



FINANCE COMMITTEE AGENDA

Tuesday, February 13, 2018

8:30 AM

Executive Conference Room, Level Three
Brea Civic & Cultural Center, 1 Civic Center Circle, Brea, California

MEMBERS: Council Member Cecilia Hupp and Council Member Marty Simonoff
ALTERNATE: Mayor Glenn Parker

Materials related to an item on this agenda submitted to the Finance Committee after distribution of the agenda packet are available for public inspection in the third floor lobby of the Civic and Cultural Center at 1 Civic Center Circle, Brea, CA during normal business hours. Such documents may also be available on the City's website subject to staff's ability to post documents before the meeting.

CALL TO ORDER / ROLL CALL

1. Matters from the Audience

CONSENT

2. Approval of Minutes of January 9, 2018 Meeting

Attachments

01-09-18 FC Minutes

3. Additional Funding for FY 2017-18 Asphalt Maintenance and Repair Program for Water Utility Cut Repairs

Attachments

Agreement

4. Agreement to Provide Motor Fuel

Attachments

Agreement

Certificate of Insurance

NOTE: This agenda is subject to amendments up to 72 hours prior to the meeting date.

DISCUSSION

5. Schedule Next Meeting: Tuesday, February 27, 2018

cc: Council Member Christine Marick
Council Member Steven Vargas

Special Accommodations

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (714) 990-7757. Notification 48 hours prior to the meeting will enable City staff to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)

City of Brea

FINANCE COMMITTEE COMMUNICATION

FROM: Bill Gallardo

DATE: 02/13/2018

SUBJECT: Approval of Minutes of January 9, 2018 Meeting

Attachments

01-09-18 FC Minutes



FINANCE COMMITTEE MINUTES

Tuesday, January 9, 2018

8:30 AM

Executive Conference Room, Level Three

Brea Civic & Cultural Center, 1 Civic Center Circle, Brea, California

CALL TO ORDER / ROLL CALL

ATTENDEES: Mayor Pro Tem Christine Marick, Council Member Marty Simonoff, Chris Emeterio, Tony Olmos, Cindy Russell, Steve Kooyman, Faith Madrazo, Alicia Brenner and Neil Groom.

1. Matters from the Audience – *None*

CONSENT

2. Approval of Minutes of December 12, 2017 – *Approved.*
3. Resolution to Certify Funding and Affirm Commitment to Implement Projects in Fiscal Years 2018/19 – 2023/24 Orange County Federal Transportation Improvement Program – *Recommended for City Council approval.*
4. Amendment to Professional Services Agreement with Onward Engineering for Additional Construction Management and Inspection Services on Capital Improvement Projects – *Committee reviewed item and directed staff to change the sentence related to the cost increases incurred for Project CIP 7929 in the amount of \$163,522 from "...anticipated" to "staff will invoice the School District for reimbursement."*
Recommended for City Council approval.
5. Professional Services Agreement for Forensic Phlebotomy Services – *Recommended for City Council approval.*
6. Purchasing Activity under Special City Council Authorization for Period Ending December 31, 2017 – *Committee discussed report and requested the upcoming lease purchase of the Fire Department Pumper be discussed at the next City Council Study Session. Recommended to receive and file.*

DISCUSSION

7. Schedule Next Meeting: January 30, 2018

Meeting adjourned: 8:36 AM

cc: Mayor Glenn Parker
Council Member Cecilia Hupp
Council Member Steven Vargas

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members

FROM: Bill Gallardo

DATE: 02/13/2018

SUBJECT: Additional Funding for FY 2017-18 Asphalt Maintenance and Repair Program for Water Utility Cut Repairs

RECOMMENDATION

Approve additional funding in the amount of \$100,000 for the FY 2017-18 Asphalt Maintenance and Repair Program.

BACKGROUND/DISCUSSION

In May of 2017, the City Council approved the annual Asphalt Maintenance and Repair Program contract. The work performed is on an as-needed basis and City Council approved a maximum budget amount of \$200,000 for this program (\$100,000 General Fund plus \$100,000 Water Fund). Historically, the budgeted amounts have been sufficient to cover the street repairs needed throughout each fiscal year.

In the current fiscal year, the Water Division has experienced several more water mainline breaks than in previous years, causing major damage to the streets, and requiring more asphalt repairs. As a result, the amount remaining for water utility repair work is less than \$12,000 for the remaining five months of the fiscal year. The additional requested budget amount would allow for timely water utility cut repairs to keep the streets safe.

The Asphalt Maintenance and Repair Program contract with Ben's Asphalt is attached for informational purposes. The contract is on a time-and-material basis and does not need to be amended.

SUMMARY/FISCAL IMPACT

Sufficient funds are available in the Water Enterprise Fund (420) budget to cover the requested budget amount. There is no additional fiscal impact to the City's General Fund.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Will Wenz, Public Works Superintendent

Concurrence: Tony Olmos, P.E, Public Works Director

Attachments

Agreement

ASHPALT MAINTENANCE AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS: That the following agreement is made and entered into, in duplicate, as of the date executed by the City Clerk and the Mayor, by and between **Ben's Asphalt, Inc.** hereinafter referred to as the "CONTRACTOR" and the City of Brea, California, hereinafter referred to as "CITY".

WHEREAS, pursuant to Notice inviting Sealed Proposals, proposals were received, Reviewed by Committee, and declared on the date specified in said notice; and

WHEREAS, CITY did accept the bid of **Ben's Asphalt, Inc.** and;

WHEREAS, CITY has authorized the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the **Asphalt Pavement Maintenance Throughout The City of Brea.**

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. **GENERAL SCOPE OF WORK:** CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do the work for the **Asphalt Pavement Maintenance Throughout The City of Brea.**

Said work to be performed in accordance with specifications and standards on file in the office of the Director of Public Works and in accordance with bid prices hereinafter mentioned and in accordance with the instruction of the Director of Public Works for a period commencing **07/03/17 through 6/30/18**. The prices quoted with the bid shall be in effect until expiration of the agreement on the date stated herein. The City and CONTRACTOR shall have the option of extending the term of the agreement, by mutual consent of the parties, four (4) times for periods of one year each. Should the agreement be extended, the contract prices shall be adjusted as set forth in paragraph 14 hereof.

2. **INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY:**
The aforesaid specifications together with the RFP and all incorporated documents therein, are incorporated herein by reference hereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Request for Proposal Inviting Bids attached hereto, together with this written agreement, shall constitute the contract between the parties. This contract is intended to require complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written agreement, the provisions of this written agreement shall control.

