMTA and other City departments expect vendors to deliver the proper blended mixture, but acknowledge that a vendor may not always be able to source a sufficient supply of biodiesel to meet the "keep full" levels required above. In such a circumstance, the vendor shall provide written notice to the SFMTA or other City department no less than 3 business days prior to delivery. SFMTA and the other City departments reserve the right to either satisfy the "keep full" requirement by accepting a delivery of CARB #2 Ultra-Low Sulfur fuel meeting the specifications set forth in Section 70 or by having biodiesel delivered by the secondary fuel vendor. Please note that the "keep full" is an SFMTA term but all city departments retain the option to accept Carb#2 Ultra-Low Sulfur or use the secondary fuel vendor after advanced written notification that the proper blended mixture is not available.
5. When making deliveries of diesel fuel under this contract, the Contractor shall use equipment which complies with all applicable Federal, State and local governmental regulations.
6. All diesel fuel delivered to SFMTA shall be passed through a 60 mesh screen before entering SFMTA storage tanks. This may be accomplished by inserting a 60 mesh screen in the delivery line of the truck-transport or by inserting a 60 mesh screen in the fill pipe of SFMTA storage tanks. It shall be the responsibility of the Contractor to provide and use the 60 mesh screen as described in this paragraph.
7. Vendor shall be responsible for all City costs arising from any spill of fuel resulting from a fuel delivery under this contract.
8. All biodiesel and/or biodiesel mixtures delivered to SFMTA shall be passed through a **three micron** filter, either from interim storage tanks to delivery trucks or from delivery trucks dispensing fuel to City fuel storage tanks.
9. Each delivery must be accompanied by a Loading Ticket ("rack tag") or similar document showing the quantity of fuel.
10. Each delivery of biodiesel from new feedstock or production sources shall include a labeled, representative sample of pure biodiesel for SFMTA retention. Vendor shall provide the City agency receiving the biodiesel mixture with a sample (1000 ml) of the neat (pure) biodiesel that was blended into the biodiesel mixture for each truck load delivered. Blends may be subject to routine testing for confirming blend concentrations and for compliance with specifications defined by ASTM D-7467. This will assist the City in identifying the source of a fuel quality problem should one arise.

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SPECIAL CONDITIONS (Continued)

73. Delivery Locations

Aggregate A: SFMTA

<u>Locations</u>	<u>No of Tank(s) & Size</u>	<u>Type Fuel</u>	<u>Aver Delivery</u>
Flynn- 1900 Harrison St. San Francisco, CA 94103	(3) 20,000 gal.	Bio Diesel(B20)	7000-7700 gal.
Kirkland- 151 Beach St San Francisco, CA 94133	(2) 20,000 gal.	Diesel	7000-7700 gal.
Woods- 1094 Indiana St San Francisco, CA 94107	(4) 20,000 gal. (1) 10,000 gal.	Bio Diesel(B20) Gas (unleaded)	7000-7700 gal. 7000-7700 gal.
Marin- 1399 Marin St. San Francisco, CA 94124	(1) 10,000 gal.	Bio Diesel(B20)	N/A *

Aggregate B: SFMTA

<u>Locations</u>	<u>No of Tank(s) & Size</u>	<u>Type Fuel</u>	<u>Aver Delivery</u>
Kirkland- 151 Beach St San Francisco, CA 94133	(1) 10,000 gal.	Bio Diesel(B100)	7000-7700 gal.
Marin- 1399 Marin St. San Francisco, CA 94124	(1) 8,000 gal.	Bio Diesel(B100)	N/A *

*Marin currently out of service.

Aggregate C: Fire Department and PUC (San Francisco)

<u>Locations</u>	<u>No. of Tank(s) & Size</u>	<u>Type Fuel</u>	<u>Aver Delivery</u>
<u>Fire: San Francisco</u>			
1340 Powell 94133	(1) 1,000 gal.	Bio Diesel(B5)	637 gal.
1301 Turk 94115	(1) 8,000 gal.	Bio Diesel(B5)	2000 gal.
	(1) 2,500 gal.	Gas (unleaded)	561 gal.
135 Sanchez 94114	(1) 3,000 gal.	Bio Diesel(B5)	1,114 gal.
2300 Folsom 94110	(1) 3,000 gal.	Bio Diesel(B5)	1,104 gal.
	(1) 1,000 gal.	Gas (unleaded)	672 gal.
36 Bluxome 94107	(1) 3,000 gal.	Bio Diesel(B5)	1,088 gal.
	(1) 1,000 gal.	Gas (unleaded)	476 gal.
2245 Jerrold 94124	(1) 3,000 gal.	Bio Diesel(B5)	577 gal.
	(1) 3,000 gal.	Gas (unleaded)	147 gal.
2880 26 th 94131	(1) 3,000 gal.	Bio Diesel(B5)	644 gal.
530 Sansome 94111	(1) 6,000 gal.	Bio Diesel(B5)	747 gal.
	(1) 1,000 gal.	Gas (unleaded)	238 gal.

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551 26 th	94121	(1)	3,000 gal.	Bio Diesel(B5)	739 gal.
1000 Ocean	94112	(1)	3,000 gal.	Bio Diesel(B5)	849 gal.
2251 Greenwich	94112	(1)	3,000 gal.	Bio Diesel(B5)	1,536 gal.
1935 32 nd	94116	(1)	3,000 gal.	Bio Diesel(B5)	1,103 gal.
		(1)	1,000 gal.	Gas (unleaded)	220 gal.
2255 18 th	94116	(1)	1,000 gal.	Bio Diesel(B5)	870 gal.
720 Moscow	94112	(1)	3,000 gal.	Bio Diesel(B5)	543 gal.
1298 Girard	94134	(1)	3,000 gal.	Bio Diesel(B5)	483 gal.
Treasure Island	94130	(1)	1,000 gal.	Bio Diesel(B5)	143 gal.
		(1)	2,000 gal.	Gas (unleaded)	Tank not used
1415 Evans	92124	(1)	2,100 gal.	Bio Diesel(B20)	30 gal.
		(1)	2,100 gal.	Gas (unleaded)	225 gal.
Fire boats: Pier 22 ½ (over marine waters)		(2)	2,600 gal.	Red Dye Diesel	1,000 gal.