3. **TERMS OF CONTRACT:**

A. The undersigned bidder agrees to execute the contract within ten (10) working days from the date of notice of award of the contract or upon notice by CITY after ten (10) working days.

B. The CONTRACTOR, while fulfilling the terms of this Contract, is performing as a representative of CITY and shall provide exceptional Customer Care. Any negative contact with staff, residents/citizens, businesses, visitors or other contractors shall be reported by CONTRACTOR immediately to CITY. CONTRACTOR'S management and supervisory personnel shall intercede to resolve or mitigate the negative contact in conjunction with CITY staff. CITY and CONTRACTOR may agree in advance to a single person contact, a representative of the CITY or CONTRACTOR, for the investigation and response to complaints.

4. INSURANCE: The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been obtained. Any tort claims filed against the CITY related to the performance of this Contract and subsequently tendered to the CONTRACTOR shall be promptly investigated, and the resolution of such claims shall be promptly reported to the CITY.

The CONTRACTOR shall take out and maintain at all times during the life of this contract the following policies of insurance:

a. Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish to the Director of Public Works a certificate of insurance as proof that he has taken out full compensation insurance for all persons whom he may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract.

Further, such policy of insurance shall provide that the insurer waives all rights of subrogation against CITY and its elected officials, officers, employees and agents.

In accordance with the provisions of Section 3700 of the California Labor Code, every CONTRACTOR shall secure the payment of compensation to his employees. CONTRACTOR, prior to commencing work, shall sign and file with the CITY a certification as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will

comply with such provisions before commencing the performance of work of this contract."

b. For all operations of the CONTRACTOR or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:

(1) Commercial General Liability (occurrence) – for bodily injury, death and property damage for products/completed operations and any and all other activities undertaken by the CONTRACTOR in the performance of this Agreement.

(2) (Alternative to Commercial General Liability) – No Longer Available.

(3) Comprehensive Automobile Liability (occurrence) – for bodily injury, death and property damage insuring against all liability arising out of the use of any vehicle.

(4) Owner's and CONTRACTOR'S Protective (occurrence) – for bodily injury, death and property damage arising out of any activities undertaken by CONTRACTOR in the performance of this Agreement.

(5) Other required insurance, endorsements or exclusions as required by the plans and specifications.

(6) The policies of insurance required in this Section b shall have no less than the following limits of coverage:

(i) \$2,000,000 (Two Million Dollars) for bodily injury or death;

(ii) \$2,000,000 (Two Million Dollars) for property damage;

(iii) The total of the limits specified in subsections (i) and (ii), above, where a combined single limit is provided.

c. Each such policy of insurance required in paragraph b shall:

(1) Be subject to no deductible amount unless otherwise provided, or approved in writing by CITY;

(2) Be issued by an insurance company approved in writing by CITY, which is admitted and licensed to do business in the State of California and which is rated A VII or better according to the most recent A.M. Best Co. Rating Guide;

- (3) Name as additional insured the CITY, its elected officials, officers, employees, attorneys and agents, and any other parties, including subcontractors, specified by CITY to be included;
- (4) Specify that it acts as primary insurance and that no insurance held or owned by the designated additional insured shall be called upon to cover a loss under said policy;
- (5) Specify that it applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;
- (6) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by CITY of written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."

- (7) Specify that any failure to comply with reporting or other provisions of the required policy, including breaches of warranty, shall not affect the coverage required to be provided;
- (8) Specify that the insurer waives all rights of subrogation against any of the named additional insured; and
- (9) Specify that any and all costs of adjusting and/or defending any claim against any insured, including court costs and attorneys' fees, shall be paid in addition to and shall not deplete any policy limits.
- (10) Otherwise be in form satisfactory to CITY.

d. Prior to commencing performance under this Agreement, the CONTRACTOR shall furnish the CITY with original endorsements, or copies of each required policy, effecting and evidencing the insurance coverage required by this Agreement. The endorsements shall be signed by a person authorized by the insurer(s) to bind coverage on its behalf. All endorsements or policies shall be received and approved by the CITY before CONTRACTOR commences performance. If performance of this Agreement shall extend beyond one (1) year, CONTRACTOR shall provide CITY with the required policies or endorsements evidencing renewal of the required policies of insurance prior to the expiration of any required policies of insurance.

1. PREVAILING WAGE: Notice is hereby given that in accordance with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and

2, the CONTRACTOR is required to pay not less than the general prevailing rate of per diem wages for work of a similar character in locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In that regard, the Director of the Department of Industrial Relations of the State of California is required to and has determined such general prevailing rates of per diem wages. Copies of such prevailing rates of per diem wages are available on the DIR website at: <https://www.dir.ca.gov/OPRL/dprewagedetermination.htm>

Pursuant to Labor Code § 1775, the CONTRACTOR shall forfeit, as penalty to CITY, not more than two hundred dollars (\$200.00) for each laborer, workman, or mechanic employed for each calendar day or portion thereof, if such laborer, workman, or mechanic is paid less than the general prevailing rate of wages hereinbefore stipulated for any work done under the attached contract, by him or by any subcontractor under him, in violation of the provisions of said Labor Code.

6. APPRENTICESHIP EMPLOYMENT: In accordance with the provisions of Section 1777.5 of the Labor Code as amended by Chapter 971, Statutes of 1939, and in accordance with the regulations of the California Apprenticeship council, properly indentured apprentices may be employed in the prosecution of the work.

Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the CONTRACTOR or any subcontractor under him.

Section 1777.5, as amended, requires the CONTRACTOR or subcontractor employing tradesmen in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices' journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five except:

- a. When unemployment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days prior to the request for certificate, or
- b. When the number of apprentices in training in the area exceeds a ratio of one to five, or
- c. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally, or
- d. When the CONTRACTOR provides evidence that he employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.

The CONTRACTOR is required to make contribution to funds established for the administration of apprenticeship programs if he employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

The CONTRACTOR and subcontractor under him shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

7. LEGAL HOURS OF WORK: Eight (8) hours of labor shall constitute a legal day's work for all workmen employed in the execution of this contract, and the CONTRACTOR and any subcontractor under him shall comply with and be governed by the laws of the State of California having to do with working hours set forth in Division 2, Part 7, Chapter 1, Article 3 of the Labor Code of the State of California as amended.

The CONTRACTOR shall forfeit, as a penalty to CITY, twenty-five dollars (\$25.00) for each laborer, workman, or mechanic employed in the execution of the contract, by him or any subcontractor under him, upon any of the work hereinbefore mentioned, for each calendar day during which said laborer, workman, or mechanic is required or permitted to labor more than eight (8) hours in violation of said Labor Code.

8. PAYROLL RECORDS The Contractor shall comply with and be bound by the provision of Labor Code Section 1776, which requires the Contractor and each Subcontractor to (1) keep accurate record and verify such records in writing under penalty of perjury, as specified in Section 1776, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform the City of the location of the records. The Contractor has ten (10) days in which to comply subsequent to receipt of a written notice requesting these records, or as a penalty to the City, the Contractor shall forfeit one hundred dollars (\$100) for each Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Statistics Enforcement, these penalties shall be withheld from progress payments then due.

9. CONTRACTOR'S LIABILITY: The City of Brea and/or its elected officials, officers, agents and employees ("Indemnitees") shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in performing the work; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, or for damage to adjoining or other property from any cause whatsoever arising out of or in connection with the performance of the work. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever,

except the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the work or at any time before its completion and final acceptance.

To the maximum extent permitted by law, the CONTRACTOR will defend, indemnify and hold the Indemnitees harmless from any and all actions, CITY against and will hold and save CITY harmless from any and all actions, claims, damages to persons or property, penalties, obligations, and/or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of any of the Indemnitees, or independent contractors who are directly responsible to CITY, and in connection therewith:

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
- b. The CONTRACTOR will promptly pay any judgment rendered against the CONTRACTOR or any of the Indemnitees covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder, and the CONTRACTOR agrees to save and hold the Indemnitees harmless therefrom.
- C. In the event any Indemnitee is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the work, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to Indemnitee any and all costs and expenses incurred by Indemnitee in such action or proceeding together with reasonable attorneys' fees.

So much of the money due to the CONTRACTOR under and by virtue of the contract as shall be considered necessary by CITY may be retained by CITY until disposition has been made of such actions or claims for damage as aforesaid.

10. NON-DISCRIMINATION: No discrimination shall be made in the employment of persons upon public works because of the race, color, or religion of such persons, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of Section 1735 of said Code.

11. CONTRACT RENEWAL NOTIFICATION: The CONTRACTOR must request, in writing, at least thirty (30) days prior to the end of each year of the contract, CONTRACTOR desire to extend the agreement and the CONTRACTOR'S desire for an adjustment in the rates of compensation as set forth in paragraphs 14 hereof.

12. NOTICES: All notices required or permitted here-under shall be deemed delivered to the party to whom notice is sent upon personal delivery thereof at the addresses set forth upon which said notice is placed, postage pre-paid, in the United States mail and addressed as follows:

CONTRACTOR:

Ben's Asphalt, Inc.
2200 S. Yale Street
Santa Ana, CA 92704

CITY:

Director of Public Works
Public Works – Street Division
545 N Berry St
Brea, CA 92621

13. SUPERVISOR DESIGNATION: CONTRACTOR shall provide to CITY's Director of Public Works, upon execution of this Agreement, the name of the individual employed by CONTRACTOR designated as the CONTRACTOR'S primary representative for the supervision and prosecution of the work. Said designated person shall be available, upon 30 minutes notice, to respond personally or by telephone to requests for information or instructions concerning the prosecution of the work from CITY's authorized representatives.

14. EXTENSION OF TERM: During the second twelve (12) month period of the Agreement, the Base Sum per month is subject to a cost-of-living adjustment (Stepped Up Base). The cost-of-living adjustment shall be set at the beginning of the second period adjustment date) in the following manner: The Consumer Price Index for all Urban Consumers (base year 1982-84 = 100) for the Los Angeles-Long Beach-Anaheim area published by the United States Department of Labor, Bureau of Statistics (Index) which is published for the month immediately preceding the adjustment date (Adjustment Index) shall be compared to the Index which was published for the date immediately preceding the beginning of the first twelve (12) month period (Beginning Index). If the Adjustment Index has increased over the Beginning Index, the monthly payment shall be increased

by the amount obtained by multiplying the base sum by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index.

15. **TERMINATION OR ABANDONMENT:** This agreement may be terminated by CITY without cause, upon the giving of a written "Notice of Termination" to CONTRACTOR at least fifteen (15) days prior to the termination date specified in said notice. CONTRACTOR may terminate this agreement only for cause. Termination of the Contract does not release CONTRACTOR from any and all claims, damages or other liability incurred during the contract until CITY acknowledges such release.

16. **ATTORNEYS' FEES:** In The event that any action or proceeding is brought by either party to enforce any term or provision of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.

17. **GOVERNING LAW AND VENUE.** The laws of the State of California shall govern the interpretation of this agreement. Venue for any legal action arising out of this agreement shall be the Superior Court of the State of California.

18. **IN WITNESS WHEREOF,** the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

State of California

Contractor's License No. 668417

[Signature]

Date: 5/1/17

By: Vice President
Title

CITY OF BREA, CALIFORNIA

By: [Signature]
Mayor

Attest: [Signature]
City Clerk



Date: 5/17/17

Contractor's Business Phone: 714-540-1700

Emergency Phone at which CONTRACTOR can be reached
at any time: Miles Day 714-231-2967

BOND NO.: 9208279

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Ben's Asphalt, Inc
2200 S. Yale Street
Santa Ana, CA 92704

SURETY:

Fidelity and Deposit Company of Maryland
777 S. Figueroa Street, Suite 3900
Los Angeles, CA 90017

OWNER (Name and Address):

City of Brea

CONSTRUCTION CONTRACT

Date: April 27, 2017

Amount: \$ 200,000.00

Two Hundred Thousand----- Dollars

Description (Name and Location):

Asphalt Pavement Maintenance throughout the City of Brea

BOND:

Date: April 28, 2017 (Not earlier than Construction Contract Date)

Amount: \$ 200,000.00

Two Hundred Thousand----- Dollars

Modifications to this Bond: ☒ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)
Ben's Asphalt, Inc.

Signature: [Signature]

Name: William Skiffington

Title: President

(Any additional signatures appear on the last page of this Payment Bond)

(FOR INFORMATION ONLY – Name, address and telephone)

AGENT OR BROKER:

Orion Risk Management
1800 Quail Street, Ste 110
Newport Beach, CA 92660

SURETY

Company: _____ (Corporate Seal)
Fidelity and Deposit Company of Maryland

Signature: [Signature]

Name: Trisha Engelhart

Title: Attorney in Fact

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.
5. The Surety's obligation to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants, who do not have a direct contract with the Contractor
 - .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - .2 have sent a Claim to the Surety (at the address described in Section 13)
 - 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).
6. If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor that is sufficient to satisfy a Claimant's obligations to furnish a written notice of non-payment under Section 5.1.1.
7. When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the

performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs, or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **DEFINITIONS**

16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or furnished or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the claim.