PUC:

1990 Newcomb	94124	(1)	2,000 gal.	Diesel	500 gal.
San Francisco, CA		(1)	8,000 gal.	Gas (unleaded)	1,550 gal.
		(1)	2,400 gal.	Bio Diesel(B20)	940 gal.
698 2 nd St.	94107	(2)	1,000 gal.	Diesel	N/A
3545 Van Ness		(2)	1,000 gal.	Diesel	N/A

Aggregate D: Central Shops and other departments

<u>Locations</u>	<u>No. of Tank(s) & Size</u>	<u>Type Fuel</u>	<u>Aver Delivery</u>
2323 Cesar Chavez	(1) 12,000 gal.	Gas (unleaded)	7,500 gal.
94124	(1) 10,000 gal.	Gas (unleaded)	7,500 gal.
	(1) 12,000 gal.	Bio Diesel	7,500 gal.
950 Bryant	(1) 20,000 gal.	Gas (unleaded)	7,500 gal.
94103	(1) 12,000 gal.	Gas (super unleaded)	4,000 gal.
100 Martin Luther King	(2) 10,000 gal.	Gas (unleaded)	7,500 gal.
94122	(1) 6,000 gal.	Bio Diesel	4,000 gal.
1001 Potrero	(7) Varied	Red Dye Diesel	1,000 gal.
375 Laguna Honda Blvd.	(1) 15,000 gal.	Red Dye Diesel	500 gal.
94116	(1) 6,000 gal.	Gas (unleaded)	3,000 gal.
120 14 th St.	(1) 500 gal.	Red Dye Diesel	100 gal.
94103	(1) 500 gal.	Red Dye Diesel	100 gal.
425 7 th St.	(2) 12,000 gal.	Red Dye Diesel	600 gal.
94103	(2) 12,000 gal.	Red Dye Diesel	600 gal.
SF Zoo	(1) 1,000 gal.	Gas (unleaded)	800 gal.
Rec & Park- Candlestick	(1) 1,000 gal.		800 gal.
	(1) 300 gal.	Red Dye Diesel	100 gal.
Harding	(1) 650 gal.	Gas (unleaded)	250 gal.
	(1) 350 gal.	Diesel	200 gal.

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Lincoln	(1)	650 gal.	Gas (unleaded)	350 gal.
	(1)	350 gal.	Diesel	150 gal.
Port of SF Pier 80	(2)	1,500 gal.	Red Dye Diesel	2,000 gal.
Port of SF Pile Driver Rigs (over marine waters)	(2)	3,500 gal.	Red Dye Diesel	2,000 gal.

Aggregate E: East Bay

<u>Locations</u>		<u>No. of Tank(s) & Size</u>	<u>Type Fuel</u>	<u>Aver Delivery</u>
505 Paloma Way	(1)	2,000 gal.	BioDiesel(B20)	600 gal.
Sunol, CA 94586	(1)	2,000 gal.	Gas (unleaded)	1,600 gal.
5555 Calaveras (Sunol)	(2)	9,000 gal.	Red Dye Diesel	4,000 gal.
8653 Calaveras (Sunol)	(1)	3,000 gal.	Red Dye Diesel	600 gal.
	(1)	10,000 gal.	Red Dye Diesel	
	(1)	1,000 gal.	Red Dye Diesel	400 gal.

Aggregate F: Peninsula

<u>Locations</u>		<u>No. of Tank(s) & Size</u>	<u>Type Fuel</u>	<u>Aver Delivery</u>
Sharp Park	(1)	650 gal.	Gas (unleaded)	350 gal.
Pacifica, CA	(1)	350 gal.	Diesel	150 gal.
1 Moreland Dr. 94066 San Bruno, CA	(4)	Varied	Red Dye Diesel	8,000 gal.
San Francisco Airport	(1)	12,000 gal.	Gas (unleaded)	6,000 gal.
94128	(1)	6,000 gal.	Gas (super unleaded)	1,000 gal.
	(1)	12,000 gal.	Bio Diesel	6,000 gal.
	(34)	Varied	Red Dye Diesel	2,500 gal.
1000 El Camino Real	(1)	10,000 gal.	Gas (unleaded)	5,500 gal.
Millbrae CA 94030	(1)	5,000 gal.	Diesel	1,600 gal.
Harry Tracy San Bruno	(2)	12,000 gal.	Red Dye Diesel	400 gal.
Log Cabin Ranch	(1)	1,000 gal.	Gas Unleaded)	800 gal.
La Honda, CA 94020	(1)	2,000 gal.	Red Dye Diesel	1,000 gal.

Aggregate G: PUC Sierra

<u>Locations</u>		<u>No. of Tank(s) & Size</u>	<u>Type Fuel</u>	<u>Aver Delivery</u>
Moccasin	(4)	2,000 gal.	Gas (Unleaded)	3,000 gal.
	(1)	2,000 gal.	Diesel	500 gal.
	(1)	2,000 gal.	Bio Diesel(B20)	800 gal.
South Fork	(1)	500 gal.	Gas (Unleaded)	300 gal.

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	(1)	500 gal.	Diesel	300 gal.
Early Intake	(2)	2,000 gal.	Gas (Unleaded)	750 gal.
	(1)	1,000 gal.	Diesel	500 gal.
Cherry Valley	(1)	500 gal.	Gas (Unleaded)	300 gal.
O'Shaughnessy	(1)	1,000 gal.	Gas (Unleaded)	800 gal.
Warnerville	(1)	2,000 gal.	Gas (Unleaded)	1,000 gal.
	(1)	1,000 gal.	Diesel	700 gal.
	(1)	1,000 gal.	Bio Diesel(B20)	700 gal.
Camp Mather	(1)	1,000 gal.	Gas (Unleaded)	700 gal.
	(1)	500 gal.	Diesel	250 gal.
Tesla Portal (Tracy, CA.)	(1)	8,000 gal	Red Dye Diesel	N/A

Aggregate H: Propane--All city locations except Sierra locations

<u>Locations</u>	<u>Number of Tanks</u>
S.F.F.D. Treasure Is. Training Div., Bldg. 600	3@ 30,000 GL (Full-limited use)
Central Shops/DPW 2323 Cesar Chavez S.F.	1@ 750 GL
DPW, Asphalt Plant 1801 Jerrold Ave., S.F.	1@ 500 GL
S.F. Int'l Airport, San Bruno	1@ 500 GL
Port Authority, Pier 50 (Tank on wheels)	1@ 500 GL
Juvenile Probation – Log Cabin Ranch	4@ 1,175 GL
SFPUC, 1990 Newcomb Ave.,	1@ 1,000 GL
SFPUC, 750 Phelps St, S.F.	1@ 1,000 GL
SFPUC, E. Portal, Alameda	3@ 250 GL 1@500 GL
SFPUC, W. Portal, Alameda	1@500 GL
SFPUC, Millbrae, CA	1@ 500 GL
SFPUC. Millbrae	2@ 1,150 GL
SFPUC, Pulgas Facil., Redwood City	1@ 2,000 GL
SFPUC, Pulgas Valve Lot, Redwood City	1@ 500 GL
SFPUC, Polhemus Sta., San Mateo	1@ 500 GL
SFPUC, Casey Quarry, San Mateo	1@ 500 GL

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SFPUC, Baden Pump Sta., South S.F.	1@ 500 GL
SFPUC, San Pedro Valve Lot, Daly City	1@ 500 GL
Irvington Portal, 41470 Mission Blvd, Fremont	1@ 500 GL
Calaveras Reservoir	2@ 300 GL
North San Andres	1@ 300 GL
Sawyer Camp	1@ 300 GL
Pilarcitos cottage	1@ 500 GL
Davis Tunnel	1@ 500 GL
Lower Crystal Springs	1@ 300 GL
Upper Crystal Springs	1@ 500 GL
Crystal Springs	2@ 1,250 GL
Cypress Work Center	1@ 500 GL
San Antonio Cottage	1@ 500 GL
Crystal Springs Pumphouse	2@ 1,150 GL
Sunol Yard	2@ 250 GL
5555 Calaveras Road (Sunol)	1@ 1,000 GL