16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for a which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

- 16.3 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the Agreement and the Contract Documents.
- 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor. /
17. If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:

No Modifications

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name: _____

Title: _____

Signature: _____

Name: _____

Title: _____

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **MICHAEL BOND, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Patrick T. MOUGHAN, Trisha ENGELHART, Julie BRENNAN, Susan READING and Kimberly ANN**, all of **Newport Beach, California**, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 3rd day of August, A.D. 2016.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: *Eric D. Barnes*
Secretary
Eric D. Barnes

Michael Bond
Vice President
Michael Bond

State of Maryland
County of Baltimore

On this 3rd day of August, A.D. 2016, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **MICHAEL BOND, Vice President, and ERIC D. BARNES, Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Constance A. Dunn

Constance A. Dunn, Notary Public
My Commission Expires: July 9, 2019



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

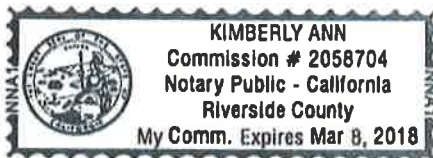
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Orange)
 On April 28, 2017 before me, Kimberly Ann, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared Trisha Engelhart
 Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Kimberly Ann
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Payment Bond
 Document Date: April 28, 2017 Number of Pages:
 Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☒ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: Fidelity and Deposit
Company of Maryland

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

City of Brea

FINANCE COMMITTEE COMMUNICATION

TO: Finance Committee Members
FROM: Bill Gallardo
DATE: 02/13/2018
SUBJECT: Agreement to Provide Motor Fuel

RECOMMENDATION

1. Approve the agreement with SC Fuels, Inc. to provide as-needed Motor Fuels; and
2. Authorize the Purchasing Agent to issue purchase orders in an aggregate not to exceed \$400,000 through December 31, 2018.

BACKGROUND/DISCUSSION

City of Brea purchases its motor fuel requirements on an as-need basis, which is normally done through national cooperative purchase agreements as they offer more competitive prices based on larger volumes than Brea could purchase on its own. Periodically, these agreements reach the end of their contract life, which is the case with SC Fuels. Since there were no other available cooperative or piggybackable agreements with SC Fuels, they offered to allow Brea to purchase fuel at the same competitive pricing as the City of Anaheim who generates much higher volume than Brea. Since the Anaheim contract did not have any piggyback or cooperative agreement clauses, Brea would have to establish its own contract to purchase fuels from SC Fuels at the Anaheim prices, which is now being recommended for approval.

Because the Anaheim contract expires December 31, 2018 with no remaining contract extensions available, a few months before the end of the proposed agreement, the Purchasing Division will solicit price and delivery information from the various national cooperative agreements, piggybackable contracts, other contracts that have been competitively bid, or consider a joint procurement with other interested governmental agencies. Staff will return to Council with a recommendation for whichever solution provides the best available pricing and is in the best interest of the City.

Staff requests that City Council approve the agreement with SC Fuels and authorize the Purchasing Agent to issue purchase orders for motor fuel to ensure that fuel is delivered without interruption and take advantage of competitive prices commensurate with Brea's requirements.

SUMMARY/FISCAL IMPACT

The City Council adopted Fiscal Year 2017-18 Budget has sufficient funding available for the requested amount for these purchases in the Public Works Department, Equipment Maintenance Division Expenditure Account for Fuel (480-51-5161-4361). Amounts for these purchases are subject to available budget appropriations for each fiscal year in which they occur. The requested not-to-exceed amount is based on the average annual purchases over the past two years and includes a contingency to allow for fluctuation in fuel prices.

RESPECTFULLY SUBMITTED

William Gallardo, City Manager

Prepared by: Neil Groom, Procurement and Contracts Administrator

Concurrence: Cindy Russell, Administrative Services Director and

Tony Olmos, Public Works Director

Attachments

Agreement

Certificate of Insurance

**AGREEMENT
BETWEEN CITY OF BREA
AND
SOUTHERN COUNTIES OIL, CO.**

This Agreement ("Agreement") is made and entered into this _____ day of _____, 20____ ("Effective Date"), by and between the CITY of Brea, a municipal corporation (hereinafter referred to as "CITY") and **SOUTHERN COUNTIES OIL CO.** a California Limited Partnership dba SC Fuels (hereinafter referred to as "CONTRACTOR").

I. Recitals

- A. CITY has solicited a proposal for the provision of fuel and related consulting services more fully described herein;
- B. CONTRACTOR has submitted a proposal in response thereto and represents CONTRACTOR is qualified and willing to perform such services;
- C. CITY has reviewed and evaluated CONTRACTOR's proposal, representations, qualifications, pricing, and promises to perform;
- D. CITY desires to retain CONTRACTOR to provide the Services, subject to the terms and conditions herein.

II. Agreement

NOW, THEREFORE, it is agreed by and between CITY and CONTRACTOR as follows:

- A. CONTRACTOR agrees to provide the services more fully described in Section II.B, below, and in Exhibit "A" attached hereto (collectively, "Services"), in accordance with all terms and conditions of this Agreement.
- B. CONTRACTOR agrees as follows:
 - 1. Upon receiving a written notice to proceed from CITY, CONTRACTOR shall commence performance in accordance with the required Services, all Federal, State, and CITY statutes, regulations, ordinances, and all applicable industry standards and

guidelines, including, but not limited to, any and all applicable environmental laws and regulations, all to the reasonable satisfaction of CITY.

2. CONTRACTOR shall supply copies of all required reports, writings, photographs and/or documents (hereinafter collectively referred to as "documents") including any supplemental documents to CITY, necessary for CONTRACTOR to perform the Services, or as otherwise specifically required hereunder. Copies of the documents shall be in such numbers as are required CITY.
3. Subject to the provisions of Section II. G, below, CONTRACTOR shall, at CONTRACTOR'S sole cost and expense, secure and hire such other persons as may, in the opinion of CONTRACTOR, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by CONTRACTOR, CONTRACTOR hereby warrants that such persons shall be fully qualified to perform Services required hereunder. CONTRACTOR further agrees that no subcontractor shall be retained by CONTRACTOR except upon the prior written approval of CITY.
4. CONTRACTOR, while fulfilling the terms of this Agreement, shall provide exceptional customer care. Any negative contact with staff, residents/citizens, businesses, visitors or other contractors shall be reported by CONTRACTOR immediately to CITY. CONTRACTOR's management and supervisory personnel shall intercede to resolve or mitigate the negative contact in conjunction with CITY staff. CITY and CONTRACTOR may agree in advance to a single person contact, a representative of either CITY or CONTRACTOR, for the investigation and response to complaints.

C. Compensation:

1. CITY shall pay CONTRACTOR for required Services satisfactorily performed by CONTRACTOR in accordance with those prices set

forth in Exhibit B. Payment shall cover cost of all labor, materials, supplies, and any and all other direct and indirect costs and fees, including work of employees, CONTRACTOR and subcontractors to CONTRACTOR necessary to perform the Services as required herein.

2. Payment for Services satisfactorily performed shall be made within a reasonable time after receipt of invoices submitted by CONTRACTOR as stated in Exhibit B.

D. Indemnity:

1. CONTRACTOR and CITY agree that CITY, its elected officials, officers, employees, agents and volunteers should, to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorneys fees, litigation costs, defense costs, court costs or any other cost arising out of, pertaining to or relating to the performance of this Agreement by CONTRACTOR. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to CITY.
2. To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify and hold CITY, its elected officials, officers, employees, agents and volunteers ("Indemnitees") free and harmless from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged, or threatened, actual attorneys fees and experts costs incurred by CITY, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in, arising out of, pertaining to or relating to the acts or omissions of CONTRACTOR, or those

of CONTRACTOR's officers, employees, agents, and/or subcontractors, in the performance of this Agreement. CONTRACTOR shall have no liability as to claims arising out of the sole, active negligence of the CITY, as established by agreement or by final court decision. All obligations under this provision are to be paid by CONTRACTOR as they are incurred by CITY. CONTRACTOR's obligation to defend, indemnify and hold the Indemnitees free and harmless, as set forth above in this Section II.D, shall also apply to any and all claims and liabilities, including damage to City property of any kind, attributable to or arising out of CONTRACTOR's negligent performance of professional fuel testing services pursuant to Section IV of Exhibit A.

3. Any tort claims filed against CITY related to CONTRACTOR's performance of this Agreement and subsequently tendered to CONTRACTOR shall be promptly investigated, and the resolution of such claims shall be promptly reported to CITY.
4. The obligations of CONTRACTOR under this or any other provision of this Agreement will not be limited by the provisions of any workers compensation act or similar act. CONTRACTOR expressly waives its statutory immunity under such statutes or laws as to CITY, its employees, agents, and officials.
5. CONTRACTOR agrees to obtain executed indemnity agreements with provisions identical to those as set forth here in this section from each and every subcontractor, sub-tier contractor or any other person or entity involved by, for, with or on behalf of CONTRACTOR in the performance of this Agreement. Notwithstanding the foregoing, CONTRACTOR agrees to be fully and primarily responsible for all claims and liabilities arising out of the acts or omissions of any of its contractors and sub-tier contractors in the performance of this Agreement.

6. Failure of CITY to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend CITY as set forth herein is binding on the successors, assigns or heirs of CONTRACTOR and shall survive the termination of this Agreement or this section.

E. Insurance:

1. Throughout the term of this Agreement, CONTRACTOR agrees to provide and maintain insurance as set forth in Exhibit C Insurance Requirements attached hereto and incorporated herein by reference.

F. Independent Contractor:

1. The parties hereto agree that CONTRACTOR and its employees, officers and agents are independent contractors under this Agreement and shall not be construed for any purpose to be employees of CITY.

G. Assignment:

1. No assignment of all or any part of this Agreement, and no subcontract to perform any obligation hereunder, shall be made, either in whole or in part, by CONTRACTOR without the prior written consent of CITY.

H. Termination:

1. CITY may terminate this Agreement upon the giving of a written "Notice of Termination" to CONTRACTOR at least thirty (30) days prior to the date of termination specified in said notice. In the event this Agreement is so terminated, and provided CONTRACTOR is not then in breach of this Agreement, CONTRACTOR shall be compensated at the amounts set forth in Exhibit B for Services furnished as of the date of termination.

2. CONTRACTOR may not terminate this Agreement except for cause.
3. Termination or expiration of this Agreement does not release CONTRACTOR from any claims, damages or other liability incurred prior to termination or expiration.

I. Governing Law:

1. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any litigation arising out of this Agreement shall be the Superior Court of the County of Orange.

J. Attorneys' Fees:

1. In the event any legal proceeding is instituted to enforce any term or provision of the Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the court to be reasonable.

K. Notices and Designated Representatives:

1. Any and all notices, demands, invoices, and written communications (notices) between Parties shall be addressed to the individuals set forth below who are primarily responsible for their respective parties' performance. Such notices shall be deemed as received by addressee within two working days after deposit in the United States mail or an express mail carrier or by verifiable electronic means.

CONTRACTOR

Southern Counties Oil, Co.

1800 W Katella Avenue, Suite 400

Orange, CA 92867

Karen Koep, Manager, Bids and Contracts

(805) 389-3550

koepk@scfuels.com

CITY

City of Brea – Public Works Department

1 Civic Center Circle

Brea, CA 92821

Tony Olmos, Public Works Director

714-990-7698

TonyO@CityofBrea.net

L. Entire Agreement:

1. This Agreement, together with all exhibits hereto and which are incorporated by reference herein, supersedes any and all other Agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party which is not embodied herein, nor any other agreement, statement or promise not contained in this Agreement, shall be valid or binding. In the event there is any conflict between the provisions of this document and any exhibit or attachment hereto, the provisions of this document shall govern.
2. Any modification of this Agreement shall be effective only if it is in writing signed by all parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above:

CONTRACTOR

Southern Counties Oil Co., a California Limited

Contractor Name: Partnership


Corporation Type: Limited Partnership

Printed Name: Patrick W. Barnecut

Title: VP of Supply and Marketing

Signature:

Date Signed:



11/13/17

Printed Name: Robert W. Bollar

Title: Corporate Secretary

Signature:

Date Signed:


11/13/17

[Two corporate signatures required.]

CITY

City of Brea

a municipal corporation

Printed Name: Cecilia Hupp

Title: Mayor

Signature:

Date:

ATTEST

Printed Name: Lillian Harris-Neal

Title: City Clerk

Signature:

Date:

Attachments (attached hereto and incorporated herein by reference):

Exhibit A – Specifications and Scope of Services

Exhibit B – Term and Compensation

Exhibit C – Insurance Requirements

EXHIBIT A
SPECIFICATIONS AND SCOPE OF SERVICES

I. Summary of Requirements

- A. CONTRACTOR shall provide as-needed motor fuel and related professional services, -as set forth in this Exhibit A.