Aggregate I: Propane--Sierra Locations

<u>Locations</u>	<u>Number of Tanks</u>
O'Shaughnessy	2@ 320 GAL 1@ 250 GAL 1@ 289 GAL
Cherry Valley	1@ 287 GAL 1@ 325 GAL
Moccasin	1@ 500 GAL 1@ 325 GAL
Moccasin Peak	1@ 289 GAL

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Lake Eleanor	1@ 250 Gal 1@ 289 Gal
Priest Reservoir	1 @ 500 GAL
Warnerville/Oakdale	1@ 325 GAL
Camp Mather	2@ 287 GAL 1@ 500 GAL
Throttling Station	2@ 325 GAL
San Joaquin Valve House	1@ 120 GAL
Rock River Lime Plant	1@1,000 GAL
Red Mountain Bar	1@ 250 GAL
Thomas Shaft (near Tracy, CA.)	1@500 GAL
Tesla Portal (near Tracy, CA.)	1@1000 GAL

NOTE: Average deliveries are not available at this time for Propane

Note The City has listed as many of the address locations as possible for all fuels. Please be aware that there may be same locations that will need to be added within any of the aggregates. As well there may be conditions where some of the locations will be deleted from any of the aggregates.

74. Price

- a. Bid prices, mark up (plus) or down (minus) are to be firm for the term from award date through the end of the contract term as well as for any and all option year extensions.
- b. Prices used for this contract will be based on the daily average rack prices of the Oil Price Information Service (OPIS), by line item as listed in Bid Sheet column "OPIS Price Index". All pricing for Biodiesel will be based on the daily average rack prices for B100, B20 or B5, and for that feedstock that is used for those mixtures.
- c. Prices that will be used also will be based on the published OPIS prices at 5:30pm-6:00 pm EST / 2:30 pm- 3:00 pm PST for the previous day. Example Monday's published prices will be used for the basis of Tuesday's deliveries, Friday's published prices will be used for deliveries for Saturday, Sunday and Monday, unless there is a published weekend price.
- d. PLEASE NOTE: For the Sierra locations, Aggregates G and I, all bidders must include in their mark up or down any and all considerations for the distance of the locations and the

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amounts of fuel that will be delivered at those locations. There will be no additional add on to the prices bid.

- e. Only prices that appear on City Contract Proposal Bid Sheets will be considered.
- f. In the event that the OPIS pricing ceases to be published, or is materially changed, either party may request a new basis to determine pricing for this contract. If a mutual agreement cannot be reached within a reasonable time, but no longer than thirty (30) days, this contract can be terminated with no prejudice against either party.
- g. In addition to the prices invoiced as based on the applicable OPIS daily rack prices plus or minus the vendors mark up or down, all taxes that are authorized by law and that can be documented may be added to the invoice.

75. Bid Evaluation

Bidders must enter firm fixed bid prices. Those prices should reflect a mark up or down only, and NOT include the OPIS daily average prices for either San Francisco, Stockton or PADD5. The mark up or down will be based on the price index as designated in Bid Sheet column "OPIS Price Index".

Except as otherwise noted on Bid Sheets, bid prices will be evaluated for each aggregate based on the mark up or down multiplied by the gallons for each line item and then totaled for each aggregate to obtain the lowest price for that aggregate, less applicable discount payment terms offered (see Bid and Contract Condition 12), less any applicable LBE preference (see General Conditions 41 through 44) and applicable sales tax adjustment (see Special Condition 76). Bid prices are to be F.O.B. freight prepaid and allowed.

Purchasing will attempt to evaluate this "bid package" within thirty (30) days after receipt of bids(s). If Purchasing requires additional evaluation time, all bidders will be notified in writing of the new expected award date.

76. Adjustment of Bid Price for Sales Tax

In accordance with Administrative Code Chapter 21C, for bid purposes, Purchasing will reduce your bid based on any sales tax revenue the City would receive from this purchase.

77. Award

A. Award will be made to the lowest priced, most responsive and responsible bidder in the aggregates as noted on the bid sheets. In determining the award(s), Purchasing will take into consideration, but will not be limited to:

- Price
- Satisfactory review of bidders' qualifications.
- Any other factors deemed pertinent

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- B. To ensure continuous and reliable sources of supply for fuel, the City may determine to award a primary as well as secondary and tertiary awards based on this bid # 70883 for all aggregates. The Secondary contractor's responsibility is to deliver only when the Primary contractor cannot deliver as requested by the department and in accordance with the provisions of the contract. The Tertiary contractor's responsibility is to delivery only when the Primary and the Secondary contractors cannot deliver as requested by the department and in accordance with the provisions of the contract. Only one award will be made to any one contractor within the same aggregate. As examples: The Prime contractor for aggregate 1 may not become either a Secondary or a Tertiary for aggregate 1. A Secondary contractor may not become a Tertiary contractor within the same aggregate.
- C. The purchaser reserves the right to make "No award" and delete from consideration for award any item listed in the bid sheets of this Contract proposal.

78. 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. In the event that the Prime contractor cannot or does not perform their responsibility as requested by the City departments, and a Secondary or Tertiary contractor must be used, all additional cost associated for fuel will be the responsibility of the Primary contractor. The City may charge the Primary contractor the difference between the cost of the Prime contractor and the cost of the Secondary or Tertiary contractor. In addition if there are any documented administrative costs involved, those cost also may be charged back to the Prime contractor.
- 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.

79. Ordering

- 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.

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80. Payment

- a. The City agrees to pay for all products in accordance with the prices quoted in the successful bid and subject to any applicable discount provisions contained in said bid. 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 audit by the City.
- c. In case of a discrepancy between OPIS pricing listed on the invoice, the listed prices as stated in Special Condition 74c will prevail.

81. Additional Items

- a. If, in the satisfaction of governmental interests it is necessary to purchase additional items from Contractor, additional items may be added to this contract by mutual agreement of the parties.
- b. The aggregated cost of all additional items added to the contract, during the contract term, shall not exceed twenty percent (20%) of the total estimated value (cost) of the original contract.
- c. All requests to add additional items to the contract must be submitted by City Departments in writing to the Purchasing Division. All requests must include complete specifications, estimated quantities for the remainder of the contract period and a price quotation provided by the contractor, for each service.
- d. All additional items or services added to the contract shall be approved through issuance of a contract modification.
- e. In the event the aggregated cost of the contract increases by more than 20% of the total estimated value of the original contract, or the increase totals more than \$50,000, the amount over 20% or \$50,000, shall be bid in accordance with Standard Purchasing Procedures. The resulting bid award shall be added to the contract through a contract modification (same Contractor) or the issuance of a new contract (new Contractor) and include Contractor's name and information, complete service description, delivery information and pricing information.