II. Definitions

A. General

1. AST = above ground storage tanks.
2. CARB = California Air Resources Board.
3. CR = City Representative
4. Emergency = immediate requirement to maintain City operations
5. EPA = United States Environmental Protection Agency.
6. OPIS = Oil Price Information Service.
7. SCAQMD = Southern California Air Quality Management District.
8. UST = underground storage tanks.

B. Specific

1. Fuel Prices = the per gallon price for the LOS ANGELES, CA OPIS. This price will fluctuate daily according to the price changes of the OPIS.
2. DFP = U.S. On-Highway Diesel Fuel Prices for California per the U.S. Energy Information Administration, Weekly Retail Gasoline and Diesel (On-Highway) Prices.
http://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_sca_w.htm.
3. Transportation Costs = the per gallon fixed cost to transport the fuel to the City. This price is subject to change quarterly according to the price changes of the DPF.

4. Markup Costs = the per gallon fixed price, based on the quantities ordered, at the time ordered. This cost is for profit and other costs excluding: OPIS-priced fuel, all applicable fees and taxes, and transportation costs. This price is fixed and NOT subject to change for the duration of the agreement.

III. Specifications

A. General

1. Provide fuels that meet or better the requirements of the Fuel Specifications and all applicable federal, state, regional, and local requirements (EPA, CARB, SCAQMD).

B. Fuel Specifications

1. The fuels listed in the Fuel Specifications subsection may or may not be required at any given time; however, should they be required those specifications will dictate the product requirements.
2. Gallon = U.S. Gallon.
3. Fuel: B20 SME BioDiesel LSN2 Ultra = is a pre-blended petroleum diesel fuel meeting ASTM D975 and 100% (neat) bio-diesel fuel meeting ASTM 6751-07be1, where the Bio-Diesel content of blended fuel is 20% Bio- Diesel by volume (B20) shall be made from feed-stocks (raw materials) grown or recycled in the United States using sustainable practices wherever and whenever possible. Bio-Diesel fuel (B20) must be delivered as a pre-blended fuel; no on-site mixing.
4. Fuel: Diesel #2 Ultra-low Sulfur LSN2 (red-dye) = an ultra-low sulfur red-dye diesel fuel meeting ASTM D975.
5. Fuel: Diesel #2 Ultra-low Sulfur LSN2 = an ultra-low sulfur diesel fuel meeting ASTM D975-08.

6. Fuel: Gasoline Unleaded 87-octane = a non-MTBE unleaded 87-octane gasoline meeting all CARB specifications and regulations.
7. Quality = meets all applicable quality requirements, industry standard requirements, and is not contaminated with any foreign matter, cloudy, discolored, or malodorous.

C. Location Information

LN	Site	Address	(A)ST/ (U)ST	Unleaded Gallons	Diesel Gallons
1	City of Brea Service Ctr	545 N. Berry St	A	7000	3000
2	Brea Civic & Cultural Ctr	1 Civic Center Circle	U		1000
3	Brea Fire Station 2	400 N. Brea Blvd.	A		2000
4	Brea Fire Station 3	2600 E. Santa Fe Rd	U		2100

IV. Scope of Services

A. Testing

1. Provide as-requested professional fuel-testing services for purity and quality, contamination, additives, trans-mixed fuels or co-mingled fuels, physical properties testing, energy value, trace components, trace contaminants, safety and regulatory parameters, bacteria, and the like. All such testing shall be performed pursuant to standard industry protocols by a properly licensed chemical engineer, or other professional possessing any and all current and valid licenses and/or certifications necessary to lawfully perform such testing services and to certify the results thereof.
2. Provide test results to CR within 24 hours after results are available. Such results shall be provided in an industry recognized format.

B. Tank Monitoring and Keep Tanks Filled

1. Provide tank monitoring service to ensure that fuel is maintained at the optimal level.
2. Keep tanks filled at these optimal levels.

C. Orders

1. Do not hold orders to consolidate them unless specifically permitted by City.
2. Be familiar with locations, logistics, access and security requirements.
3. Make the necessary accommodations including type and size of transport unit required before loading fuel into those units, dispatching, and making delivery.

D. Delivery Information

1. Provide all necessary delivery devices to make delivery to each site as required.
2. Ensure that the transport units can accommodate the delivery logistics at every location prior to dispatching those units.
3. Deliver within eight (8) business hours of receipt of order from City.
4. Deliver on non-holiday, Monday through Friday, 7:00 am to 4:00 pm.
5. Deliver to the locations set forth in the Location Information subsection.

E. Reporting and Invoicing

1. Provide the OPIS daily wholesale rack average (A.M.) Los Angeles, Ca. OPIS prices as requested and with every invoice.
2. Provide separate invoices by fuel type for each delivery. Invoices that are not accompanied by the reports will not be paid and the payment cycle will not begin until satisfactory receipt of matching reports has been provided.

3. Ensure that the Purchase Order number (PO#); delivery date and location; fuel type, quantity, prices, all related pricing detail listed below, and price totals are on each invoice.

EXHIBIT B TERM AND COMPENSATION

I. Term

- A. The term of the agreement will be through December 31, 2018 based on available budget appropriations.

II. Compensation

- A. Compensation for satisfactorily providing the Services shall be the not-to-exceed sum of \$400,000 for the term of the Agreement.
- B. Payments will be made net 30 days after receipt of fuel and an accurate invoice, whichever comes later.

III. Pricing Terms

- A. Fuel Price is the per gallon price for required fuel based on the OPIS Daily Wholesale Rack Average (AM) for Los Angeles, CA, at the time the order is placed. The Fuel Price will fluctuate according to the price changes of the OPIS. Only the actual amount of delivered fuel is billable regardless of ordered amount.
- B. Transportation Costs is the per gallon fixed cost, based on the quantities ordered, to transport the fuel to CITY and the price is subject to quarterly changes.
- C. Markup Costs is the per gallon fixed price, based on the quantities ordered, at the time ordered. This cost is for profit and other costs excluding: the fuel itself, all applicable fees and taxes, and transportation costs. This price is fixed and NOT subject to change for the term of the Agreement.
- D. Government-mandated Fees and Sales Tax will be added to orders.

- E. No additional charges. Do not charge for rejected loads due to poor quality of fuel or incorrect type of fuel, minimum orders, return of undelivered fuel due to tank capacity being reached, environmental fees, fuel surcharges, etc.