82. Future City Production and San Francisco Bio-Diesel Stations

The City is working to develop a partnership with a biodiesel company or companies to produce biodiesel in San Francisco and/or as close to the City as possible. If the City does enter into any such arrangement, the City reserves the right to purchase biodiesel and

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biodiesel mixtures produced at such plants outside of this contract. The City further reserves the right to purchase biodiesel directly from San Francisco-based biodiesel retail locations on a per vehicle basis.

83. Material Safety Data Sheets

Any City, state or Federal requirement for Hazardous Substance must be strictly adhered to.

- a. Successful bidder must furnish completed Material Safety Data Sheets (MSDS) within ten days of notification to do so, for any product supplied on this contract that contains or is considered to be a hazardous substance. Failure to furnish a completed MSDS for each item required may result in rejection of the bid.
- b. Contractor shall provide to the City, current updated MSDSs for required products under this agreement. MSDSs are subject to approval by the San Francisco Department of Public Health, Environmental Service Health as to form and content.

For more information, call the buyer whose name appears on the bid package.

84. Bid Security

Each bid must be accompanied by an original bid bond, or money order, or a cashier's check or certified check in the amount of \$ 1,000.00 payable to the City and County of San Francisco, to guarantee the filing of Performance Bond and Insurance Certificates, and proper execution of the contract. **Personal or company checks will not be accepted.** Any proposal submitted without the proper bid security shall be determined to be non-responsive and result in the rejection of the bid.

After the successful bidder has furnished the required documents or the City has rejected proposals, all bid proposal securities, except those which may have been forfeited; will be returned to the respective bidders whose proposals they accompanied.

85. 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

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Contractual Liability, Explosion, Collapse and Under (XCU) coverage, 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. Auto Liability coverage should be endorsed to include the Auto Pollution Endorsements and Motor carrier Act Endorsement, MCS 90.
 - (4) Pollution Liability Insurance with limits not less than \$5,000,000 each occurrence, and CA 9948, Broaden Pollution Coverage Endorsement. This coverage shall be endorsed to include Non-Owned Disposal Site coverage;
- b. Commercial General Liability, Commercial Automobile Liability, and Pollution 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.

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- 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.
- 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.

86. Failure to Execute Contract

- a. Within ten days of the receipt of a notice of award, the bidder to whom the contract is awarded shall deliver the performance bond and/or specified insurance certificates to City.
- b. If the bidder fails or refuses to furnish the required bond and/or insurance within ten days after receiving notice from Purchasing, Purchasing may, at its option, determine that this bidder has abandoned its bid. Thereupon the tentative award of said contract to this bidder shall be canceled and City shall notify the bidder's surety and collect on the bidder's bond (or the check accompanying its bid shall be deposited with the Treasurer of the City and County of San Francisco for collection) and the proceeds thereof shall be retained by City as partial liquidated damages for failure of such bidder to properly file the bonds and insurance herein required. The foregoing in no way limits the damages which are recoverable by City whether or not defined elsewhere in the contract documents.

87. Entire Agreement

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

88. Bid Submittal Instructions

Bids **must** be received at Central Purchasing, City Hall, Room 430, indicated on Page 1 of the Contract Proposal. Bids transmitted by fax or any type of electronic mail will not be accepted.

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Bidders are to return all required documents, which include:

- A. Page 1 of the Contract Proposal completed and signed.
- B. Bid Sheets for items being bid on only.
- C. All questionnaires and forms including completed and signed, bid addendum or change notice receipts, of applicable.
- D. Bid Security, if required.
- E. Bidder shall mail bid or hand deliver in an envelope clearly marked with the bid number and due date (lower left corner).

Bids must be made on the enclosed bid sheets. Prices should be clearly written by typewriter or pen and ink.

To receive full consideration, your bid should be unqualified and unconditional.

FOR MORE INFORMATION, call:

Hermilo Rodis, Purchaser
(415) 554-6263

END OF SPECIAL CONDITIONS

Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2013 Through August 31, 2016

REQUIRED INFORMATION OF ALL BIDDERS

Bid Questionnaire

1. Are you bidding as specified? YES ___ NO ___
2. Are you bidding as a Manufacturer or as a Distributor? MFR ___ DIST ___
3. Do you have a direct order entry system or other type of system that can facilitate ordering? e.g. fax. If Yes, specify type. _____
YES ___ NO ___
4. Are you able to comply with the delivery requirements per Special Condition? YES ___ NO ___
5. Are you claiming LBE preference on this bid per provisions Chapter 14B? If yes, see General Condition 40 and check appropriate below:
___ We are currently certified. HRC has issued us Certification No. _____.
___ We submitted LBE Certification Application to the HRC on _____
(date)
6. If applicable, have you completed and enclosed IRS-Form W-9? (See General Condition 56). YES ___ NO ___
7. Have you submitted with your bid all the required documents? (See Special Condition). YES ___ NO ___
 - a. Page 1 of the Contract Proposal YES ___ NO ___
 - b. Bid Sheets for Items being bid on only YES ___ NO ___
 - c. Specifications on alternate items bid YES ___ NO ___
 - d. All questionnaires and forms YES ___ NO ___
 - e. Bid Security, if required YES ___ NO ___
 - f. **Envelope clearly marked with the bid number and due date in the lower left corner** YES ___ NO ___
8. Has your company enrolled with Paymode-X to receive ACH payments from the City? YES ___ NO ___

Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2013 Through August 31, 2016

REQUIRED INFORMATION OF ALL BIDDERS

Company Information

Name of Firm: _____

Address: _____

Phone No.: _____ Fax: _____

E-mail address: _____

Toll Free Phone No.: _____

Contact: Title: _____

Signature, Date _____

Federal I.D. Number: _____

Payment Terms: _____

Person preparing bid: _____

Local Representative: _____

(if other than bid preparer)

Address: _____

Phone: _____

Fax: _____

Where is your warehouse or store's facility from which you intend to furnish contract items?

Address: _____

Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2013 Through August 31, 2016

REQUIRED INFORMATION OF ALL BIDDERS

Company Information

What are the telephone and fax number for placing orders?

Telephone () _____
Toll Free () _____
Fax () _____

What hours do you provide for Will-Call orders?

_____ to _____

If address for Will-Call is different than above, please specify:

Address: _____

What is your 24-hour emergency telephone number, per General Condition 56?

Telephone () _____

Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2013 Through August 31, 2016

REQUIRED INFORMATION OF ALL BIDDERS

References

All bidders, including current Contractor, must provide references of a least three organizations of the approximate size and volume of comparable business now being serviced by bidder.

1. Name of Company _____ Contact _____ Phone No. _____
Address _____
Number of Years Providing Service _____

2. Name of Company _____ Contact _____ Phone No. _____
Address _____
Number of Years Providing Service _____

3. Name of Company _____ Contact _____ Phone No. _____
Address _____
Number of Years Providing Service _____

Successful bidder may be required to submit a letter of reference from each reference listed within five days of notification. Failure to do so may result in rejection of bid.