IV. Unit Prices

- A. For the requirements stated in Exhibit A, the following prices apply:

LN	Description	Price per Gallon
FUEL: UNL GASOLINE		
1	FUEL: UNL GASOLINE: [ordered qty: 6,000+] (taxable)	OPIS LA
2	TRANSPORTATION COSTS (price subject to change quarterly) (taxable)	\$0.03
3	MARKUP (not subject to change) (taxable)	(\$0.06)
4	FUEL: UNL GASOLINE: [ordered qty: 2,500 to 5,999] (taxable)	OPIS LA
5	TRANSPORTATION COSTS (price subject to change quarterly) (taxable)	\$0.05
6	MARKUP (not subject to change) (taxable)	\$0.00
7	FUEL: UNL GASOLINE: [ordered qty: 0 to 2,499] (taxable)	OPIS LA
8	TRANSPORTATION COSTS (price subject to change quarterly) (taxable)	\$0.05
9	MARKUP (not subject to change) (taxable)	\$0.00
FUEL: CARB ULNo2 DIESEL		
10	FUEL: CARB ULNo2 DIESEL: [ordered qty: 6,000+] (taxable)	OPIS LA
11	TRANSPORTATION COSTS (price subject to change quarterly) (taxable)	\$0.03
12	MARKUP (not subject to change) (taxable)	(\$0.02)
13	FUEL: CARB ULNo2 DIESEL: [ordered qty: 2,500 to 5,999] (taxable)	OPIS LA
14	TRANSPORTATION COSTS (price subject to change quarterly) (taxable)	\$0.05
15	MARKUP (not subject to change) (taxable)	\$0.00
16	FUEL: CARB ULNo2 DIESEL: [ordered qty: 0 to 2,499] (taxable)	OPIS LA
17	TRANSPORTATION COSTS (price subject to change quarterly) (taxable)	\$0.06
18	MARKUP (not subject to change) (taxable)	\$0.00
FUEL: RED-DYE CARB ULNo2 DIESEL		
19	FUEL: RED-DYE CARB ULNo2 DIESEL: [ordered qty: 0 to 2,499] (taxable)	OPIS LA
20	TRANSPORTATION COSTS (price subject to change quarterly) (taxable)	\$0.06
21	MARKUP (not subject to change) (taxable)	\$0.00
22	FUEL: RED-DYE DIFFERENTIAL OVER CARB ULNo2 DIESEL (taxable)	\$0.00
FUEL: GROSS SME BIODIESEL TAX ADJUSTED MARKET INDEX, B20		
23	FUEL: GROSS SME BIODIESEL TAX ADJUSTED MARKET INDEX, B20, Carb ULS: [ordered qty: 6,000+] (taxable)	OPIS LA
24	TRANSPORTATION COSTS (price subject to change quarterly) (taxable)	\$0.04
25	MARKUP (not subject to change) (taxable)	\$0.00
26	FUEL: GROSS SME BIODIESEL TAX ADJUSTED MARKET INDEX, B20, Carb ULS: [ordered qty: 2,500 to 5,999] (taxable)	OPIS LA
27	TRANSPORTATION COSTS (price subject to change quarterly) (taxable)	\$0.08
28	MARKUP (not subject to change) (taxable)	\$0.00
29	FUEL: GROSS SME BIODIESEL TAX ADJUSTED MARKET INDEX, B20, Carb ULS: [ordered qty: 0 to 2,499] (taxable)	OPIS LA
30	TRANSPORTATION COSTS (price subject to change quarterly) (taxable)	\$0.10
31	MARKUP (not subject to change) (taxable)	\$0.00

End of Exhibit B

EXHIBIT C
INSURANCE REQUIREMENTS

I. Existing Coverage

- A. If CONTRACTOR uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so prior to commencing performance of the Services.

II. Coverage Requirements

- A. Unless otherwise approved in writing by the CITY's risk manager, the following coverages will be provided by CONTRACTOR and maintained on behalf of CITY and in accordance with the requirements set forth herein:
1. Commercial General Liability/Umbrella Insurance. Primary insurance shall be provided on ISO-CGL form No. CG 00 01 11 85 or 88 or similar. Total limits shall be not less than two million dollars (\$2,000,000) per occurrence for all coverage and three million dollars (\$3,000,000) general aggregate.
 2. CITY and its officers, agents and employees shall be named as additional insureds using ISO additional insured endorsement form CG 20 10 11 85 or similar (in no event will CITY accept an endorsement form with an edition date later than 1990).
 3. General and Auto Liability Insurance Coverage shall be provided on a "per occurrence" basis and shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to CITY or any employee or agent of CITY. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Umbrella Liability Insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall

include a "drop down" provision providing primary coverage above a maximum of \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy.

4. Coverage shall be in the following form as to any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion. Policies shall have concurrent starting and ending dates.
5. Business Auto/Umbrella Liability Insurance. Primary coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 or similar including symbol 1 (Any Auto). Limits shall be no less than one million dollars (\$1,000,000) per accident. Starting and ending dates shall be concurrent.
6. Workers' Compensation/Employers' Liability shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employers' liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects CITY, its officers, agents or employees.

B. Additional insurance requirements:

1. This Section supersedes all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
2. Nothing contained in this Section is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Section are intended to be

separate and distinct from any other provision in this Agreement and shall be interpreted as such.

3. All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available, or applicable. Nothing contained in this Agreement or any other agreement relating to CITY or its operations limits the application of each insurance coverage.
4. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all-inclusive, or to the exclusion of other coverage, or a waiver of any type.
5. For purposes of insurance coverage only, this Agreement shall be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
6. All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit CONTRACTOR, and CONTRACTOR's agents, officers, or employees from waiving the right of subrogation prior to a loss. Contractor hereby waives all rights of subrogation against CITY.
7. Unless otherwise approved by CITY, CONTRACTOR's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of "A VII."

8. In the event any policy of insurance required by this Agreement does not comply with these requirements or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONTRACTOR. Upon CONTRACTOR's failure to make such reimbursement within 30 days of written demand, CITY may deduct that sum from any monies due CONTRACTOR hereunder or otherwise.
9. CONTRACTOR agrees to provide evidence of the insurance required herein, satisfactory to CITY, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to CONTRACTOR's general liability and umbrella liability policy (if any) using ISO form CG 20 10 11 85 or similar. Certificate(s) are to reflect that the insurer will provide 30 days' notice of any cancellation of coverage. CONTRACTOR agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regarding to any notice provisions. CONTRACTOR agrees to provide complete copies of policies to CITY upon request.
10. CONTRACTOR shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof shall be furnished within 72 hours of the expiration of the coverage.
11. Any actual or alleged failure on the part of CITY or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any

right or remedy of CITY or any additional insured, in this or any other regard.