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF CONTRACT ADMINISTRATION
PURCHASING DIVISION

70883

Fuel, Diesel, Biodiesel, Gas and Propane
For the Term September 1, 2013 Through August 31, 2016

FORMAT FOR ANNUAL REPORTS

Order Date	Delivery Date	Ordering Department	Delivery Address	Description	Qty	Price	Extended Price
9/20/12	9/23/12	Fire Dept.	2880-26 th St.	B5	644	\$3.77	\$2,427.88
9/26/12	9/30/12	SFMTA	Woods-1094 Indiana St.	Gas (Unleaded)	7,000	\$3.29	\$23,030.00

Schedule of Reporting Dates:

- Data from January 1 – December 31, due to the City by February 15

Standard Bid Forms

Before the City can award any contract to a vendor, that vendor must file three standard City forms. See the chart on page 2. Because many vendors have already completed these forms, and because some informational forms are rarely revised, the City has not included them in the bid package. Instead, this document describes the forms, where to find them on the Internet (see bottom of page 2), and where to file them. If a vendor cannot get the documents off the Internet, the vendor should call 415.554.6248 or e-mail to Purchasing (purchasing@sfgov.org) and Purchasing can fax, mail or e-mail them to vendor.

If vendor has already filled out items on the chart, the vendor should not do so again unless the vendor's answers have changed. To find out which of those forms have been submitted, the vendor should call Vendor File Support at (415) 554-6702.

If a vendor would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the vendor should call Human Rights Commission (HRC) at (415) 252-2500.

Where the forms are on the Internet

Office of Contract Administration

www.sfgov.org/site/oca

(URL will change.)

Purchasing forms:

Under the "Information for vendors and contractors" banner, click on "Required vendor forms."

Homepage:

<http://www.sf-hrc.org>

LBE forms:

On the "Local Business Enterprise" pull-down menu near the top of the page, click on "How to certify your local business with us and become a City vendor."

Nondiscrim. Forms:

On the "Equal Benefits" pull-down menu near the top of the page, click on "Important forms and documents."

Item	Form name and Internet location	Form number	Description	Return the form to; For more information
1.	Request for Taxpayer Identification Number and Certification URL: www.sfgov.org/site/oca (URL will change.) Click on "How to qualify to do business with the City."	W-9	The City needs the vendor's taxpayer ID number on this form. If a vendor has already done business with the City, this form is not necessary.	Controller's Office Vendor File Support E-mail to: vendor.file.support@sfgov.org (415) 554-6702
2.	Business Tax Declaration URL: www.sfgov.org/site/oca (URL will change.) Click on "How to qualify to do business with the City."	P-25	All vendors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector.	Treasurer/Tax Collector The address and e-mail address are on the form. (415) 554-6718
3.	S.F. Administrative Code Chapters 12B and 12C Declaration: Nondiscrimination in Contracts and Benefits URL: www.sf-hrc.org	HRC-12B-101	Vendors tell the City if their personnel policies meet the City's requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required depending on the vendor's answers on this form.	Human Rights Comm. The address is on the form. (415) 252-2500
4.	Small-Micro-Local Business Enterprise Program application URL: www.sf-hrc.org	[none]	Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must already be certified by HRC before the bid opening.	Human Rights Comm. The address is on the form. (415) 252-2500
5.	ARCH enrollment with Paymode-X: URL: www.sfgov.org/ach	[none]	All vendors are required to accept electronic payments using Automatic Clearing House (ACH)—Paymode X, an independent service through the Bank of America. There is no charge from Paymode or the City to use this payment service.	Controller's Office: ACH.Support@sfgov.org (415) 554-7591



Edwin M. Lee
Mayor

Jaci Fong
Director and Purchaser
Purchasing

March 12, 2013

Bid Addendum No. 1

**Contract Proposal No. 70883
Fuel, Diesel, Biodiesel, Gas & Propane**

Bid Due Date and Time: Change from: Monday, March 25, 2013, at 2:00 P. M.

Change to: Monday, April 22, 2013, at 2:00 P. M.

To: All Prospective Bidders for Contract Proposal #70883

Subject: Bid Due Date Change

This Bid Addendum No. 1 addresses the change to the bid due date.

All information provided herein is considered to be fully incorporated into the Contract Proposal #70883 document and technical specifications. All other terms and conditions remain the same.

Bidders shall consider this addendum and any subsequent addenda when preparing their bids. Failure to acknowledge receipt of this addendum may render the bid non-responsive.

Total number of pages for Bid Addendum No. 1 is 1 page.

Best regards,

Hermilo Rodis
Purchaser
Hermilo.Rodis@sfgov.org

Please sign and date this Bid Addendum No. 1. (A copy of this acknowledgement should be included with the submittal of the proposal.)

I have received Bid Addendum No. 1 dated Mar. 12, 2013, one (1) page and have fully incorporated all changes as required.

Company

Signature

Date



Edwin M. Lee
Mayor

Jaci Fong
Director and Purchaser
Purchasing

April 15, 2013
Bid Addendum No. 2
Contract Proposal #70883
Fuel, Diesel, Biodiesel, Gas & Propane

Bid Due Date and Time: Change from: Monday, April 22, 2013, at 2:00 P. M.
Change to: Friday, May 3, 2013, at 2:00 P. M.

To: All Prospective Bidders for Contract Proposal #70883

Subject: Bid due date change and revision of certain contract conditions

This Bid Addendum 2 addresses the change to the bid due date and revision of Bid and Contract Condition 16, General Conditions 41, Special Conditions 74 and 75, and the Bid Sheet.

All information provided herein is considered to be fully incorporated into the Contract Proposal 70883 document and technical specifications. All other terms and conditions remain the same.

Bidders shall consider this addendum and any subsequent addenda when preparing their bids. Failure to acknowledge receipt of this addendum will render the bid non-responsive.

Total number of pages for Bid Addendum No. 2 is 9 pages.

Best regards,

Hermilo Rodis
Purchaser
Hermilo.Rodis@sfgov.org

Please sign and date this Bid Addendum No. 2. (A copy of this acknowledgement should be included with the submittal of the proposal.)

I have received Bid Addendum No. 2 dated April 15, 2013, nine (9) pages and have fully incorporated all changes as required.

Company Signature Date

Please incorporate the following changes to the referenced contract proposal.

1) Bid and Contract Condition 16. "Hold Harmless and Indemnification" on starting on page 4 of 46 is hereby deleted in it's entirety and replaced with the following:

16. Hold Harmless and Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Contract, including but not limited to, the use of Contractor's facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Contract, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequences of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Contract.

Hazardous Materials Indemnity

(a) In addition to the above, Contractor specifically agrees to indemnify and defend City from any and all claims that arise as a result of any Regulatory Action or any Claim made or threatened by any third party against the City, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the release or discharge of any fuel or other hazardous material, including but not limited to spilling, leaking, escaping, discharge, leaching, dumping, or disposing, arising from or related to this agreement, including, without limitation, Losses based in common law. Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value and attorneys' fees and consultants' fees and experts' fees and costs, except where caused by the City's sole negligence or willful misconduct.

(b) Contractor agrees that, upon request from City, it will immediately Remediate, at its sole cost, in compliance with all Environmental Laws and this Agreement, any release or discharge of any fuel or other hazardous material, including but not limited to spilling, leaking,

escaping, discharge, leaching, dumping, or disposing, arising from or related to Contractor's performance of this agreement. Remediation shall include but not be limited to clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional City requirements. Contractor must obtain City's approval of a Remediation work plan, whether or not required under Environmental Laws, then begin Remediation actions immediately following City's approval of the work plan and continue diligently until Remediation is complete, as determined by City, in its sole discretion. If the City elects to conduct required remediation activities with its own personnel or other vendors, Contractor agrees to pay City for all documented costs, including but not limited to administrative costs, attorneys' fees, consultants' fees, experts' fees, penalties or costs imposed by an Environmental Regulatory Agency, and any other costs incurred by City to respond, investigate, clean up, abate, contain, treat, stabilize, monitor, remediate, remedy, remove, or otherwise control or to restore the affected area to the standard required by the applicable Environmental Regulatory Agency in accordance with applicable Environmental Laws and any additional City requirements.

2) General Condition 41. "LBE Ordinance." on page 11 of 46 is hereby deleted in it's entirely and replaced with the following:

41. LBE Ordinance. The bid discount will not apply in this contract. This contract is estimated to cost well over the \$10, 000,000 threshold, whereby the following provision of Section 14B will apply.

~~Contracts Subject to Prime Bidding Discounts. Contract Awarding Authorities shall apply Discounts to all Contracts the estimated cost of which exceeds \$10,000 and is less than \$10,000,000, except that the Bid Discount provisions applicable to SBA-LBEs shall apply only to contracts (other than Commodities Contracts) with an estimated cost no less than \$400,000 and no greater than \$20,000,000, and to Commodities Contracts with an estimated cost no less than \$400,000 and no greater than \$10,000,000. Discounts shall apply only to bids where the LBE prime or joint venture bidder will perform a commercially useful function on the Contract. LBE prime or joint venture bidders who fail to perform a commercially useful function under the Contract are subject to sanctions as set forth in Section 14B.17(D).~~

3) Special Condition 74. "Price" starting on page 34 of 46 is hereby deleted in it's entirely and replaced with the following:

74. Price

- a. Bid prices, mark up (plus) or down (minus) are to be firm from award date through the end of the contract term as well as for any and all option year extensions.
- b. Prices used for this contract will be based on the daily average rack prices of the Oil Price Information Service (OPIS), by line item as listed in Bid Sheet column "OPIS Price Index". All pricing for Biodiesel will be based on the daily average rack prices for B100, B99, B50,

B20 or B5, and for that feedstock that is used for those mixtures. The customized pricing used for Biodiesel will be the OPIS average rack price of San Francisco, Richmond and San Jose (San Francisco Bay Area Average). INSTRUCTIONAL(How San Francisco Bay Area average is determined): The cost basis for any delivered Biodiesel product (to include B5, B20, B99 without RIN, and B100 without RIN) will be an average of all suppliers offering the respective Biodiesel product: YGME (Yellow Grease Methyl Ester), SME (Soy Methyl Ester) or MULT-Blended (Multiple Feedstocks) at Richmond, CA, San Francisco, CA, and San Jose, CA as reported by OPIS (Oil Price Information Service) in Gross terms/Standard format in the daily OPIS Biodiesel Closing Benchmark Rack Report (prices as of 5:59 P.M. EST). The average will be comprised of adding together every supplier price listing for the respective Biodiesel product at these three locations and dividing them by the total number of supplier prices.

- c. Daily prices will be the published OPIS prices at 5:30pm-6:00 pm EST / 2:30 pm- 3:00 pm PST for the previous day. For example, Monday's published prices will be used for the basis of Tuesday's deliveries, Friday's published prices will be used for deliveries for Saturday, Sunday and Monday, unless there is a published weekend price.
- d. PLEASE NOTE: For the Sierra locations, Aggregates G and I, all bidders must include in their mark up or down any and all considerations for the distance of the locations and the amounts of fuel that will be delivered at those locations. There will be no additional add on to the prices bid.
- e. Only prices that appear on City Contract Proposal Bid Sheets will be considered.
- f. In the event that the OPIS pricing ceases to be published, or is materially changed, either party may request a new basis to determine pricing for this contract. If a mutual agreement cannot be reached within a reasonable time, but no longer than thirty (30) days, this contract can be terminated with no prejudice against either party.
- g. In addition to the prices invoiced as based on the applicable OPIS daily rack prices plus or minus the vendors mark up or down, all taxes that are authorized by law and that can be documented may be added to the invoice.

4) Special Condition 75. "Bid Evaluation" on page 35 of 46 is hereby deleted in it's entirely and replaced with the following:

75. Bid Evaluation

Bidders must enter firm fixed mark-up or mark-down bid prices. Those prices should reflect a mark up or down only, and NOT include the OPIS daily average prices for either San Francisco, Stockton or San Francisco Bay Area Average (SF Bay Area). INSTRUCTIONAL(How San Francisco Bay Area average is determined): The cost basis for any delivered Biodiesel product (to include B5, B20, B99 without RIN, and B100 without RIN) will be an average of all suppliers offering the respective Biodiesel product: YGME (Yellow Grease Methyl Ester), SME (Soy Methyl Ester) or MULT-Blended (Multiple Feedstocks) at Richmond, CA, San Francisco, CA, and San Jose, CA as reported by OPIS (Oil Price Information Service) in Gross terms/Standard format in the daily OPIS Biodiesel Closing Benchmark Rack Report (prices as of 5:59 P.M. EST).

The average will be comprised of adding together every supplier price listing for the respective Biodiesel product at these three locations and dividing them by the total number of supplier prices.

Except as otherwise noted on Bid Sheets, bid prices will be evaluated for each aggregate based on the mark up or down multiplied by the gallons for each line item and then totaled for each aggregate to obtain the lowest price for that aggregate, less applicable discount payment terms offered (see Bid and Contract Condition 12), and applicable sales tax adjustment (see Special Condition 76). Bid prices are to be F.O.B. freight prepaid and allowed.

Purchasing will attempt to evaluate this "bid package" within thirty (30) days after receipt of bids(s). If Purchasing requires additional evaluation time, all bidders will be notified in writing of the new expected award date.

5) Bid Sheets

- A) The two (2) original bid sheets of the contract proposal are hereby deleted in their entirety and replaced with the four (4) bid sheets as shown as ATTACHMENT A of this Bid Addendum No. 2. These bid sheets allow for offers to be made for Primary, Secondary and Tertiary evaluations. It also includes provisions for changes in the OPIS Price Index, additional line items for over water delivery of fuel, addition of B50 line items, and clarification that all amounts listed in the column with the dollar (\$) which was changed from the cents (¢) sign would mean dollars or fractions of a dollar.

ALL OFFERS MUST BE MADE ON THESE BID SHEETS.

End of Addendum No. 2. No other items follow.

Attachment A - Addendum No. 2

Contract Proposal 70883 - Bid Sheet (Revised as of 4-15-13)

Enter Bid Prices as a mark up or down from the OPIS Daily Average rack price for the area listed under the "OPIS Index Used" column. Please enter if your mark up is a plus or minus to the OPIS daily average rack prices for your bid. Prices should be based on split delivery, full combination tank and trailer.

Aggregates (Delivery Areas)	Fuel Type	Est. Annual Usage	Item No.	Delivery Quantity	OPIS Index Used	PRIMARY		SECONDARY		TERTIARY		
						Total Bid Price	Bid Price + or - \$	Total Bid Price	Bid Price + or - \$	Total Bid Price	Bid Price + or - \$	
Aggregate A: San Francisco SFMTA	Biodiesel: B20	750,000	101	<= 7,400	SF Bay Area*							
	Biodiesel: B20	3,000,000	102	> 7,401	SF Bay Area*							
	Gas Regular Unleaded (87 Octane)	3,800	103	<= 7,400	San Francisco							
	Gas Regular Unleaded (87 Octane)	22,400	104	> 7,401	San Francisco							
	Diesel # 2 ULS	200,000	105	<= 7,400	San Francisco							
	Diesel # 2 ULS	800,000	106	> 7,401	San Francisco							
TOTAL AGGREGATE A:						\$		\$		\$		
Aggregate B: San Francisco SFMTA	Biodiesel: B99	240,000	201	<= 7,400	SF Bay Area*							
	Biodiesel: B99	600,000	202	> 7,401	SF Bay Area*							
	Biodiesel: B100	240,000	203	<= 7,400	SF Bay Area*							
	Biodiesel: B100	600,000	204	> 7,401	SF Bay Area*							
	TOTAL AGGREGATE B:						\$		\$		\$	
	Aggregate C: San Francisco Fire Dept and PUC	Biodiesel: B5	32,000	301	<= 200	SF Bay Area*						
Biodiesel: B5		32,000	302	201-500	SF Bay Area*							
Biodiesel: B5		32,000	303	501-1,000	SF Bay Area*							
Biodiesel: B5		32,000	304	1,001-1,500	SF Bay Area*							
Biodiesel: B5		32,000	305	1,501-3,000	SF Bay Area*							
Biodiesel: B5		32,000	306	> 3,000	SF Bay Area*							
Biodiesel: B20		32,000	307	<= 200	SF Bay Area*							
Biodiesel: B20		42,000	308	201-500	SF Bay Area*							
Biodiesel: B20		42,000	309	501-1,000	SF Bay Area*							
Biodiesel: B20		42,000	310	1,001-1,500	SF Bay Area*							
Biodiesel: B20		42,000	311	1,501-3,000	SF Bay Area*							
Biodiesel: B20		42,000	312	> 3,000	SF Bay Area*							
Biodiesel: B50		5,000	313	<= 200	SF Bay Area*							
Biodiesel: B50		5,000	314	> 200	SF Bay Area*							
Diesel # 2 ULS		42,000	315	<= 200	San Francisco							
Diesel # 2 ULS		42,000	316	201-500	San Francisco							
Diesel # 2 ULS		42,000	317	501-1,000	San Francisco							
Diesel # 2 ULS		42,000	318	1,001-1,500	San Francisco							
Diesel # 2 ULS		42,000	319	1,501-3,000	San Francisco							
Diesel # 2 ULS		42,000	320	> 3,000	San Francisco							
Red Dye Diesel # 2 ULS		42,000	321	<= 200	San Francisco							
Red Dye Diesel # 2 ULS		5,000	322	201-500	San Francisco							
Red Dye Diesel # 2 ULS		5,000	323	501-1,000	San Francisco							
Red Dye Diesel # 2 ULS		5,000	324	1,001-2,000	San Francisco							
Red Dye Diesel # 2 ULS		5,000	325	> 2,000	San Francisco							
Gas Regular Unleaded (87 Octane)			32,000	326	<= 500	San Francisco						
Gas Regular Unleaded (87 Octane)			32,000	327	501-1,000	San Francisco						
Gas Regular Unleaded (87 Octane)			32,000	328	1,001-1,500	San Francisco						
Gas Regular Unleaded (87 Octane)			32,000	329	1,501-3,000	San Francisco						
Gas Regular Unleaded (87 Octane)			32,000	330	> 3,000	San Francisco						
TOTAL AGGREGATE C:						\$		\$		\$		
TOTAL AGGREGATE:						\$		\$		\$		

Attachment A - Addendum No. 2

Contract Proposal 70883 - Bid Sheet (Revised as of 4-15-13)

Aggregates (Delivery Areas)	Fuel Type	Est. Annual Usage	Item No.	Delivery Quantity	OPIS Index Used	Bid Price		Total Bid Price		Bid Price		Total Bid Price		
						+ or -	\$	+ or -	\$	+ or -	\$	+ or -	\$	
Aggregate D: San Francisco Central Shops, and other Dept. 4447	Biodiesel: B5	20,000	401	<=5,000	SF Bay Area*									
	Biodiesel: B5	20,000	402	5,001-7,400	SF Bay Area*									
	Biodiesel: B5	300,000	403	>7,400	SF Bay Area*									
	Biodiesel: B20	10,000	404	<=5,000	SF Bay Area*									
	Biodiesel: B20	10,000	405	5,001-7,400	SF Bay Area*									
	Biodiesel: B20	80,000	406	>7,400	SF Bay Area*									
	Biodiesel: B50	5,000	407	<2,000	SF Bay Area*									
	Biodiesel: B50	5,000	408	>2,000	SF Bay Area*									
	Diesel # 2 ULS	2,000	409	<=200	San Francisco									
	Diesel # 2 ULS	2,000	410	201-500	San Francisco									
	Diesel # 2 ULS	5,000	411	>500	San Francisco									
	Red Dye Diesel # 2 ULS	5,000	412	<=200	San Francisco									
	Red Dye Diesel # 2 ULS	5,000	413	201-500	San Francisco									
	Red Dye Diesel # 2 ULS	5,000	414	501-1,000	San Francisco									
	Red Dye Diesel # 2 ULS	5,000	415	1,001-2,000	San Francisco									
	Red Dye Diesel # 2 ULS	5,000	416	>2,000	San Francisco									
	Red Dye Diesel # 2 ULS(over water)	5,000	417	<=200	San Francisco									
	Red Dye Diesel # 2 ULS(over water)	5,000	418	201-500	San Francisco									
	Red Dye Diesel # 2 ULS(over water)	5,000	419	501-1,000	San Francisco									
	Red Dye Diesel # 2 ULS(over water)	5,000	420	1,001-2,000	San Francisco									
	Red Dye Diesel # 2 ULS(over water)	5,000	421	>2,000	San Francisco									
	Gas Regular Unleaded (87 Octane)	2,000	422	<1,000	San Francisco									
	Gas Regular Unleaded (87 Octane)	5,000	423	1,001-2,000	San Francisco									
	Gas Regular Unleaded (87 Octane)	20,000	424	2,001 - 5,000	San Francisco									
	Gas Regular Unleaded (87 Octane)	20,000	425	5,001 - 7,400	San Francisco									
	Gas Regular Unleaded (87 Octane)	1,520,000	426	>7,400	San Francisco									
	Gas Premium Unleaded (91 Octane)	36,000	427	<=5,000	San Francisco									
	Gas Premium Unleaded (91 Octane)	6,000	428	>5,000	San Francisco									
	TOTAL AGGREGATE D:												2,119,000	\$
	Aggregate E: East Bay	Biodiesel: B20	1,000	501	<=200	SF Bay Area*								
		Biodiesel: B20	1,000	502	201-500	SF Bay Area*								
		Biodiesel: B20	1,000	503	>500	SF Bay Area*								
		Red Dye Diesel # 2 ULS	4,000	504	<=2,000	San Francisco								
		Red Dye Diesel # 2 ULS	6,000	505	>2,000	San Francisco								
		Gas Regular Unleaded (87 Octane)	25,000	506	<=5000	San Francisco								
	TOTAL AGGREGATE E:												53,000	\$

Aggregates (Delivery Areas)	Fuel Type	Est. Annual Usage	Item No.	Delivery Quantity	OPIS Index Used	PRIMARY		SECONDARY		TERTIARY	
						Bid Price + or - \$	Total Bid Price	Bid Price + or - \$	Total Bid Price	Bid Price + or - \$	Total Bid Price
Aggregate F: Peninsula	Biodiesel: B20	30,000	601	<= 7,400	SF Bay Area *						
	Biodiesel: B20	30,000	602	> 7,400	SF Bay Area *						
	Diesel # 2 ULS	5,000	603	<= 200	San Francisco						
	Diesel # 2 ULS	5,000	604	201-500	San Francisco						
	Diesel # 2 ULS	5,000	605	501-1,000	San Francisco						
	Diesel # 2 ULS	5,000	606	1,001-1,500	San Francisco						
	Diesel # 2 ULS	5,000	607	>1,500	San Francisco						
	Red Dye Diesel # 2 ULS	2,000	608	<= 200	San Francisco						
	Red Dye Diesel # 2 ULS	2,000	609	201-500	San Francisco						
	Red Dye Diesel # 2 ULS	2,000	610	> 500	San Francisco						
	Gas Regular Unleaded (87 Octane)	4,000	611	<1,000	San Francisco						
	Gas Regular Unleaded (87 Octane)	6,000	612	1,000-2,000	San Francisco						
	Gas Regular Unleaded (87 Octane)	30,000	613	2,001-5,000	San Francisco						
	Gas Regular Unleaded (87 Octane)	30,000	614	5,001-7,400	San Francisco						
	Gas Regular Unleaded (87 Octane)	100,000	615	> 7,400	San Francisco						
	Gas Premium Unleaded (91 Octane)	2,000	616		San Francisco						
TOTAL AGGREGATE F:						183,000	\$		\$		\$
Aggregate G: PUC Sierra	Biodiesel: B20	900	701	<= 200	SF Bay Area *						
	Biodiesel: B20	900	702	201 - 400	SF Bay Area *						
	Biodiesel: B20	900	703	401 - 800	SF Bay Area *						
	Biodiesel: B20	1,800	704	810 - 1,600	SF Bay Area *						
	Biodiesel: B20	4,500	705	> 1,600	SF Bay Area *						
	Diesel # 2 ULS	3,200	706	<= 200	Stockton						
	Diesel # 2 ULS	3,200	707	201 - 400	Stockton						
	Diesel # 2 ULS	3,200	708	401 - 800	Stockton						
	Diesel # 2 ULS	3,200	709	810 - 1,600	Stockton						
	Diesel # 2 ULS	3,200	710	> 1,600	Stockton						
	Gas Regular Unleaded (87 Octane)	19,800	711	<= 200	Stockton						
	Gas Regular Unleaded (87 Octane)	19,800	712	201 - 400	Stockton						
	Gas Regular Unleaded (87 Octane)	19,800	713	401 - 800	Stockton						
	Gas Regular Unleaded (87 Octane)	19,800	714	810 - 1,600	Stockton						
	Gas Regular Unleaded (87 Octane)	19,800	715	> 1,600	Stockton						
TOTAL AGGREGATE G:						124,000	\$		\$		\$

Attachment A Addendum No. 2
 Contract Proposal 70883 - Bid Sheet (Revised as of 4-15-13)

Aggregates (Delivery Areas)	Fuel Type	Est. Annual Usage	Item No.	Delivery Quantity	OPIS Index Used	PRIMARY		SECONDARY	
						Bid Price + or - \$	Total Bid Price	Bid Price + or - \$	Total Bid Price
Aggregate H: All locations except Sierra	Propane	50,000	801		San Francisco				
TOTAL AGGREGATE H:						\$		\$	
Aggregate I: Sierra locations	Propane	20,000	901		Stockton				
TOTAL AGGREGATE I:						\$		\$	
						Tank Size	Annual	Total Bid Price	
	Tank	250 gal.	1001				X 4		
	Tank	300 gal.	1002				X 4		
	Tank	500 gal.	1003				X 4		
	Tank	600 gal.	1004				X 4		
	Tank	1,000 gal.	1005				X 4		
	Tank	1,150 gal.	1006				X 4		
	Tank with pump, motor & meter	1,175 gal.	1007				X 4		
	Tank with pump, motor & meter	3,400 gal.	1008				X 4		

Fees to cover rental, maintenance and equipment for Propane Tanks as required.**

* SF Bay Area is the daily average rack price that OPIS will customize for B5, B20, B50, B99 and B100 for YGME, SIME and MULT-Blended which will include suppliers from the cities of San Francisco, Richmond and San Jose in California. (See Instructional on Special Condition 74.b.)

** Rental, maintenance and equipment fee will not be used for evaluation.

Bidder Name: _____

Payment Terms: _____ % Cash Discount for Payment in _____ Days.
 (See Bid and Contract Condition 12, Page 3)

**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: Golden Gate Petroleum	
<p><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></p> <p>1) <u>Board of Directors:</u> Dennis O'Keefe- Chairman of the Board, CEO, President; Pat O'Keefe – Vice President , Secretary; John Bailey – CFO, Treasurer</p> <p>2) CEO – Dennis O'Keefe; CFO – John Bailey; COO – NONE</p> <p>3) Dennis O'Keefe is the only person with more than 20% ownership</p> <p>4) No Subcontractors listed in the bid</p> <p>5) There are no political committees sponsored or controlled by Golden Gate Petroleum or its Board of Directors/Executives</p>	
Contractor address: 1340 Arnold Drive # 231, Martinez, CA 94553	
Date that contract was approved:	Amount of contract:
Describe the nature of the contract that was approved:	
Comments:	

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 _____

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:	Contact telephone number: ()
Address:	E-mail:

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