12. CONTRACTOR agrees to require all subcontractors or other parties hired for this project to provide general liability insurance naming as additional insureds all parties to this Agreement. CONTRACTOR agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. CONTRACTOR agrees to require that no contract used by any subcontractor, or contracts CONTRACTOR enters into on behalf of CITY, will reserve the right to charge back to CITY the cost of insurance required by this Agreement. CONTRACTOR agrees that upon request, all agreements with subcontractors or others with whom CONTRACTOR contracts on behalf of CITY will be submitted to CITY for review. Failure of CITY to request copies of such agreement will not impose any liability on CITY, its officers, agents, or employees.
13. If CONTRACTOR is a Limited Liability Company (LLC), general liability coverage must be amended so that the LLC and its managers, affiliates, employees, agents and other persons necessary or incidental to its operations are insureds.
14. CONTRACTOR agrees to provide immediate notice to CITY of any claim or loss against CONTRACTOR that includes CITY as a defendant. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims.

End of Exhibit C



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/07/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh Risk & Insurance Services 17901 Von Karman Avenue, Suite 1100 (949) 399-5800; License #0437153 Irvine, CA 92614	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL ADDRESS:
INSURED Southern Counties Oil Co., A CA LP Southern Counties Lubricants, LLC, Cardlock Fuels System, Inc. dba SC Fuels, dba Canyon State Oil P.O. Box 4159 Orange, CA 92863-4159	INSURER(S) AFFORDING COVERAGE INSURER A: Federated Service Insurance Company INSURER B: Insurance Company Of The West INSURER C: INSURER D: INSURER E: INSURER F:
999999-STND-GAWU-17-18	NAIC # 28304 27847

COVERAGES **CERTIFICATE NUMBER:** LOS-002355279-06 **REVISION NUMBER:** 7

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVO	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	X	9170666	11/01/2017	11/01/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> Auto Pollution	X	X	9170666	11/01/2017	11/01/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ COMP/COLL DEOS: \$ 1,000
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION S	X	X	9170667	11/01/2017	11/01/2018	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	X	N/A	WVE508499501	11/01/2017	11/01/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E L EACH ACCIDENT \$ 1,000,000 E L DISEASE - EA EMPLOYEE \$ 1,000,000 E L DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
The City of Brea and its officers, agents and employees are named as additional insureds (except workers compensation) where required by written contract. Coverage is primary and non-contributory. Waiver of subrogation is applicable where required by written contract and subject to policy terms and conditions.

CERTIFICATE HOLDER

City of Brea 1 Civic Center Circle Brea, CA 92821	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh Risk & Insurance Services Pamela Petersen
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

CITY OF BREA
1 CIVIC CENTER CIR
BREA CA 92821

- (If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Job or Project:

ANY COVERAGE PROVIDED BY THIS ENDORSEMENT APPLIES ONLY TO THE DELIVERY
OF FUEL TO THE CERTHOLDER'S PREMISES. ADDITIONAL INSUREDS ALSO INCLUDE
CITY OF BREA ITS OFFICERS, AGENTS AND EMPLOYEES.

Insured:

SOUTHERN COUNTIES OIL CO A
CALIFORNIA LIMITED PARTNERSHIP
1800 W KATELLA AVE STE 400
ORANGE CA 92867

Copyright, Insurance Services Office, Inc., 1992

CG-F-64 (05-97)
(CG 20 10 11-85)

Policy Number: 9170666

Transaction Effective Date: 10-31-2017

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIMARY AND NONCONTRIBUTORY -
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance Condition** and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

FEDERATED INSURANCE COMPANIES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST
OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV - Conditions:

We waive any right of recovery we may have against any person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard", except when the payments result from the sole negligence of that person or organization. We waive this right only when you are required to do so by written contract or agreement with that person or organization, executed by you prior to the occurrence of any loss.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED BY CONTRACT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A. WHO IS AN INSURED for "bodily injury" and "property damage" liability is amended to include:
Any person or organization other than a joint venture, for which you have agreed by written contract to procure bodily injury or property damage "auto" liability insurance arising out of operation of a covered "auto" with your permission. However, this additional insurance does not apply to:
- (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
 - (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
 - (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
 - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
 - (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
- B. The coverage extended to any additional insured by this endorsement is limited to, and subject to all terms, conditions, and exclusions of the Coverage Part to which this endorsement is attached.
- In addition, coverage shall not exceed the terms and conditions that are required by the terms of the written agreement to add any insured, or to procure insurance.
- C. The limits of insurance applicable to such insurance shall be the lesser of the limits required by the agreement between the parties, or the limits provided by this policy.
- D. Additional exclusions. The insurance afforded to any person or organization as an insured under this endorsement does not apply:
1. To "loss" which occurs prior to the date of your contract with such person or organization;
 2. To "loss" arising out of the sole negligence of any person or organization that would not be an insured except for this endorsement.
 3. To "loss" for any leased or rented "auto" when the lessor or his or her agent takes possession of the leased or rented "auto" or the policy period ends, whichever occurs first.

FEDERATED INSURANCE COMPANIES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NON-CONTRIBUTORY CLAUSE ENDORSEMENT

This endorsement modifies insurance provided under the following:

**AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE PART**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

It is agreed that the insurance provided by any additional insured endorsement is primary when primary coverage is required in a written contract. We will not seek contribution from any insurer when insurance on a non-contributing basis is required in a written contract. For coverage to apply, the written contract must have been executed prior to the occurrence of "loss".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET WAIVER OF TRANSFER OF RIGHTS OF RECOVERY

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

In the event of any payment for a loss under this Business Auto Coverage Part arising out of your ongoing operations, we agree to waive our rights under the TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US condition against any person or organization, its subsidiaries, directors, agents or employees, for which you have agreed by written contract, prior to the occurrence of any loss, to waive such rights, except when the payment results from the sole negligence of that person or organization, its subsidiaries, directors, agents or employees.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT - BLANKET

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us).

The additional premium for this endorsement shall be 3% of the total California Workers' Compensation premium otherwise due.

Schedule

Person or Organization

ANY PERSON OR ORGANIZATION
FOR WHOM THIS WAIVER IS
REQUIRED.

Job Description

ALL CALIFORNIA OPERATIONS.

Policy Number: WVE5084995 - 01

Insured: Southern Counties Oil Co

Endorsement Effective: 11/01/2017

Coverage Provided by: Insurance Company of the West

Issue Date: 10/26/2017

Countersigned by: