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**CITY OF SANTA ROSA
GENERAL SERVICES AGREEMENT
WITH NICK BARBIERI TRUCKING, LLC
AGREEMENT NUMBER _____**

This "Agreement" is made as of this ____ day of _____, 2013, by and between the City of Santa Rosa, a municipal corporation ("City"), and Nick Barbieri Trucking, LLC, dba Redwood Coast Fuels, a California Limited Liability Company, ("Contractor").

RECITALS

A. City desires to purchase diesel and unleaded regular gasoline and delivery services.

B. City desires to retain a qualified contractor to conduct the services described above in accordance with the terms of this Agreement.

C. Contractor represents to City that it is fully qualified to conduct the services described above.

D. The parties have negotiated upon the terms pursuant to which Contractor will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide to City the services described in City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel Section 1 dated August 7, 2013 and Contractor's bid dated August 28, 2013, all of which are attached hereto as Exhibits A and B (in order of precedence) which are incorporated by reference as though fully set forth herein. Contractor shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto solely for the purpose of defining the manner and scope of services to be provided by Contractor and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. The parties agree that any term contained in Exhibit B that adds to, varies or conflicts with the terms of this Agreement is null and void.

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2. TIME FOR PERFORMANCE

The services described herein shall be provided as set forth in Exhibits A and B. Contractor shall devote such time and effort to the performance of services as is necessary for the satisfactory and timely performance of Contractor's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

3. STANDARD OF PERFORMANCE

Contractor shall perform all services required under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's occupation in California. All products and services of whatsoever nature that Contractor provides to City pursuant to this Agreement shall conform to the standards of quality normally observed by persons currently practicing in Contractor's occupation, and shall be provided in accordance with any schedule of performance specified in Exhibit A. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, at any time during the term of this Agreement, desires the removal of any person assigned by Contractor to perform services pursuant to this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

4. COMPENSATION

The total of all fees paid to Contractor for the satisfactory performance and completion of all services set forth in Exhibits A and B shall not exceed the total sum of five million dollars and no cents (\$5,000,000). The Chief Financial Officer is authorized to pay all proper claims from the appropriate IFAS keys.

5. BILLABLE RATES, PAYMENTS TO CONTRACTOR

a. Billable Rates. Contractor shall be paid for the performance of services at as set forth in Exhibit B.

b. Payments. Payments will be delayed where Contractor fails to provide the information required under subsection c.1 below or fails to comply with the insurance requirements in Attachment One to this Agreement. In no event shall the City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice.

c. Invoices. Payment will be made on a calendar-month basis in arrears. Invoices shall be submitted to the person and address specified in the Agreement, bid, or purchase order. In the event this Agreement becomes effective or terminates during the course of a month, the amount paid to the Contractor for the partial month shall be determined by prorating the amount on the basis of the number of calendar days involved. Processing of payment will be delayed for Contractor's failure to include reference to Agreement (including number) on the invoice **and for failure to**

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maintain current insurance information with the City in accordance with insurance requirements hereunder. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in the Contractor's invoice. Invoices for services provided in June or for any services not previously invoiced shall be submitted within 10 working days after June 30 to facilitate City fiscal year end closing. Failure to comply with this invoice submission requirement may delay payment.

In connection with any cash discount specified in the bid response, if applicable, or Contractor's Proposal, time will be computed from the date correct invoices are received by the person and address specified in the Agreement, bid, or purchase order. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check. All invoices shall contain the following information:

1. Contractor name and remittance address
2. Date of invoice issuance
3. Amount of invoice
4. City purchase order or Agreement number
5. Identification of Agreement or purchase order line item(s) (if multiple lines) and description of services provided
6. Date of completion of services
7. Detail of costs, including labor, materials, tax, etc.

d. Business Taxes. Contractor shall pay to the City when due all business taxes payable by Contractor under the provisions of Chapter 6-04 of the Santa Rosa City Code. The City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Contractor.

6. TERM, SUSPENSION, TERMINATION

a. The term of this Agreement shall be for two years commencing on the date it is made above. City and Contractor may, upon mutual written agreement of both parties, extend this Agreement for three one-year periods, one two-year period, one three-year period, or any combination not to exceed a total of three years.

b. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If City gives such notice of suspension, Contractor shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time by giving a written notice of termination to Contractor. If City gives such notice of termination, Contractor shall immediately cease rendering services pursuant to this Agreement. If City terminates this Agreement, City shall pay Contractor the reasonable value of services rendered by Contractor prior to termination. In this regard, Contractor shall furnish to City such information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Contractor. City shall not in any manner be liable for lost profits that might have been made by Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement.

7. TERMINATION OF AGREEMENT FOR DEFAULT

If at any time 1) Contractor fails to conform to the requirements of this Agreement; 2) Contractor seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Contractor which may interfere with the performance of this Agreement; or 4) Contractor has failed to supply an adequate working force, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of this Agreement, which default is not fully corrected or remedied to the reasonable satisfaction of City within ten (10) days following the date a written notice thereof by City, then City shall have the right and power, at its option and without prejudice to any other rights or remedies it may have, to immediately terminate this Agreement. Any cost or expense incurred by City arising out of Contractor's breach or default hereunder, and for City's enforcement of these rights, shall be the obligation of Contractor and may, at City's discretion, be deducted from any amounts that may then be owing to Contractor under this Agreement, without any release or waiver of any other rights or remedies in law or equity to which City may be entitled.

8. INDEMNIFY AND HOLD HARMLESS AGREEMENT

Contractor shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same results from or arises out of the performance of this Agreement by Contractor, its officers, employees, agents, or sub-contractors, excepting only that resulting from the sole, active negligence or intentional misconduct of City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employees' benefits acts. The provisions of this Section 8 shall survive any expiration or termination of this Agreement.

9. INSURANCE REQUIREMENTS

Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated herein by this reference. Maintenance of the insurance coverages as set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Contractor in exchange for the City's agreement to make the payments prescribed hereunder. Failure by Contractor to (i) maintain or renew coverage, (ii) provide the City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the City as a material breach of this Agreement by Contractor, whereupon the City shall be entitled to all rights and remedies at law and in equity, including but not limited to the immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under this Agreement. In the event Contractor, with approval of the City

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pursuant to Section 11 below, retains or utilizes any subcontractors in the provision of any services to City under this Agreement, Contractor shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in Attachment One.

10. LEGAL REQUIREMENTS AND PERMITS

Contractor represents and warrants that Contractor has all licenses, permits, City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Contractor to practice its occupation and provide services under this Agreement. Contractor shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.; (iii) OSHA; and (iv) the Immigration Reform and Control Act of 1986. Contractor shall, if requested by City, provide certification and evidence of such compliance. If Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

11. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not subcontract or assign any right or obligation under this Agreement without the written consent of the City. Any attempted or purported subcontract or assignment without City's written consent shall be void and of no effect. No right under this Agreement, or claim for money due or to become due hereunder, shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this Agreement or any part thereof and Contractor hereby agrees to indemnify and hold City harmless against any and all such claims. In the event Contractor obtains the prior written consent of City to assign monies due or to become due under this Agreement, Contractor shall provide City a copy of the instrument of assignment duly executed by Contractor, which shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work. Upon notice and request by the City, Contractor shall promptly remedy, to include termination of any subcontract as appropriate and necessary, any default or failure to perform in a satisfactory manner the work undertaken by any subcontractor. Contractor shall be fully responsible and accountable to the City for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by them, to the same extent that Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.

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12. BINDING EFFECT

This Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the parties, subject to the provisions of Section 11, above.

13. RETENTION OF RECORDS

Contractor shall be required to retain any records necessary to document the charges for the services to be performed under this Agreement and make such records available to the City for inspection at the City's request for a period of not less than four (4) years.

14. ENTIRE AGREEMENT

This document, including all Exhibits and Attachment One, contains the entire agreement between the parties and supersedes whatever oral or written understanding the parties may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Santa Rosa City Code.

15. SEVERABILITY

If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. WAIVER

Neither City acceptance of, or payment for, any service performed by Contractor, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

17. ENFORCEMENT OF AGREEMENT

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

18. CONTRACTOR NOT AGENT

Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.

19. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Contractor, in the performance of Contractor's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are

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employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors.

d. The provisions of this Section 19 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

20. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

City

Jim Wright
Purchasing Agent
631 First Street, 2nd Floor
Santa Rosa, California 95404
Phone: (707) 543-3706
Fax: (707) 543-3703
jwright@srcity.org

Contractor

Randy Parker
Redwood Coast Fuels
50 West Lake Mendocino Dr.
Ukiah, California 95482
Phone: (707) 463-3100
Cell: (707) 391-1040
randallgparker@att.net

21. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to the City that it is (a) a duly organized and validly existing corporation, formed and in good standing under the laws of the State of California, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Contractor hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Contractor in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the

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board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

CONTRACTOR:

CITY OF SANTA ROSA
a Municipal Corporation

Name of Firm: Nick Barbieri Trucking, LLC,
dba Redwood Coast Fuels

TYPE OF BUSINESS ENTITY:

- Individual/Sole Proprietor
- Partnership
- Corporation
- Limited Liability Company
- Other (please specify: _____)

By: _____

Print Name: _____

Title: _____

Signatures of Authorized Persons:

APPROVED AS TO FORM:

By: _____

Office of the City Attorney

Print Name: _____

ATTEST:

Title: _____

By: _____

City Clerk

Print Name: _____

Title: _____

Taxpayer I.D. No. _____

City of Santa Rosa Business Tax Cert. No.

Attachments:

- Attachment One - Insurance Requirements
- Exhibit A - City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel dated August 8, 2013
- Exhibit B - Contractor's bid dated August 28, 2013

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
GENERAL SERVICES AGREEMENTS**

- A. Insurance Policies:** Contractor shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 2 million per occurrence \$ 4 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
4. Pollution Liability	\$500,000	If the work involves lead-based paint or asbestos identification/remediation, the policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the policy must not contain mold exclusion and the definition of "Pollution" in the policy must include microbial matter, including mold.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
2. Liability policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the contract. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Self-insured retentions above \$10,000 must be approved by the City. At the City's option, Contractor may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Exhibit A

NOTICE

IF RECEIVING THIS IFB BY INTERNET, CALL (707) 543-3700 TO REGISTER AS A BIDDER. FAILURE TO REGISTER AS A BIDDER MAY RESULT IN YOUR FIRM NOT RECEIVING BID ADDENDUMS. FAILURE TO SUBMIT BID ADDENDUMS WITH BID MAY CAUSE YOUR BID TO BE CONSIDERED NON-RESPONSIVE.



City of Santa Rosa

INVITATION FOR BIDS 13-44

UNLEADED GASOLINE AND DIESEL FUEL

DATE ISSUED

August 8, 2013

BIDS DUE

(Bid Opening)

August 28, 2013 at 2:00 p.m.

635 1st Street – Second Floor
Santa Rosa, CA 95404

TO

Jim Wright, Purchasing Agent
City of Santa Rosa – Purchasing Office
635 First Street, 2nd Floor
Santa Rosa, CA 95404
(707) 543-3706
(707) 543-3703
jwright@srcity.org



The City of Santa Rosa does not discriminate on the basis of disability in the admissions or access to, or treatment of or employment in its programs or activities. Disability-related aids or services, including printed information in alternate formats, to enable persons with disabilities to participate in public meetings, programs, bid openings, and to deliver bid packages to the location specified herein, are available by contacting the Purchasing Agent, Jim Wright at (707) 543-3706 one week prior to the meeting, program, bid due date or formal bid opening.

**INVITATION FOR BIDS 13-44
UNLEADED GASOLINE AND DIESEL FUEL**

Sealed Bids, signed and in the original only, subject to the Invitation For Bids, Provisions and Specifications, will be received at City of Santa Rosa, **Purchasing Office, 635 First Street, 2nd Floor Santa Rosa, CA 95404 until 2:00 p.m., on Wednesday, August 28, 2013,** for unleaded gasoline and diesel fuel.

The Intent of this Invitation for Bids is to establish two-year term contract(s), with three one-year renewal options for the purchase of unleaded regular gasoline and diesel for the City of Santa Rosa in accordance with the terms, conditions and work specifications contained herein. The City may award on an “all or none” basis, or may make multiple awards by section if deemed in the best interest of the City.

The City may purchase unleaded regular gasoline and diesel outside of this contract if, in the opinion of the City, this is necessary to meet operation requirements.

Services shall include furnishing all qualified labor, product, equipment, and transportation necessary to perform the work outlined in this contract. All deliveries must be FOB destination.

Do not add State of California sales tax or any of the taxes or fees the City is required to pay in your margin quoted. Any additional costs such as: fuel and insurance surcharges and CA UST diesel and gas charges, must be included in your margin quoted.

Section 1

Truck and Trailer Delivery

LOCATIONS	# OF TANKS	STORAGE CAPACITY IN GALLONS	TYPE OF FUEL	ESTIMATED 2-YR USAGE	INCREASE/ MARGIN PER GALLON OVER PULL POINT RACK AT REFINERY
Municipal Services Center – North 55 Stony Point Road	1	15,000	Regular Unleaded gasoline	500,000	
Municipal Services Center – North 55 Stony Point Road	2	35,000	Diesel	800,000	

Section 2

Bobtail Delivery

LOCATIONS	# OF TANKS	TANK SIZE IN GALS	TYPE OF FUEL	ESTIMATED 2-YR USAGE	INCREASE/ MARGIN PER GALLON OVER PULL POINT RACK AT REFINERY
Laguna Treatment Plant 4300 Llano Road	1	15,000	Red Dye Diesel	50,000	
Brown Farm 2200 Llano Road	1	500	Unleaded Regular Gasoline	2,000	
Brown Farm 2200 Llano Road	1	500	Diesel	4,000	
Fire Station #1 955 Sonoma Avenue	1	2,000	Diesel	9,000	
Fire Station #3 3311 Coffey Lane	1	500	Diesel	7,000	
Fire Station #4 1775 Yulupa Avenue	1	800	Diesel	5,000	
Fire Station #5 3480 Parker Hill Road	1	500	Diesel	6,000	
Fire Station #6 205 Calistoga Road	1	500	Diesel	3,000	
Misc. Utilities Dept. Pump Stations and Wells	12	various	Red Dye Diesel	500	

BID

In compliance with the above, the undersigned offers and agrees, if this IFB is accepted, within ninety (90) calendar days from date of opening, to furnish any or all of the items upon which prices are offered at the price set opposite each item, delivered at the designated point(s) within the time specified in the Schedule. Discounts will be allowed for prompt payment as follows:

N/A percent, 20 calendar days; _____ percent, 30 calendar days.

Name and Address of Bidder:	Signature of Person Authorized to Sign:
Phone No.	
Date of Bid:	Please Type Signer's Name and Title:

BID ITEM(S) AVAILABLE FOR OTHER AGENCY "PIGGY-BACK" PROCUREMENT:

YES NO

NOTE: Prospective sellers are referred to GENERAL PROVISIONS for terms and conditions of OTHER AGENCY "PIGGY-BACK" PROCUREMENTS.

SPECIFICATIONS

It is the intent of these specifications to describe the unleaded gasoline and diesel fuel that shall meet or exceed the specifications described in the following minimum specifications.

Any deviation from the written specifications shown in the Invitation For Bids shall be noted in the Exceptions Section of the Invitation. (See Required Data Section – Page 26 of 39)

Attention should also be directed to the Required Data Section of the bid in order to provide the data required.

In order to receive full consideration, submitted bids must fully follow these Specifications and the Invitation for Bids' Special Provisions and General Provisions.

**MINIMUM SPECIFICATIONS FOR
UNLEADED GASOLINE AND DIESEL FUEL**

GASOLINE: Unleaded regular gasoline minimum 87 Octane

DIESEL: Ultra Low Sulfur and Red Dye

1. Must meet ASTM designation D-975 (Grade 2-D)
2. Maximum final boiling point of 675 degrees Fahrenheit.
3. Minimum cetane No. 40.
4. Maximum sulfur content of 0.50% by weight.

SPECIAL PROVISIONS

CONTRACT PERIOD: The resulting contract shall be in effect from November 1, 2013 or date of award if subsequent thereto for a period of two years, with the option to renew the contract for three 1-year extensions, or any combination not exceeding a total of three years upon written consent of the contractual parties.

ORDERS: Orders against the contract will be placed by a duly authorized City employee or according to a schedule provided by a duly authorized City employee, unless notified differently in writing.

DELIVERY REQUIREMENTS:

1. The vendor shall be required to complete all deliveries within twenty-four (24) hours from time of request, except when requested on a Friday or prior to a holiday, which shall cause delivery to be made on the next regularly scheduled City work day.
2. Truck and trailer fuel deliveries will require a copy of the bill of lading from the refinery. Copies of the bill of lading can either be delivered to MSC-North Warehouse, 55 Stony Point Road, Santa Rosa, or faxed to (707) 543-4217, or emailed to the Stores Specialist within twenty-four (24) hours of delivery for all sites.
3. All bobtail fuel deliveries to be metered by a Sonoma County Department of Weights and Measures approved metering device and the tank shall be stick measured before delivery by the driver. All delivery tags shall be annotated as to each type of reading for amounts delivered.
4. Each delivery tag for gasoline shall be annotated as to octane level of fuel delivered. At least once quarterly, if desired, the City will randomly monitor gasoline octane. This once per quarter testing cost shall be borne by the contractor. Any testing beyond one time, in any particular calendar quarter, shall be the responsibility of the City.
5. The delivery sites are listed on Pages 2 and 3 of this Invitation for Bids. Deliveries shall be coordinated through the Purchasing Division or a duly authorized City employee.

6. All prices shall be F.O.B. delivered to the designated City of Santa Rosa site as listed on Pages 2 and 3, unless otherwise specified. All delivery charges to be included in the margins bid on Pages 2 and 3.
7. Diesel fuel delivery shall be verified with each delivery site involved, and where deemed necessary by the City, shall be delivered at least once each week so as to reduce the chance of water contamination and bacteria build-up. In no case shall fuel levels be allowed to drop below 20% of fuel capacity where deemed necessary by the City. Vendor(s) agree, by submission, to replace any contaminated fuel, caused by contractor delay in delivery, within 24 hours of such notification by the City.
8. Bobtail deliveries as described in Section 2 will be necessary for the smaller quantity deliveries of fuel, but in no case shall there be a need for less than 100 gallons per delivery site. Any delivery that does not meet the above criteria may be charged at the appropriate gallon cost.
9. Emergency Product Delivery: If, in the event that unforeseen circumstances should create a fuel shortage and/or a priority delivery schedule, the vendor agrees that the City of Santa Rosa will be guaranteed a first delivery priority of fuel to maintain all City Emergency Services. The vendor will furnish emergency fuel deliveries within twenty-four (24) hours from receipt of order when necessary.

Please indicate if you will comply with this requirement: YES____ NO____

10. Each vendor to provide their delivery assets within 150 miles radius of the Santa Rosa area:

- a. Number of Truck and Trailers: _____ Capacity: _____gallons.
- b. Number of Bobtail Trucks: _____ Capacity: _____gallons
- c. Number of Drivers: _____
- d. Number of Dispatchers: _____

Please state whether the above list is:

Contractor owned:	_____
Contractor leased/rented:	_____
Subcontractor owned:	_____
Independent Owner/Operator:	_____
Other:	_____

If Subcontractor owned please provided the following:

Name: _____	Contact person: _____
Address: _____	Telephone number: _____

If other, please explain: _____

Comments: _____

OTHER REQUIREMENTS:

1. Each bidder shall conform to California Business and Professional Code, Section 13520, to wit:

Basis of settlement: temperature corrected gallonage - - "It is unlawful for any distributor, or for any broker, to sell any product to a retailer or to any person, when the quantity distributed in the single delivery, to a single location is 5,000 gallons or more, as or purporting to be gasoline or diesel fuel, unless the distributor or broker, as the case may be, offers to invoice the purchaser for such gasoline or diesel fuel on the basis of temperature-corrected gallonage to 60 degrees Fahrenheit, for all such deliveries to the purchaser, over a period of twelve (12) consecutive months, and settles his account with the purchaser on the same basis."

2. Vapor recovery systems for gasoline must be on all contractor delivery systems and shall carry systems that are compatible with the vapor recovery system of each tank at each delivery site to which such gasoline is required to be delivered.

Further, the vapor recovery system of each conveyance shall be in compliance with all regulations by the local and state authority, or the U.S. Environmental Protection Agency, whichever has authority over jurisdiction of recovery of gasoline vapors.

3. The contractor shall use reasonable care to avoid damage or contamination of existing buildings, equipment, asphalt, soil or vegetation, at any City delivery site. If the contractor causes damage or contamination, he shall replace the damaged items or repair the damage at no expense the City, and to the satisfaction of the City.
4. Free Time and Detention Rates: Upon arrival of contractor's delivery equipment at delivery site(s), specify below the free time offered and detention rates that may apply. Detention rate(s) beyond free time shall apply only with respect to delays caused by the City.

Specify here the free time offered: _____

Specify here the detention rate to be charge, after expiration of free time, for any City caused delay in delivery: _____

BID PRICING:

1. The City of Santa Rosa does not agree to purchase any maximum or minimum amounts with the award of this bid, quantities listed are estimates only.
2. Bidder shall bid fuel at increase/margin over their "pull point" rack price for each bid item; "pull point" rack being the actual vendor's price paid to the refinery.
3. The determination of the price payable for each delivery of an item shall be accomplished by adding increase or margin to the Contractor's "pull point" rack price on the date of delivery.
4. No upward price adjustment shall be due the Contractor, when a Contractor delay beyond the 24-hour notice, causes a price increase after the City places an order, unless the Contractor's failure to make earlier delivery results from causes which are beyond the control of and without fault of the Contractor.

5. After orders are placed, Contractor is expected to shop refineries for the most competitive rack price available and purchase product from that refinery for delivery to the City.
6. All prices quoted shall be F.O.B. destination, all Santa Rosa delivery sites and exclusive of California State Sales Taxes.
7. The quoted markup (increase or margin) offered shall remain firm throughout the contract period, although the City may receive the benefit of any rebates, allowances, or other price reduction incentives offered to customers of the Contractor, including any passthrough incentives from the refineries.

BID EVALUATION:

Bids shall be evaluated by applying the margins bid for each item to the average price paid for these items by the City for the previous three month period ending July 31, 2013, times the estimated bi-annual usage plus applicable taxes. The lowest bidder will be determined by adding the extended amounts for Section 1 and for Section 2, with each section evaluated independently.

AUDITING OF INVOICES:

The City reserves the right to periodically audit pull point rack invoices of the successful bidder to ensure the prices being charged to the City are as specified in the bid.

REFERENCES:

Bidders shall provide the names and locations of comparable contracts with other municipalities or government agencies or private companies operating under this model bid within the past five (5) years.

CITY OF SANTA ROSA CONTRACT:

The successful bidder will be required to sign a contract substantially similar to the sample contract provided as Attachment A, and shall comply with the insurance requirements therein. Should the bidder be unwilling to sign this contract as is, the reasons why must be stated in the Required Data Section, Exceptions to the Specifications of this Invitation for Bids on Page 26 of 39.

GENERAL PROVISIONS

Bids: Discounts for prompt payment must be shown on bid, otherwise prices will be considered net. Prompt payment discounts of less than 30 days following final acceptance of the equipment/materials by the City will not be factored into the evaluation of bids. Unless prices and all information requested are complete, bid may be disregarded and given no consideration.

This Invitation For Bids shall result in a firm, fixed price contract to purchase.

In case of default by the vendor, the City of Santa Rosa may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to

the vendor, the difference between the price named in the contract or purchase order and actual cost thereof to the City of Santa Rosa. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.

All prices and bids must be in ink or typewritten. No pencil figures or erasures are permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing the bid. All bids must be signed with the firm's name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

Submission of Bids: Each bid must be submitted on the prescribed form in a sealed envelope with a bid number, closing date and time on the outside. Each bid must be signed as indicated above.

Information must be furnished complete in compliance with the terms, conditions, provisions and specifications of the Invitation For Bids. The information requested and the manner of submission is essential to permit prompt evaluation of all bids on a fair and uniform basis. Accordingly, the City reserves the right to declare as non-responsive, and reject any bid in which material information requested is not furnished or where indirect or incomplete answers or information is provided.

Bids shall be for the total net price including all applicable taxes and charges, delivered F.O.B., City of Santa Rosa.

Bids and modifications or corrections thereof received after the closing time specified will not be considered.

No telegraphic, telephone or facsimile of bids will be accepted. If a photocopy is to be submitted, it must be signed in original, in ink.

If you do not bid, return this Invitation For Bids and state reason; otherwise your name may be removed from our mailing list.

All or Nothing Bids: If your bid is on an "all or nothing" basis, so state in the Exceptions Section on page 26 of 39 of this Invitation For Bids. If a seller elects to bid "all or none" as a part of his bid, the City will be bound by that condition and will not accept bids on individual items or group items for that bid. If the City awards to an "all or nothing" seller, that award shall be for the proposal as a whole or no part thereof.

Other Agency "Piggy-Back" Procurements: Other municipalities, fire districts or public agencies in Sonoma County may be interested in purchasing equipment as procured through this solicitation. The seller is to indicate in the Schedule beginning on Page 5 of this Invitation For Bids if pricing offered in this bid will be extended to other public agencies in this area not later than ninety (90) days after award by the City of Santa Rosa. Any such "piggy-back" awards will be made independently by each agency, and the City of Santa Rosa is not an agent, partner or representative of these agencies and is not obligated or liable for any action of debts that may arise out of such independently negotiated "piggy-back" procurements.

Delivery: The delivery date or term within which the proposed item(s) will be delivered shall be stated in the space provided under Delivery Information. Failure by the successful seller to notify the City of Santa Rosa immediately of any delivery beyond the stated date or terms is cause for him to be held responsible for damages incurred as a result of an extended delivery time.

Warranty: The seller shall state on the Required Data Section the terms and conditions of the warranty being offered with the equipment bid.

It is understood by the sellers, and a condition of these specifications to which all sellers agree, that the City will not issue complete acceptance until the above warranty is furnished to the City by means of filing with the City Purchasing Agent.

In all purchases by the City of Santa Rosa, availability and accessibility of warranty service, and service after warranty may be considered in determining the low seller. *[NOTE: Refer to Special Provisions Section and/or Minimum Specifications for any additional terms and conditions.]*

Material and Equipment Specified by Name: Whenever any material or equipment is specified by patent or proprietary name or by the name of the manufacturer, unless stated differently, such specification shall be considered as if followed by the words "or acceptable equal", whether or not such words appear. The seller may offer material or equipment with equal or better qualities and performance in substitution for those specified which he considers would be in the City's interest to accept. No verbal offers for substitution will be acknowledged or considered from sellers, distributors, manufacturers or subcontractors. Any such offers shall be made in writing to the Purchasing Agent for his consideration with the submission of the proposal and the seller shall include sufficient data which, together with any other data the City may require, will enable the City to assess the acceptability of the material or equipment. Such acceptance by the City shall not relieve the seller from full responsibility from the efficiency and quality and performance of the substitute material or equipment, in the same manner and degree as the material and equipment specified by name.

It should be understood that specifying a brand name, components and/or equipment in these specifications shall not relieve the seller from full responsibility to produce the products in accordance with the performance warranty and contractual requirements. The seller is responsible for notifying the City of any inappropriate brand name, component and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

Materials and Workmanship: Materials used shall be of new and recent manufacture and best quality.

Bid Postponement and Amendment: The City of Santa Rosa reserves the right to revise or amend the specifications up to the time set for opening the bids. Such revisions and amendments, if any, shall be announced by amendments to this solicitation. Copies of such amendments shall be furnished to all prospective sellers. Prospective sellers are defined as those sellers listed on the City's Invitation For Bids list for this material, or who have obtained bid documents subsequent to the bid advertisement. If the revisions and amendments require changes in quantities or prices proposed, or both, the date set for opening bids may be postponed by such number of days as in the opinion of the City shall enable sellers to revise their bids. In any case, the bid opening shall be at least five (5) working days after the last amendment, and the amendment shall include an announcement of the new date, if applicable, for the opening of bids.

Single Bid Response: If only one bid is received in response to the Invitation For Bids, a detailed cost proposal may be requested of the single Seller. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

Bid Withdrawal: After the bids are opened, bids may not be withdrawn for ninety (90) calendar days. Prior to the date/time set for the bid opening, however, bids may be modified or withdrawn by the Seller's authorized representative in person, or by written telegraphic notice. If bids are modified or withdrawn in person, the authorized representative shall make his identity known and shall sign a receipt for the bid. Written or telegraphic notices shall be received in the office designated on Page No. 1 of this Invitation For Bids no later than the exact date/time for the bid opening. A telegraphic modification or withdrawal received in the designated office by telephone from the receiving telegraph office no later than the date/time set for the bid opening shall be considered if such message is confirmed by a copy of the telegram.

Award: The City of Santa Rosa reserves the right to accept bids, award bids and/or not award bids on individual items listed, on group items, or on the proposal as a whole; to reject any and all bids, to waive any informality in the bids, and to accept the bid that appears from all consideration to be for the best interest of the City of Santa Rosa.

In determining and evaluating the best bid, the prices will not necessarily be controlling, but quality, equality, efficiency, utility, general terms, delivery, suitability of the equipment/material offered, and the reputation of the equipment/material in general use will also be considered with any other relevant factors. The Purchasing Agent shall be the sole judge in the determination of these matters.

Notice of bid award, if bid be awarded, will be made within ninety (90) days of opening of bids to the lowest responsive and responsible seller, whose bid proposal complies with all the requirements in the Invitation For Bids. Receipt of the official Purchase Order of the City of Santa Rosa covering the supplies, materials, equipment or services as described in the Bid will indicate the award of the bid and a contract to purchase.

Order Acknowledgment: The successful seller, after receipt of a City of Santa Rosa Purchase Order, shall be required to furnish the City Purchasing Agent, when made available, a copy of the factory order acknowledgment or production date(s) for the equipment/material ordered.

Contract Administration: Except as otherwise specifically provided in this Invitation For Bids, and the resulting Purchase Contract or Purchase Order, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified. Service may also be made by mail, by placing a notice, submittal or communication in an envelope with the proper first-class postage affixed thereto and addressed as indicated, and depositing said envelope in the United States mail (see Required Data Section).

Option to Increase Quantity of Ordered Units: The City reserves the right to increase the quantity of ordered units shown on this Invitation For Bids by issuance on the original purchase order or an additional purchase order not later than ninety (90) days after award of bid. The successful seller agrees to furnish to the City the additional ordered units at the unit price offered in this Bid.

Modification: The City of Santa Rosa, at any time prior to the delivery date specified on the resulting Purchase Order or Purchase Contract, may issue a written order for any modifications. Such modifications shall be the result of negotiation and agreement between both parties.

Oral change orders are not permitted. No change in this Invitation For Bids or resulting Purchase Order or Purchase Contract shall be made unless the City of Santa Rosa gives its prior written approval from the office of the Purchasing Agent. The Seller shall be liable for all costs resulting from any unauthorized changes to the Invitation For Bids, Purchase Order or Purchase Contract.

Termination of Contract to Purchase: If at any time, in the opinion of the City, upon recommendation of the Purchasing Agent, 1) seller fails to conform to the requirements of this contract; or 2) seller seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceedings are commenced against seller which may interfere with the performance of the contract; or 4) seller has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in any by the terms of the contract, notice thereof in writing may be served upon him, and should he neglect or refuse to provide means for a satisfactory compliance with the contract as directed by the Purchasing Agent within the time specified in such notice the City in any such case shall have the right and power, at its option and without prejudice to any other right it may have, to terminate the contract. Any excess of the cost arising there from will be charged against the seller and his sureties, who will be liable thereof. In the event of such termination, all monies due the seller or retained under terms of the contract shall be forfeited to the City; but such forfeiture will not release the seller or his sureties from liability for failure to fulfill the contract.

Inspection: The City reserves the right and shall be at liberty to inspect all materials and workmanship and shall have the right to reject all materials and workmanship which do not conform to the equipment/material specification provided; however, the City is under no duty to make such inspection. Should it be determined, after inspection that a conditional acceptance exists and corrections are needed to bring the equipment/material up to the specifications of the bid award, the City, for the purpose of earning the discount, may extend the date of complete acceptance beyond the date of delivery.

Title: Title to the equipment/material shall pass to the City at the F.O.B. point designated under Delivery, subject to the right of the City to reject upon inspection.

Acceptance and Payment: Acceptance shall be made at the time all equipment/material is operational and in proper working order as determined by and to the satisfaction of the City of Santa Rosa. Acceptance of the equipment/material shall be determined on the basis of technical completeness, performance and adherence to the operational requirements and functions of the specifications.

Payment will be scheduled within thirty (30) days upon complete delivery and acceptance of all material/equipment and receipt of an original and one (1) copy of an invoice complying with the terms and conditions of the award. The City reserves the right to withhold up to ten percent (10%) of the purchase price in the event there is a conditional acceptance.

In connection with any discount for prompt payment specified on this Invitation For Bid, time will be computed from the date of complete acceptance of the equipment/material, or from date correct invoices are received in the City Finance Office, if the latter date is later than the date of complete acceptance. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.

Non-compliance with any one of the following requirements shall constitute a conditional acceptance:

1. Adherence to the general construction and performance specifications.
2. Reasonable opportunity for equipment/material inspection by City Purchasing Department.
3. Receipt of manuals (if applicable).
4. Receipt of warranty statement.

Assignment and Subcontracting: The seller shall not assign or subcontract the work, or any part thereof, without the previous written consent of the City, nor shall he assign, by power of attorney or otherwise, any of the money payable under this contract unless written consent of the City has been obtained. No right under this contract, not claim for money due or to become due hereunder shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this contract or any part thereof, unless such assignment has been authorized by the written consent of the City. In case the seller is permitted to assign monies due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by him, his subcontract shall be immediately terminated by the seller upon notice from the City. The seller shall be fully responsible and accountable to the City for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. Nothing contained in this contract shall create any contractual relation between any subcontract and the City.

Indemnify and Hold Harmless Agreement: Seller agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the City, its officers, and employees, from actions, claims, damages, disabilities or the cost of litigation that are asserted by any person or entity to the extent arising out of the negligent acts or omissions or willful misconduct in the performance by the seller hereunder, whether or not there is concurrent negligence on the part of the City, but excluding liability due to the active negligence or willful misconduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for seller or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts.

Seller shall be liable to City for any loss of or damage to City property arising from seller's negligence or willful misconduct.

Patents and Royalties: All costs involved in fees, royalties or claims for any patented invention, article, process or method that may be used upon or in any manner connected with the supply of this material shall be paid by the seller. Should the seller, his agent or employees or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under the contract, the seller shall promptly substitute other articles, materials or appliances in lieu thereof equal finish, efficiency, quality, suitability and market value, and satisfactory in all respects to the City. Or in the event that the City elects, in lieu of such substitution, to have supplied and to retain and use any such inventions, articles, materials or plans as may be required to be supplied the seller shall pay such royalties and secure such valid licenses as may be requisite for the City, its officers, agents, and employees, or any of them to use such invention, article, materials or appliances without being disturbed or in any way interfered with by any proceeding in the law or equity on account thereof. Should the seller neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then in the event the City shall have the right to make such substitution or the City may pay such royalties and secure such licenses and charge the seller even though final payment under the contract may have been made.

Federal and State Tax: Prices quoted shall not include Federal Excise Tax. California Sales Tax of nine and one-half percent (9.50%) will be paid in accordance with the contract payment schedule.

Legality: If any provisions of this Invitation For Bids shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

California Law: This Invitation For Bids shall be governed according to the laws of the State of California.

Compliance with Laws and Regulations: All materials, parts and equipment furnished pursuant to these specifications shall be in compliance with the laws and regulations of the State of California and OSHA. The seller shall, if requested by the City, supply certification and evidence of such compliance.

Retention of Records: The seller shall be required to retain any records necessary to document the charges for goods to be provided or services to be performed and make such records available to the City for inspection at the City's request for a period of four (4) years.

Recycled Content, Recyclability:

- A. **Recycled Content Preference:** It is the City policy, whenever practicable, to purchase functional products which contain, in order of preference:
1. the highest percentage of post-consumer recovered material available in the marketplace; and
 2. the highest percentage of secondary waste recovered material available in the market place.
- B. **Recyclability and Waste Reduction:** In addition to the recovered material content of a product, important criteria in selecting products shall also be:
1. the ability of the product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs; and
 2. the volume and toxicity of waste and by-product a given product and its packaging generate in their manufacture, use, recycling, and disposal. Products and packaging designed to minimize waste and toxic by-products in their manufacture, use, recycling, and disposal shall be preferred.
- C. **Equipment Compatibility:** Equipment purchased or rented by the City shall be compatible, whenever practicable, with the use of recycled-content products.
- D. **Definitions:** For the purposes of this general provision, a "recycled product" means all materials, goods, and supplies, no less than 50% of the total weight of which consists of secondary and post-consumer waste with not less than 10% of its total weight consisting of weight consisting of post-consumer waste. "Post-consumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item, and does not include manufacturing waste. "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. [Source: California Public Contract Code, Section 12200]

Bid Contents: This proposal consists of the Invitation For Bids, Bid, Provisions, Specifications, Attachments and other terms and conditions as are attached or incorporated by reference in the schedule of the Invitation For Bids.

Federal Transit Authority Requirements. Bidders and the successful seller(s) are subject to, and shall comply with, the following bolded provisions.

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
- 6. Energy Conservation Requirements**
- 7. Clean Water Requirements**
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
- 10. Lobbying**
- 11. Access to Records and Reports**
- 12. Federal Changes**
13. Bonding Requirements
- 14. Clean Air**
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
- 19. No Government Obligation to Third Parties**
- 20. Program Fraud and False or Fraudulent Statements and Related Acts**
- 21. Termination**
- 22. Government-wide Debarment and Suspension (Nonprocurement)**
23. Privacy Act
- 24. Civil Rights Requirements**
- 25. Breaches and Dispute Resolution**
26. Patent and Rights in Data
27. Transit Employee Protective Agreements
- 28. Disadvantaged Business Enterprises (DBE)**
29. [Reserved]
- 30. Incorporation of Federal Transit Administration (FTA) Terms**
31. Drug and Alcohol Testing

Titles and sources of authority references for all of the Federal Transit Authority clauses are listed in this document. However, only those clauses applicable to this specific bid and resulting contract are detailed with the full requirements articulated.

1. FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

This section does not apply to this contract.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

This section does not apply to this contract.

3. CHARTER BUS AND SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

This section does not apply to this contract.

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

This section does not apply to this contract.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49

CFR Part 41

This section does not apply to this contract.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. BUS TESTING

49 U.S.C. 5323(c)

49 CFR Part 665

This section does not apply to this contract.

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 CFR Part 663

This section does not apply to this contract.

10. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through

other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	None None unless ¹ non-competitive award	Those imposed on state pass thru to Contractor	None Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
<u>II Non State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	Yes ³ Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes Yes	Yes Yes	Yes Yes	Yes Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between City and FTA (available on FTA website), as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS

This section does not apply to this contract.

14. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

This section does not apply to this contract.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

This section does not apply to this contract.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

This section does not apply to this contract.

18. RESERVED

This section does not apply to this contract.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

See Termination of Contract to Purchase provision

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. PRIVACY ACT

5 U.S.C. 552

This section does not apply to this contract.

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the City of Santa Rosa Purchasing Agent. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Purchasing Agent. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Purchasing Agent shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the City of Santa Rosa, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Santa Rosa and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Santa Rosa is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Santa Rosa or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

This section does not apply to this contract.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333

29 CFR Part 215

This section does not apply to this contract.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The City's overall goal for DBE participation is 6.6%.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49

CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City of Santa Rosa deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful bidder/offer or will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- c. A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of the section. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the City's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.
- d. The contractor must promptly notify City of Santa Rosa, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of City of Santa Rosa.

29. [RESERVED]

This section does not apply to this contract.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS **FTA Circular 4220.1E**

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Santa Rosa requests which would cause City of Santa Rosa to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331

49 CFR Parts 653 and 654

This section does not apply to this contract.

REQUIRED

DATA

FORMS

List of Forms:

Exceptions to Specifications

References

Designated Contact

REFERENCES
Preferably Municipalities Operating Under the Model Bid

- 1) Government Agency _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 2) Government Agency _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 3) Government Agency _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 4) Government Agency _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 5) Company _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 6) Company _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 7) Company _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 8) Company _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

REQUIRED DATA

Designated Contact

Bidder is required to indicate in the space provided below, the designated contact individuals name and address as requested under Notification in the General Provisions Section of the Invitation for Bids.

City of Santa Rosa

Jim Wright
Purchasing Agent
City of Santa Rosa – Purchasing Office
635 First Street, 2nd Floor
Santa Rosa, CA 95404
707-543-3706 Voice
707-543-3703 Fax
jwright@srcity.org

Contractor

**ATTACHMENT A
(SAMPLE)
CITY OF SANTA ROSA
GENERAL SERVICES AGREEMENT
WITH [NAME OF CONTRACTOR]
AGREEMENT NUMBER _____**

This "Agreement" is made as of this ____ day of _____, 2013 [leave date blank until all parties have signed or until Council approves], by and between the City of Santa Rosa, a municipal corporation ("City"), and [add Contractor's full name, for example, "XYZ Sales Corporation" or "ABC Contracting, LLC" or "ABC Enterprises, LP", or "John Smith, dba Smith Contracting"] a [add type of legal entity and state of entity formation or incorporation, for example, a "California Corporation," or a "Delaware Limited Liability Company," or a "Nevada Limited Partnership," or a "sole proprietor"], ("Contractor").

RECITALS

A. City desires to purchase diesel and unleaded regular gasoline and delivery services.

B. City desires to retain a qualified contractor to conduct the services described above in accordance with the terms of this Agreement.

C. Contractor represents to City that it is fully qualified to conduct the services described above.

D. The parties have negotiated upon the terms pursuant to which Contractor will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide to City the services described in City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel dated August 7, 2013 and Contractor's bid dated _____, all of which are attached hereto as Exhibits A and B (in order of precedence) which are incorporated by reference as though fully set forth herein. Contractor shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto solely for the purpose of defining the manner and scope of services to be provided by Contractor and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. The parties agree that any term contained in Exhibit B that adds to, varies or conflicts with the terms of this Agreement is null and void.

2. TIME FOR PERFORMANCE

The services described herein shall be provided as set forth in Exhibits A and B. Contractor shall devote such time and effort to the performance of services as is necessary for the satisfactory and timely performance of Contractor's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

3. STANDARD OF PERFORMANCE

Contractor shall perform all services required under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's occupation in California. All products and services of whatsoever nature that Contractor provides to City pursuant to this Agreement shall conform to the standards of quality normally observed by persons currently practicing in Contractor's occupation, and shall be provided in accordance with any schedule of performance specified in Exhibit A. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, at any time during the term of this Agreement, desires the removal of any person assigned by Contractor to perform services pursuant to this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

4. COMPENSATION

The total of all fees paid to Contractor for the satisfactory performance and completion of all services set forth in Exhibits A and B shall not exceed the total sum of \$_____. The Chief Financial Officer is authorized to pay all proper claims from the appropriate IFAS keys.

5. BILLABLE RATES, PAYMENTS TO CONTRACTOR

a. Billable Rates. Contractor shall be paid for the performance of services as set forth in Exhibit B.

b. Payments. Payments will be delayed where Contractor fails to provide the information required under subsection c.1 below or fails to comply with the insurance requirements in Attachment One to this Agreement. In no event shall the City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice.

c. Invoices. Payment will be made on a calendar-month basis in arrears. Invoices shall be submitted to the person and address specified in the Agreement, bid, or purchase order. In the event this Agreement becomes effective or terminates during the course of a month, the amount paid to the Contractor for the partial month shall be determined by prorating the amount on the basis of the number of calendar days involved. Processing of payment will be delayed for Contractor's failure to include reference to Agreement (including number) on the invoice **and for failure to maintain current insurance information with the City in accordance with insurance requirements hereunder.** In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in the Contractor's

invoice. Invoices for services provided in June or for any services not previously invoiced shall be submitted within 10 working days after June 30 to facilitate City fiscal year end closing. Failure to comply with this invoice submission requirement may delay payment.

In connection with any cash discount specified in the bid response, if applicable, or Contractor's Proposal, time will be computed from the date correct invoices are received by the person and address specified in the Agreement, bid, or purchase order. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check. All invoices shall contain the following information:

1. Contractor name and remittance address
2. Date of invoice issuance
3. Amount of invoice
4. City purchase order or Agreement number
5. Identification of Agreement or purchase order line item(s) (if multiple lines) and description of services provided
6. Date of completion of services
7. Detail of costs, including labor, materials, tax, etc.

d. Business Taxes. Contractor shall pay to the City when due all business taxes payable by Contractor under the provisions of Chapter 6-04 of the Santa Rosa City Code. The City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Contractor.

6. TERM, SUSPENSION, TERMINATION

a. The term of this Agreement shall be for two years commencing on the date it is made above. City and Contractor may, upon mutual written agreement of both parties, extend this Agreement for three one-year periods, one two-year period, one three-year period, or any combination not to exceed a total of three years.

b. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If City gives such notice of suspension, Contractor shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time by giving a written notice of termination to Contractor. If City gives such notice of termination, Contractor shall immediately cease rendering services pursuant to this Agreement. If City terminates this Agreement, City shall pay Contractor the reasonable value of services rendered by Contractor prior to termination. In this regard, Contractor shall furnish to City such information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Contractor. City shall not in any manner be liable for lost profits that might have been made by Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement.

7. TERMINATION OF AGREEMENT FOR DEFAULT

If at any time 1) Contractor fails to conform to the requirements of this Agreement; 2) Contractor seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Contractor which may interfere with the performance of this Agreement; or 4) Contractor has failed to supply an adequate working force, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended

in and by the terms of this Agreement, which default is not fully corrected or remedied to the reasonable satisfaction of City within ten (10) days following the date a written notice thereof by City, then City shall have the right and power, at its option and without prejudice to any other rights or remedies it may have, to immediately terminate this Agreement. Any cost or expense incurred by City arising out of Contractor's breach or default hereunder, and for City's enforcement of these rights, shall be the obligation of Contractor and may, at City's discretion, be deducted from any amounts that may then be owing to Contractor under this Agreement, without any release or waiver of any other rights or remedies in law or equity to which City may be entitled.

8. INDEMNIFY AND HOLD HARMLESS AGREEMENT

Contractor shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same results from or arises out of the performance of this Agreement by Contractor, its officers, employees, agents, or sub-contractors, excepting only that resulting from the sole, active negligence or intentional misconduct of City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employees' benefits acts. The provisions of this Section 8 shall survive any expiration or termination of this Agreement.

9. INSURANCE REQUIREMENTS

Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated herein by this reference. Maintenance of the insurance coverages as set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Contractor in exchange for the City's agreement to make the payments prescribed hereunder. Failure by Contractor to (i) maintain or renew coverage, (ii) provide the City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the City as a material breach of this Agreement by Contractor, whereupon the City shall be entitled to all rights and remedies at law and in equity, including but not limited to the immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under this Agreement. In the event Contractor, with approval of the City pursuant to Section 11 below, retains or utilizes any subcontractors in the provision of any services to City under this Agreement, Contractor shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in Attachment One.

10. LEGAL REQUIREMENTS AND PERMITS

Contractor represents and warrants that Contractor has all licenses, permits, City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Contractor to practice its occupation and provide services under this Agreement. Contractor shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which

prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.; (iii) OSHA; and (iv) the Immigration Reform and Control Act of 1986. Contractor shall, if requested by City, provide certification and evidence of such compliance. If Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

11. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not subcontract or assign any right or obligation under this Agreement without the written consent of the City. Any attempted or purported subcontract or assignment without City's written consent shall be void and of no effect. No right under this Agreement, or claim for money due or to become due hereunder, shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this Agreement or any part thereof and Contractor hereby agrees to indemnify and hold City harmless against any and all such claims. In the event Contractor obtains the prior written consent of City to assign monies due or to become due under this Agreement, Contractor shall provide City a copy of the instrument of assignment duly executed by Contractor, which shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work. Upon notice and request by the City, Contractor shall promptly remedy, to include termination of any subcontract as appropriate and necessary, any default or failure to perform in a satisfactory manner the work undertaken by any subcontractor. Contractor shall be fully responsible and accountable to the City for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by them, to the same extent that Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.

12. BINDING EFFECT

This Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the parties, subject to the provisions of Section 11, above.

13. RETENTION OF RECORDS

Contractor shall be required to retain any records necessary to document the charges for the services to be performed under this Agreement and make such records available to the City for inspection at the City's request for a period of not less than four (4) years.

14. ENTIRE AGREEMENT

This document, including all Exhibits and Attachment One, contains the entire agreement between the parties and supersedes whatever oral or written understanding the parties may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Contractor, and by

City, in accordance with applicable provisions of the Santa Rosa City Code.

15. SEVERABILITY

If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. WAIVER

Neither City acceptance of, or payment for, any service performed by Contractor, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

17. ENFORCEMENT OF AGREEMENT

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

18. CONTRACTOR NOT AGENT

Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.

19. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by

reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Contractor, in the performance of Contractor's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors.

d. The provisions of this Section 19 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

20. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

<u>City</u>	<u>Contractor</u>
Jim Wright	_____
Purchasing Agent	_____
631 First Street, 2 nd Floor	_____
Santa Rosa, California 95404	_____
Phone: (707) 543-3706	_____
Fax: (707) 543-3703	_____

21. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to the City that it is (a) a duly organized and validly existing [enter type of entity], formed and in good standing under the laws of the State of [enter state of formation for corporations, LPs and LLCs], (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Contractor hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Contractor in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

CONTRACTOR:

CITY OF SANTA ROSA
a Municipal Corporation

Name of Firm: _____

TYPE OF BUSINESS ENTITY (*check one*):
____ Individual/Sole Proprietor
____ Partnership
____ Corporation
____ Limited Liability Company
____ Other (please specify: _____)

By: _____

Print Name: _____

Title: _____

Signatures of Authorized Persons:

APPROVED AS TO FORM:

By: _____

Office of the City Attorney

Print Name: _____

ATTEST:

Title: _____

By: _____

City Clerk

Print Name: _____

Title: _____

Taxpayer I.D. No. _____

City of Santa Rosa Business Tax Cert. No.

Attachments:

Attachment One - Insurance Requirements

Exhibit A - City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel dated August 8, 2013
Exhibit B – Contractor's bid dated _____

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
GENERAL SERVICES AGREEMENTS**

- A. Insurance Policies:** Contractor shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 2 million per occurrence \$ 4 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
4. Pollution Liability	\$500,000	If the work involves lead-based paint or asbestos identification/remediation, the policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the policy must not contain mold exclusion and the definition of "Pollution" in the policy must include microbial matter, including mold.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
2. Liability policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the contract. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Self-insured retentions above \$10,000 must be approved by the City. At the City's option, Contractor may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

NOTICE

IF RECEIVING THIS IFB BY INTERNET, CALL (707) 543-3700 TO REGISTER AS A BIDDER. FAILURE TO REGISTER AS A BIDDER MAY RESULT IN YOUR FIRM NOT RECEIVING BID ADDENDUMS. FAILURE TO SUBMIT BID ADDENDUMS WITH BID MAY CAUSE YOUR BID TO BE CONSIDERED NON-RESPONSIVE.



**INVITATION FOR BIDS
13-44**

UNLEADED GASOLINE AND DIESEL FUEL

DATE ISSUED

August 8, 2013

BIDS DUE

(Bid Opening)

August 28, 2013 at 2:00 p.m.

635 1st Street – Second Floor
Santa Rosa, CA 95404

TO

Jim Wright, Purchasing Agent
City of Santa Rosa – Purchasing Office
635 First Street, 2nd Floor
Santa Rosa, CA 95404
(707) 543-3706
(707) 543-3703
jwright@srcity.org



The City of Santa Rosa does not discriminate on the basis of disability in the admissions or access to, or treatment of or employment in its programs or activities. Disability-related aids or services, including printed information in alternate formats, to enable persons with disabilities to participate in public meetings, programs, bid openings, and to deliver bid packages to the location specified herein, are available by contacting the Purchasing Agent, Jim Wright at (707) 543-3706 one week prior to the meeting, program, bid due date or formal bid opening.

INVITATION FOR BIDS 13-44
UNLEADED GASOLINE AND DIESEL FUEL

Sealed Bids, signed and in the original only, subject to the Invitation For Bids, Provisions and Specifications, will be received at City of Santa Rosa, **Purchasing Office, 635 First Street, 2nd Floor Santa Rosa, CA 95404 until 2:00 p.m., on Wednesday, August 28, 2013**, for unleaded gasoline and diesel fuel.

The Intent of this Invitation for Bids is to establish two-year term contract(s), with three one-year renewal options for the purchase of unleaded regular gasoline and diesel for the City of Santa Rosa in accordance with the terms, conditions and work specifications contained herein. The City may award on an "all or none" basis, or may make multiple awards by section if deemed in the best interest of the City.

The City may purchase unleaded regular gasoline and diesel outside of this contract if, in the opinion of the City, this is necessary to meet operation requirements.

Services shall include furnishing all qualified labor, product, equipment, and transportation necessary to perform the work outlined in this contract. All deliveries must be FOB destination.

Do not add State of California sales tax or any of the taxes or fees the City is required to pay in your margin quoted. Any additional costs such as: fuel and insurance surcharges and CA UST diesel and gas charges, must be included in your margin quoted.

Section 1

Truck and Trailer Delivery

LOCATIONS	# OF TANKS	STORAGE CAPACITY IN GALLONS	TYPE OF FUEL	ESTIMATED 2-YR USAGE	INCREASE/ MARGIN PER GALLON OVER PULL POINT RACK AT REFINERY
Municipal Services Center – North 55 Stony Point Road	1	15,000	Regular Unleaded gasoline	500,000	.049
Municipal Services Center – North 55 Stony Point Road	2	35,000	Diesel	800,000	.059

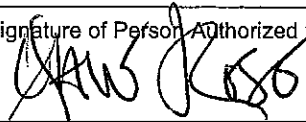
Section 2**Bobtail Delivery**

LOCATIONS	# OF TANKS	TANK SIZE IN GALS	TYPE OF FUEL	ESTIMATED 2-YR USAGE	INCREASE/ MARGIN PER GALLON OVER PULL POINT RACK AT REFINERY
Laguna Treatment Plant 4300 Llano Road	1	15,000	Red Dye Diesel	50,000	.059
Brown Farm 2200 Llano Road	1	500	Unleaded Regular Gasoline	2,000	.19
Brown Farm 2200 Llano Road	1	500	Diesel	4,000	.19
Fire Station #1 955 Sonoma Avenue	1	2,000	Diesel	9,000	.19
Fire Station #3 3311 Coffey Lane	1	500	Diesel	7,000	.19
Fire Station #4 1775 Yulupa Avenue	1	800	Diesel	5,000	.19
Fire Station #5 3480 Parker Hill Road	1	500	Diesel	6,000	.19
Fire Station #6 205 Calistoga Road	1	500	Diesel	3,000	.19
Misc. Utilities Dept. Pump Stations and Wells	12	various	Red Dye Diesel	500	.19

BID

In compliance with the above, the undersigned offers and agrees, if this IFB is accepted, within ninety (90) calendar days from date of opening, to furnish any or all of the items upon which prices are offered at the price set opposite each item, delivered at the designated point(s) within the time specified in the Schedule. Discounts will be allowed for prompt payment as follows:

N/A percent, 20 calendar days; 0 percent, 30 calendar days.

Name and Address of Bidder: Ramos Oil Company, Inc. 1515 S. River Rd. W. Sacto., Ca. Phone No. 916-371-2570 95691	Signature of Person Authorized to Sign: 
Date of Bid: 08-20-2013	Please Type Signer's Name and Title: Dave Rose

BID ITEM(S) AVAILABLE FOR OTHER AGENCY "PIGGY-BACK" PROCUREMENT:

 YES X NO

NOTE: Prospective sellers are referred to GENERAL PROVISIONS for terms and conditions of OTHER AGENCY "PIGGY-BACK" PROCUREMENTS.

SPECIFICATIONS

It is the intent of these specifications to describe the unleaded gasoline and diesel fuel that shall meet or exceed the specifications described in the following minimum specifications.

Any deviation from the written specifications shown in the Invitation For Bids shall be noted in the Exceptions Section of the Invitation. (See Required Data Section – Page 26 of 39)

Attention should also be directed to the Required Data Section of the bid in order to provide the data required.

In order to receive full consideration, submitted bids must fully follow these Specifications and the Invitation for Bids' Special Provisions and General Provisions.

**MINIMUM SPECIFICATIONS FOR
UNLEADED GASOLINE AND DIESEL FUEL**

GASOLINE: Unleaded regular gasoline minimum 87 Octane

DIESEL: Ultra Low Sulfur and Red Dye

1. Must meet ASTM designation D-975 (Grade 2-D)
2. Maximum final boiling point of 675 degrees Fahrenheit.
3. Minimum cetane No. 40.
4. Maximum sulfur content of 0.50% by weight.

SPECIAL PROVISIONS

CONTRACT PERIOD: The resulting contract shall be in effect from November 1, 2013 or date of award if subsequent thereto for a period of two years, with the option to renew the contract for three 1-year extensions, or any combination not exceeding a total of three years upon written consent of the contractual parties.

ORDERS: Orders against the contract will be placed by a duly authorized City employee or according to a schedule provided by a duly authorized City employee, unless notified differently in writing.

DELIVERY REQUIREMENTS:

1. The vendor shall be required to complete all deliveries within twenty-four (24) hours from time of request, except when requested on a Friday or prior to a holiday, which shall cause delivery to be made on the next regularly scheduled City work day.
2. Truck and trailer fuel deliveries will require a copy of the bill of lading from the refinery. Copies of the bill of lading can either be delivered to MSC-North Warehouse, 55 Stony Point Road, Santa Rosa, or faxed to (707) 543-4217, or emailed to the Stores Specialist within twenty-four (24) hours of delivery for all sites.
3. All bobtail fuel deliveries to be metered by a Sonoma County Department of Weights and Measures approved metering device and the tank shall be stick measured before delivery by the driver. All delivery tags shall be annotated as to each type of reading for amounts delivered.
4. Each delivery tag for gasoline shall be annotated as to octane level of fuel delivered. At least once quarterly, if desired, the City will randomly monitor gasoline octane. This once per quarter testing cost shall be borne by the contractor. Any testing beyond one time, in any particular calendar quarter, shall be the responsibility of the City.
5. The delivery sites are listed on Pages 2 and 3 of this Invitation for Bids. Deliveries shall be coordinated through the Purchasing Division or a duly authorized City employee.

- 6. All prices shall be F.O.B. delivered to the designated City of Santa Rosa site as listed on Pages 2 and 3, unless otherwise specified. All delivery charges to be included in the margins bid on Pages 2 and 3.
- 7. Diesel fuel delivery shall be verified with each delivery site involved, and where deemed necessary by the City, shall be delivered at least once each week so as to reduce the chance of water contamination and bacteria build-up. In no case shall fuel levels be allowed to drop below 20% of fuel capacity where deemed necessary by the City. Vendor(s) agree, by submission, to replace any contaminated fuel, caused by contractor delay in delivery, within 24 hours of such notification by the City.
- 8. Bobtail deliveries as described in Section 2 will be necessary for the smaller quantity deliveries of fuel, but in no case shall there be a need for less than 100 gallons per delivery site. Any delivery that does not meet the above criteria may be charged at the appropriate gallon cost.
- 9. Emergency Product Delivery: If, in the event that unforeseen circumstances should create a fuel shortage and/or a priority delivery schedule, the vendor agrees that the City of Santa Rosa will be guaranteed a first delivery priority of fuel to maintain all City Emergency Services. The vendor will furnish emergency fuel deliveries within twenty-four (24) hours from receipt of order when necessary.

Please indicate if you will comply with this requirement: YES X NO

10. Each vendor to provide their delivery assets within 150 miles radius of the Santa Rosa area:

a.	Number of Truck and Trailers:	<u>13</u>	Capacity:	<u>9000</u> gallons.
b.	Number of Bobtail Trucks:	<u>25</u>	Capacity:	<u>4500</u> gallons
c.	Number of Drivers:	<u>50</u>		
d.	Number of Dispatchers:	<u>6</u>		

Please state whether the above list is:

Contractor owned:	<u>Yes</u>
Contractor leased/rented:	<u> </u>
Subcontractor owned:	<u> </u>
Independent Owner/Operator:	<u> </u>
Other:	<u> </u>

If Subcontractor owned please provided the following:

Name: <u> </u>	Contact person: <u> </u>
Address: <u> </u>	Telephone number: <u> </u>
<u> </u>	
<u> </u>	

If other, please explain:

Comments:

OTHER REQUIREMENTS:

1. Each bidder shall conform to California Business and Professional Code, Section 13520, to wit:

Basis of settlement: temperature corrected gallonage - - "It is unlawful for any distributor, or for any broker, to sell any product to a retailer or to any person, when the quantity distributed in the single delivery, to a single location is 5,000 gallons or more, as or purporting to be gasoline or diesel fuel, unless the distributor or broker, as the case may be, offers to invoice the purchaser for such gasoline or diesel fuel on the basis of temperature-corrected gallonage to 60 degrees Fahrenheit, for all such deliveries to the purchaser, over a period of twelve (12) consecutive months, and settles his account with the purchaser on the same basis."

2. Vapor recovery systems for gasoline must be on all contractor delivery systems and shall carry systems that are compatible with the vapor recovery system of each tank at each delivery site to which such gasoline is required to be delivered.

Further, the vapor recovery system of each conveyance shall be in compliance with all regulations by the local and state authority, or the U.S. Environmental Protection Agency, whichever has authority over jurisdiction of recovery of gasoline vapors.

3. The contractor shall use reasonable care to avoid damage or contamination of existing buildings, equipment, asphalt, soil or vegetation, at any City delivery site. If the contractor causes damage or contamination, he shall replace the damaged items or repair the damage at no expense the City, and to the satisfaction of the City.
4. Free Time and Detention Rates: Upon arrival of contractor's delivery equipment at delivery site(s), specify below the free time offered and detention rates that may apply. Detention rate(s) beyond free time shall apply only with respect to delays caused by the City.

Specify here the free time offered: 1 Hour

Specify here the detention rate to be charge, after expiration of free time, for any City caused delay in delivery: \$75 per hour

BID PRICING:

1. The City of Santa Rosa does not agree to purchase any maximum or minimum amounts with the award of this bid, quantities listed are estimates only.
2. Bidder shall bid fuel at increase/margin over their "pull point" rack price for each bid item; "pull point" rack being the actual vendor's price paid to the refinery.
3. The determination of the price payable for each delivery of an item shall be accomplished by adding increase or margin to the Contractor's "pull point" rack price on the date of delivery.
4. No upward price adjustment shall be due the Contractor, when a Contractor delay beyond the 24-hour notice, causes a price increase after the City places an order, unless the Contractor's failure to make earlier delivery results from causes which are beyond the control of and without fault of the Contractor.

5. After orders are placed, Contractor is expected to shop refineries for the most competitive rack price available and purchase product from that refinery for delivery to the City.
6. All prices quoted shall be F.O.B. destination, all Santa Rosa delivery sites and exclusive of California State Sales Taxes.
7. The quoted markup (increase or margin) offered shall remain firm throughout the contract period, although the City may receive the benefit of any rebates, allowances, or other price reduction incentives offered to customers of the Contractor, including any passthrough incentives from the refineries.

BID EVALUATION:

Bids shall be evaluated by applying the margins bid for each item to the average price paid for these items by the City for the previous three month period ending July 31, 2013, times the estimated bi-annual usage plus applicable taxes. The lowest bidder will be determined by adding the extended amounts for Section 1 and for Section 2, with each section evaluated independently.

AUDITING OF INVOICES:

The City reserves the right to periodically audit pull point rack invoices of the successful bidder to ensure the prices being charged to the City are as specified in the bid.

REFERENCES:

Bidders shall provide the names and locations of comparable contracts with other municipalities or government agencies or private companies operating under this model bid within the past five (5) years.

CITY OF SANTA ROSA CONTRACT:

The successful bidder will be required to sign a contract substantially similar to the sample contract provided as Attachment A, and shall comply with the insurance requirements therein. Should the bidder be unwilling to sign this contract as is, the reasons why must be stated in the Required Data Section, Exceptions to the Specifications of this Invitation for Bids on Page 26 of 39.

GENERAL PROVISIONS

Bids: Discounts for prompt payment must be shown on bid, otherwise prices will be considered net. Prompt payment discounts of less than 30 days following final acceptance of the equipment/materials by the City will not be factored into the evaluation of bids. Unless prices and all information requested are complete, bid may be disregarded and given no consideration.

This Invitation For Bids shall result in a firm, fixed price contract to purchase.

In case of default by the vendor, the City of Santa Rosa may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to

the vendor, the difference between the price named in the contract or purchase order and actual cost thereof to the City of Santa Rosa. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.

All prices and bids must be in ink or typewritten. No pencil figures or erasures are permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing the bid. All bids must be signed with the firm's name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

Submission of Bids: Each bid must be submitted on the prescribed form in a sealed envelope with a bid number, closing date and time on the outside. Each bid must be signed as indicated above.

Information must be furnished complete in compliance with the terms, conditions, provisions and specifications of the Invitation For Bids. The information requested and the manner of submission is essential to permit prompt evaluation of all bids on a fair and uniform basis. Accordingly, the City reserves the right to declare as non-responsive, and reject any bid in which material information requested is not furnished or where indirect or incomplete answers or information is provided.

Bids shall be for the total net price including all applicable taxes and charges, delivered F.O.B., City of Santa Rosa.

Bids and modifications or corrections thereof received after the closing time specified will not be considered.

No telegraphic, telephone or facsimile of bids will be accepted. If a photocopy is to be submitted, it must be signed in original, in ink.

If you do not bid, return this Invitation For Bids and state reason; otherwise your name may be removed from our mailing list.

All or Nothing Bids: If your bid is on an "all or nothing" basis, so state in the Exceptions Section on page 26 of 39 of this Invitation For Bids. If a seller elects to bid "all or none" as a part of his bid, the City will be bound by that condition and will not accept bids on individual items or group items for that bid. If the City awards to an "all or nothing" seller, that award shall be for the proposal as a whole or no part thereof.

Other Agency "Piggy-Back" Procurements: Other municipalities, fire districts or public agencies in Sonoma County may be interested in purchasing equipment as procured through this solicitation. The seller is to indicate in the Schedule beginning on Page 5 of this Invitation For Bids if pricing offered in this bid will be extended to other public agencies in this area not later than ninety (90) days after award by the City of Santa Rosa. Any such "piggy-back" awards will be made independently by each agency, and the City of Santa Rosa is not an agent, partner or representative of these agencies and is not obligated or liable for any action of debts that may arise out of such independently negotiated "piggy-back" procurements.

Delivery: The delivery date or term within which the proposed item(s) will be delivered shall be stated in the space provided under Delivery Information. Failure by the successful seller to notify the City of Santa Rosa immediately of any delivery beyond the stated date or terms is cause for him to be held responsible for damages incurred as a result of an extended delivery time.

Warranty: The seller shall state on the Required Data Section the terms and conditions of the warranty being offered with the equipment bid.

It is understood by the sellers, and a condition of these specifications to which all sellers agree, that the City will not issue complete acceptance until the above warranty is furnished to the City by means of filing with the City Purchasing Agent.

In all purchases by the City of Santa Rosa, availability and accessibility of warranty service, and service after warranty may be considered in determining the low seller. *[NOTE: Refer to Special Provisions Section and/or Minimum Specifications for any additional terms and conditions.]*

Material and Equipment Specified by Name: Whenever any material or equipment is specified by patent or proprietary name or by the name of the manufacturer, unless stated differently, such specification shall be considered as if followed by the words "or acceptable equal", whether or not such words appear. The seller may offer material or equipment with equal or better qualities and performance in substitution for those specified which he considers would be in the City's interest to accept. No verbal offers for substitution will be acknowledged or considered from sellers, distributors, manufacturers or subcontractors. Any such offers shall be made in writing to the Purchasing Agent for his consideration with the submission of the proposal and the seller shall include sufficient data which, together with any other data the City may require, will enable the City to assess the acceptability of the material or equipment. Such acceptance by the City shall not relieve the seller from full responsibility from the efficiency and quality and performance of the substitute material or equipment, in the same manner and degree as the material and equipment specified by name.

It should be understood that specifying a brand name, components and/or equipment in these specifications shall not relieve the seller from full responsibility to produce the products in accordance with the performance warranty and contractual requirements. The seller is responsible for notifying the City of any inappropriate brand name, component and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

Materials and Workmanship: Materials used shall be of new and recent manufacture and best quality.

Bid Postponement and Amendment: The City of Santa Rosa reserves the right to revise or amend the specifications up to the time set for opening the bids. Such revisions and amendments, if any, shall be announced by amendments to this solicitation. Copies of such amendments shall be furnished to all prospective sellers. Prospective sellers are defined as those sellers listed on the City's Invitation For Bids list for this material, or who have obtained bid documents subsequent to the bid advertisement. If the revisions and amendments require changes in quantities or prices proposed, or both, the date set for opening bids may be postponed by such number of days as in the opinion of the City shall enable sellers to revise their bids. In any case, the bid opening shall be at least five (5) working days after the last amendment, and the amendment shall include an announcement of the new date, if applicable, for the opening of bids.

Single Bid Response: If only one bid is received in response to the Invitation For Bids, a detailed cost proposal may be requested of the single Seller. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

Bid Withdrawal: After the bids are opened, bids may not be withdrawn for ninety (90) calendar days. Prior to the date/time set for the bid opening, however, bids may be modified or withdrawn by the Seller's authorized representative in person, or by written telegraphic notice. If bids are modified or withdrawn in person, the authorized representative shall make his identity known and shall sign a receipt for the bid. Written or telegraphic notices shall be received in the office designated on Page No. 1 of this Invitation For Bids no later than the exact date/time for the bid opening. A telegraphic modification or withdrawal received in the designated office by telephone from the receiving telegraph office no later than the date/time set for the bid opening shall be considered if such message is confirmed by a copy of the telegram.

Award: The City of Santa Rosa reserves the right to accept bids, award bids and/or not award bids on individual items listed, on group items, or on the proposal as a whole; to reject any and all bids, to waive any informality in the bids, and to accept the bid that appears from all consideration to be for the best interest of the City of Santa Rosa.

In determining and evaluating the best bid, the prices will not necessarily be controlling, but quality, equality, efficiency, utility, general terms, delivery, suitability of the equipment/material offered, and the reputation of the equipment/material in general use will also be considered with any other relevant factors. The Purchasing Agent shall be the sole judge in the determination of these matters.

Notice of bid award, if bid be awarded, will be made within ninety (90) days of opening of bids to the lowest responsive and responsible seller, whose bid proposal complies with all the requirements in the Invitation For Bids. Receipt of the official Purchase Order of the City of Santa Rosa covering the supplies, materials, equipment or services as described in the Bid will indicate the award of the bid and a contract to purchase.

Order Acknowledgment: The successful seller, after receipt of a City of Santa Rosa Purchase Order, shall be required to furnish the City Purchasing Agent, when made available, a copy of the factory order acknowledgment or production date(s) for the equipment/material ordered.

Contract Administration: Except as otherwise specifically provided in this Invitation For Bids, and the resulting Purchase Contract or Purchase Order, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified. Service may also be made by mail, by placing a notice, submittal or communication in an envelope with the proper first-class postage affixed thereto and addressed as indicated, and depositing said envelope in the United States mail (see Required Data Section).

Option to Increase Quantity of Ordered Units: The City reserves the right to increase the quantity of ordered units shown on this Invitation For Bids by issuance on the original purchase order or an additional purchase order not later than ninety (90) days after award of bid. The successful seller agrees to furnish to the City the additional ordered units at the unit price offered in this Bid.

Modification: The City of Santa Rosa, at any time prior to the delivery date specified on the resulting Purchase Order or Purchase Contract, may issue a written order for any modifications. Such modifications shall be the result of negotiation and agreement between both parties.

Oral change orders are not permitted. No change in this Invitation For Bids or resulting Purchase Order or Purchase Contract shall be made unless the City of Santa Rosa gives its prior written approval from the office of the Purchasing Agent. The Seller shall be liable for all costs resulting from any unauthorized changes to the Invitation For Bids, Purchase Order or Purchase Contract.

Termination of Contract to Purchase: If at any time, in the opinion of the City, upon recommendation of the Purchasing Agent, 1) seller fails to conform to the requirements of this contract; or 2) seller seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceedings are commenced against seller which may interfere with the performance of the contract; or 4) seller has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in any by the terms of the contract, notice thereof in writing may be served upon him, and should he neglect or refuse to provide means for a satisfactory compliance with the contract as directed by the Purchasing Agent within the time specified in such notice the City in any such case shall have the right and power, at its option and without prejudice to any other right it may have, to terminate the contract. Any excess of the cost arising there from will be charged against the seller and his sureties, who will be liable thereof. In the event of such termination, all monies due the seller or retained under terms of the contract shall be forfeited to the City; but such forfeiture will not release the seller or his sureties from liability for failure to fulfill the contract.

Inspection: The City reserves the right and shall be at liberty to inspect all materials and workmanship and shall have the right to reject all materials and workmanship which do not conform to the equipment/material specification provided; however, the City is under no duty to make such inspection. Should it be determined, after inspection that a conditional acceptance exists and corrections are needed to bring the equipment/material up to the specifications of the bid award, the City, for the purpose of earning the discount, may extend the date of complete acceptance beyond the date of delivery.

Title: Title to the equipment/material shall pass to the City at the F.O.B. point designated under Delivery, subject to the right of the City to reject upon inspection.

Acceptance and Payment: Acceptance shall be made at the time all equipment/material is operational and in proper working order as determined by and to the satisfaction of the City of Santa Rosa. Acceptance of the equipment/material shall be determined on the basis of technical completeness, performance and adherence to the operational requirements and functions of the specifications.

Payment will be scheduled within thirty (30) days upon complete delivery and acceptance of all material/equipment and receipt of an original and one (1) copy of an invoice complying with the terms and conditions of the award. The City reserves the right to withhold up to ten percent (10%) of the purchase price in the event there is a conditional acceptance.

In connection with any discount for prompt payment specified on this Invitation For Bid, time will be computed from the date of complete acceptance of the equipment/material, or from date correct invoices are received in the City Finance Office, if the latter date is later than the date of complete acceptance. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.

Non-compliance with any one of the following requirements shall constitute a conditional acceptance:

1. Adherence to the general construction and performance specifications.
2. Reasonable opportunity for equipment/material inspection by City Purchasing Department.
3. Receipt of manuals (if applicable).
4. Receipt of warranty statement.

Assignment and Subcontracting: The seller shall not assign or subcontract the work, or any part thereof, without the previous written consent of the City, nor shall he assign, by power of attorney or otherwise, any of the money payable under this contract unless written consent of the City has been obtained. No right under this contract, not claim for money due or to become due hereunder shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this contract or any part thereof, unless such assignment has been authorized by the written consent of the City. In case the seller is permitted to assign monies due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by him, his subcontract shall be immediately terminated by the seller upon notice from the City. The seller shall be fully responsible and accountable to the City for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. Nothing contained in this contract shall create any contractual relation between any subcontract and the City.

Indemnify and Hold Harmless Agreement: Seller agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the City, its officers, and employees, from actions, claims, damages, disabilities or the cost of litigation that are asserted by any person or entity to the extent arising out of the negligent acts or omissions or willful misconduct in the performance by the seller hereunder, whether or not there is concurrent negligence on the part of the City, but excluding liability due to the active negligence or willful misconduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for seller or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts.

Seller shall be liable to City for any loss of or damage to City property arising from seller's negligence or willful misconduct.

Patents and Royalties: All costs involved in fees, royalties or claims for any patented invention, article, process or method that may be used upon or in any manner connected with the supply of this material shall be paid by the seller. Should the seller, his agent or employees or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under the contract, the seller shall promptly substitute other articles, materials or appliances in lieu thereof equal finish, efficiency, quality, suitability and market value, and satisfactory in all respects to the City. Or in the event that the City elects, in lieu of such substitution, to have supplied and to retain and use any such inventions, articles, materials or plans as may be required to be supplied the seller shall pay such royalties and secure such valid licenses as may be requisite for the City, its officers, agents, and employees, or any of them to use such invention, article, materials or appliances without being disturbed or in any way interfered with by any proceeding in the law or equity on account thereof. Should the seller neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then in the event the City shall have the right to make such substitution or the City may pay such royalties and secure such licenses and charge the seller even though final payment under the contract may have been made.

Federal and State Tax: Prices quoted shall not include Federal Excise Tax. California Sales Tax of nine and one-half percent (9.50%) will be paid in accordance with the contract payment schedule.

Legality: If any provisions of this Invitation For Bids shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

California Law: This Invitation For Bids shall be governed according to the laws of the State of California.

Compliance with Laws and Regulations: All materials, parts and equipment furnished pursuant to these specifications shall be in compliance with the laws and regulations of the State of California and OSHA. The seller shall, if requested by the City, supply certification and evidence of such compliance.

Retention of Records: The seller shall be required to retain any records necessary to document the charges for goods to be provided or services to be performed and make such records available to the City for inspection at the City's request for a period of four (4) years.

Recycled Content, Recyclability:

- A. **Recycled Content Preference:** It is the City policy, whenever practicable, to purchase functional products which contain, in order of preference:
1. the highest percentage of post-consumer recovered material available in the marketplace; and
 2. the highest percentage of secondary waste recovered material available in the market place.
- B. **Recyclability and Waste Reduction:** In addition to the recovered material content of a product, important criteria in selecting products shall also be:
1. the ability of the product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs; and
 2. the volume and toxicity of waste and by-product a given product and its packaging generate in their manufacture, use, recycling, and disposal. Products and packaging designed to minimize waste and toxic by-products in their manufacture, use, recycling, and disposal shall be preferred.
- C. **Equipment Compatibility:** Equipment purchased or rented by the City shall be compatible, whenever practicable, with the use of recycled-content products.
- D. **Definitions:** For the purposes of this general provision, a "recycled product" means all materials, goods, and supplies, no less than 50% of the total weight of which consists of secondary and post-consumer waste with not less than 10% of its total weight consisting of weight consisting of post-consumer waste. "Post-consumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item, and does not include manufacturing waste. "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. [Source: California Public Contract Code, Section 12200]

Bid Contents: This proposal consists of the Invitation For Bids, Bid, Provisions, Specifications, Attachments and other terms and conditions as are attached or incorporated by reference in the schedule of the Invitation For Bids.

Federal Transit Authority Requirements. Bidders and the successful seller(s) are subject to, and shall comply with, the following bolded provisions.

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
- 6. Energy Conservation Requirements**
- 7. Clean Water Requirements**
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
- 10. Lobbying**
- 11. Access to Records and Reports**
- 12. Federal Changes**
13. Bonding Requirements
- 14. Clean Air**
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
- 19. No Government Obligation to Third Parties**
- 20. Program Fraud and False or Fraudulent Statements and Related Acts**
- 21. Termination**
- 22. Government-wide Debarment and Suspension (Nonprocurement)**
23. Privacy Act
- 24. Civil Rights Requirements**
- 25. Breaches and Dispute Resolution**
26. Patent and Rights in Data
27. Transit Employee Protective Agreements
- 28. Disadvantaged Business Enterprises (DBE)**
29. [Reserved]
- 30. Incorporation of Federal Transit Administration (FTA) Terms**
31. Drug and Alcohol Testing

Titles and sources of authority references for all of the Federal Transit Authority clauses are listed in this document. However, only those clauses applicable to this specific bid and resulting contract are detailed with the full requirements articulated.

1. FLY AMERICA REQUIREMENTS**49 U.S.C. § 40118****41 CFR Part 301-10**

This section does not apply to this contract.

2. BUY AMERICA REQUIREMENTS**49 U.S.C. 5323(j)****49 CFR Part 661**

This section does not apply to this contract.

3. CHARTER BUS AND SCHOOL BUS REQUIREMENTS**49 U.S.C. 5323(d)****49 CFR Part 604**

This section does not apply to this contract.

4. CARGO PREFERENCE REQUIREMENTS**46 U.S.C. 1241****46 CFR Part 381**

This section does not apply to this contract.

5. SEISMIC SAFETY REQUIREMENTS**42 U.S.C. 7701 et seq. 49****CFR Part 41**

This section does not apply to this contract.

6. ENERGY CONSERVATION REQUIREMENTS**42 U.S.C. 6321 et seq.****49 CFR Part 18**

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS**33 U.S.C. 1251**

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. BUS TESTING**49 U.S.C. 5323(c)****49 CFR Part 665**

This section does not apply to this contract.

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**49 U.S.C. 5323****49 CFR Part 663**

This section does not apply to this contract.

10. LOBBYING**31 U.S.C. 1352****49 CFR Part 19****49 CFR Part 20**

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through

other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I State Grantees						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II Non State Grantees						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between City and FTA (available on FTA website), as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS

This section does not apply to this contract.

14. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

This section does not apply to this contract.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

This section does not apply to this contract.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

This section does not apply to this contract.

18. RESERVED

This section does not apply to this contract.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

**49 U.S.C. Part 18
FTA Circular 4220.1E**

See Termination of Contract to Purchase provision

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. PRIVACY ACT

5 U.S.C. 552

This section does not apply to this contract.

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION**49 CFR Part 18****FTA Circular 4220.1E**

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the City of Santa Rosa Purchasing Agent. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Purchasing Agent. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Purchasing Agent shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the City of Santa Rosa, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Santa Rosa and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Santa Rosa is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Santa Rosa or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA**37 CFR Part 401****49 CFR Parts 18 and 19**

This section does not apply to this contract.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**49 U.S.C. § 5310, § 5311, and § 5333****29 CFR Part 215**

This section does not apply to this contract.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**49 CFR Part 26**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The City's overall goal for DBE participation is 6.6%.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49

CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City of Santa Rosa deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offer or will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- c. A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of the section. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the City's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.
- d. The contractor must promptly notify City of Santa Rosa, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of City of Santa Rosa.

29. [RESERVED]

This section does not apply to this contract.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Santa Rosa requests which would cause City of Santa Rosa to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331

49 CFR Parts 653 and 654

This section does not apply to this contract.

REQUIRED

DATA

FORMS

List of Forms:

Exceptions to Specifications

References

Designated Contact

REFERENCES
Preferably Municipalities Operating Under the Model Bid

- | | |
|----------------------|---|
| 1) Government Agency | <u>City of Davis</u> |
| Location | <u>1818 5th Street Davis, Ca. 95616</u> |
| Contact Person | <u>Dan Doolan</u> |
| Phone No. | <u>530-757-5653</u> |
| Length of Service | <u>10 years</u> |
| | |
| 2) Government Agency | <u>City of Stockton</u> |
| Location | <u>1465 S. Stockton, St. Stockton, Ca. 95206</u> |
| Contact Person | <u>Concepcion</u> |
| Phone No. | <u>209-937-8712</u> |
| Length of Service | <u>5 years</u> |
| | |
| 3) Government Agency | <u>City of Yuba City</u> |
| Location | <u>1201 Civic Center Blvd. Yuba City, Ca. 95993</u> |
| Contact Person | <u>Ken Reiche</u> |
| Phone No. | <u>530-822-4646</u> |
| Length of Service | <u>5 years</u> |
| | |
| 4) Government Agency | <u>City of Fairfield</u> |
| Location | <u>1000 Webster Street Fairfield, Ca. 94533</u> |
| Contact Person | <u>Scott Lundgren</u> |
| Phone No. | <u>707-428-7375</u> |
| Length of Service | <u>10 Years</u> |
| | |
| 5) Company | <u>City of Lincoln</u> |
| Location | <u>600 6th Street Lincoln, Ca. 95648</u> |
| Contact Person | <u>Bill Smull</u> |
| Phone No. | <u>916-645-3314</u> |
| Length of Service | <u>15 years</u> |
| | |
| 6) Company | <u>City of Rio vista</u> |
| Location | <u>one Main Street Rio Vista, Ca. 94571</u> |
| Contact Person | _____ |
| Phone No. | <u>707-374-4346</u> |
| Length of Service | <u>5 years</u> |
| | |
| 7) Company | _____ |
| Location | _____ |
| Contact Person | _____ |
| Phone No. | _____ |
| Length of Service | _____ |
| | |
| 8) Company | _____ |
| Location | _____ |
| Contact Person | _____ |
| Phone No. | _____ |
| Length of Service | _____ |

REQUIRED DATA**Designated Contact**

Bidder is required to indicate in the space provided below, the designated contact individuals name and address as requested under Notification in the General Provisions Section of the Invitation for Bids.

City of Santa Rosa

Jim Wright
Purchasing Agent
City of Santa Rosa – Purchasing Office
635 First Street, 2nd Floor
Santa Rosa, CA 95404
707-543-3706 Voice
707-543-3703 Fax
jwright@srcity.org

Contractor

Dave Rose
Sales Representative
Ramos Oil Company, Inc.
1515 South River Road
West Sacramento, Ca. 95691
916-997-6257 (Cell)
916-371-2570 (Office)
916-371-0635 (Fax)

daver@ramosoil.com

**ATTACHMENT A
(SAMPLE)
CITY OF SANTA ROSA
GENERAL SERVICES AGREEMENT
WITH [NAME OF CONTRACTOR]
AGREEMENT NUMBER _____**

This "Agreement" is made as of this ____ day of _____, 2013 [leave date blank until all parties have signed or until Council approves], by and between the City of Santa Rosa, a municipal corporation ("City"), and [add Contractor's full name, for example, "XYZ Sales Corporation" or "ABC Contracting, LLC" or "ABC Enterprises, LP", or "John Smith, dba Smith Contracting"] a [add type of legal entity and state of entity formation or incorporation, for example, a "California Corporation," or a "Delaware Limited Liability Company," or a "Nevada Limited Partnership," or a "sole proprietor"], ("Contractor").

RECITALS

A. City desires to purchase diesel and unleaded regular gasoline and delivery services.

B. City desires to retain a qualified contractor to conduct the services described above in accordance with the terms of this Agreement.

C. Contractor represents to City that it is fully qualified to conduct the services described above.

D. The parties have negotiated upon the terms pursuant to which Contractor will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide to City the services described in City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel dated August 7, 2013 and Contractor's bid dated _____, all of which are attached hereto as Exhibits A and B (in order of precedence) which are incorporated by reference as though fully set forth herein. Contractor shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto solely for the purpose of defining the manner and scope of services to be provided by Contractor and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. The parties agree that any term contained in Exhibit B that adds to, varies or conflicts with the terms of this Agreement is null and void.

2. TIME FOR PERFORMANCE

The services described herein shall be provided as set forth in Exhibits A and B. Contractor shall devote such time and effort to the performance of services as is necessary for the satisfactory and timely performance of Contractor's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

3. STANDARD OF PERFORMANCE

Contractor shall perform all services required under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's occupation in California. All products and services of whatsoever nature that Contractor provides to City pursuant to this Agreement shall conform to the standards of quality normally observed by persons currently practicing in Contractor's occupation, and shall be provided in accordance with any schedule of performance specified in Exhibit A. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, at any time during the term of this Agreement, desires the removal of any person assigned by Contractor to perform services pursuant to this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

4. COMPENSATION

The total of all fees paid to Contractor for the satisfactory performance and completion of all services set forth in Exhibits A and B shall not exceed the total sum of \$_____. The Chief Financial Officer is authorized to pay all proper claims from the appropriate IFAS keys.

5. BILLABLE RATES, PAYMENTS TO CONTRACTOR

a. Billable Rates. Contractor shall be paid for the performance of services at as set forth in Exhibit B.

b. Payments. Payments will be delayed where Contractor fails to provide the information required under subsection c.1 below or fails to comply with the insurance requirements in Attachment One to this Agreement. In no event shall the City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice.

c. Invoices. Payment will be made on a calendar-month basis in arrears. Invoices shall be submitted to the person and address specified in the Agreement, bid, or purchase order. In the event this Agreement becomes effective or terminates during the course of a month, the amount paid to the Contractor for the partial month shall be determined by prorating the amount on the basis of the number of calendar days involved. Processing of payment will be delayed for Contractor's failure to include reference to Agreement (including number) on the invoice **and for failure to maintain current insurance information with the City in accordance with insurance requirements hereunder.** In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in the Contractor's

invoice. Invoices for services provided in June or for any services not previously invoiced shall be submitted within 10 working days after June 30 to facilitate City fiscal year end closing. Failure to comply with this invoice submission requirement may delay payment.

In connection with any cash discount specified in the bid response, if applicable, or Contractor's Proposal, time will be computed from the date correct invoices are received by the person and address specified in the Agreement, bid, or purchase order. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check. All invoices shall contain the following information:

1. Contractor name and remittance address
2. Date of invoice issuance
3. Amount of invoice
4. City purchase order or Agreement number
5. Identification of Agreement or purchase order line item(s) (if multiple lines) and description of services provided
6. Date of completion of services
7. Detail of costs, including labor, materials, tax, etc.

d. Business Taxes. Contractor shall pay to the City when due all business taxes payable by Contractor under the provisions of Chapter 6-04 of the Santa Rosa City Code. The City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Contractor.

6. TERM, SUSPENSION, TERMINATION

a. The term of this Agreement shall be for two years commencing on the date it is made above. City and Contractor may, upon mutual written agreement of both parties, extend this Agreement for three one-year periods, one two-year period, one three-year period, or any combination not to exceed a total of three years.

b. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If City gives such notice of suspension, Contractor shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time by giving a written notice of termination to Contractor. If City gives such notice of termination, Contractor shall immediately cease rendering services pursuant to this Agreement. If City terminates this Agreement, City shall pay Contractor the reasonable value of services rendered by Contractor prior to termination. In this regard, Contractor shall furnish to City such information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Contractor. City shall not in any manner be liable for lost profits that might have been made by Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement.

7. TERMINATION OF AGREEMENT FOR DEFAULT

If at any time 1) Contractor fails to conform to the requirements of this Agreement; 2) Contractor seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Contractor which may interfere with the performance of this Agreement; or 4) Contractor has failed to supply an adequate working force, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended

in and by the terms of this Agreement, which default is not fully corrected or remedied to the reasonable satisfaction of City within ten (10) days following the date a written notice thereof by City, then City shall have the right and power, at its option and without prejudice to any other rights or remedies it may have, to immediately terminate this Agreement. Any cost or expense incurred by City arising out of Contractor's breach or default hereunder, and for City's enforcement of these rights, shall be the obligation of Contractor and may, at City's discretion, be deducted from any amounts that may then be owing to Contractor under this Agreement, without any release or waiver of any other rights or remedies in law or equity to which City may be entitled.

8. INDEMNIFY AND HOLD HARMLESS AGREEMENT

Contractor shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same results from or arises out of the performance of this Agreement by Contractor, its officers, employees, agents, or sub-contractors, excepting only that resulting from the sole, active negligence or intentional misconduct of City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employees' benefits acts. The provisions of this Section 8 shall survive any expiration or termination of this Agreement.

9. INSURANCE REQUIREMENTS

Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated herein by this reference. Maintenance of the insurance coverages as set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Contractor in exchange for the City's agreement to make the payments prescribed hereunder. Failure by Contractor to (i) maintain or renew coverage, (ii) provide the City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the City as a material breach of this Agreement by Contractor, whereupon the City shall be entitled to all rights and remedies at law and in equity, including but not limited to the immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under this Agreement. In the event Contractor, with approval of the City pursuant to Section 11 below, retains or utilizes any subcontractors in the provision of any services to City under this Agreement, Contractor shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in Attachment One.

10. LEGAL REQUIREMENTS AND PERMITS

Contractor represents and warrants that Contractor has all licenses, permits, City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Contractor to practice its occupation and provide services under this Agreement. Contractor shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which

prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.; (iii) OSHA; and (iv) the Immigration Reform and Control Act of 1986. Contractor shall, if requested by City, provide certification and evidence of such compliance. If Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

11. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not subcontract or assign any right or obligation under this Agreement without the written consent of the City. Any attempted or purported subcontract or assignment without City's written consent shall be void and of no effect. No right under this Agreement, or claim for money due or to become due hereunder, shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this Agreement or any part thereof and Contractor hereby agrees to indemnify and hold City harmless against any and all such claims. In the event Contractor obtains the prior written consent of City to assign monies due or to become due under this Agreement, Contractor shall provide City a copy of the instrument of assignment duly executed by Contractor, which shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work. Upon notice and request by the City, Contractor shall promptly remedy, to include termination of any subcontract as appropriate and necessary, any default or failure to perform in a satisfactory manner the work undertaken by any subcontractor. Contractor shall be fully responsible and accountable to the City for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by them, to the same extent that Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.

12. BINDING EFFECT

This Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the parties, subject to the provisions of Section 11, above.

13. RETENTION OF RECORDS

Contractor shall be required to retain any records necessary to document the charges for the services to be performed under this Agreement and make such records available to the City for inspection at the City's request for a period of not less than four (4) years.

14. ENTIRE AGREEMENT

This document, including all Exhibits and Attachment One, contains the entire agreement between the parties and supersedes whatever oral or written understanding the parties may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Contractor, and by

City, in accordance with applicable provisions of the Santa Rosa City Code.

15. SEVERABILITY

If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. WAIVER

Neither City acceptance of, or payment for, any service performed by Contractor, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

17. ENFORCEMENT OF AGREEMENT

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

18. CONTRACTOR NOT AGENT

Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.

19. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by

reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Contractor, in the performance of Contractor's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors.

d. The provisions of this Section 19 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

20. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

City

Jim Wright
Purchasing Agent
631 First Street, 2nd Floor
Santa Rosa, California 95404
Phone: (707) 543-3706
Fax: (707) 543-3703

Contractor

21. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to the City that it is (a) a duly organized and validly existing [enter type of entity], formed and in good standing under the laws of the State of [enter state of formation for corporations, LPs and LLCs], (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Contractor hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Contractor in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

CONTRACTOR:

CITY OF SANTA ROSA
a Municipal Corporation

Name of Firm: _____

TYPE OF BUSINESS ENTITY (*check one*):
____ Individual/Sole Proprietor
____ Partnership
____ Corporation
____ Limited Liability Company
____ Other (please specify: _____)

By: _____
Print Name: _____
Title: _____

Signatures of Authorized Persons:

APPROVED AS TO FORM:

By: _____

Office of the City Attorney

Print Name: _____

Title: _____

ATTEST:

By: _____

City Clerk

Print Name: _____

Title: _____

Taxpayer I.D. No. _____

City of Santa Rosa Business Tax Cert. No.

Attachments:

Attachment One - Insurance Requirements

Exhibit A - City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel dated August 8, 2013
Exhibit B – Contractor's bid dated _____

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
GENERAL SERVICES AGREEMENTS**

- A. Insurance Policies:** Contractor shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 2 million per occurrence \$ 4 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
4. Pollution Liability	\$500,000	If the work involves lead-based paint or asbestos identification/remediation, the policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the policy must not contain mold exclusion and the definition of "Pollution" in the policy must include microbial matter, including mold.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
2. Liability policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the contract. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Self-insured retentions above \$10,000 must be approved by the City. At the City's option, Contractor may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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**CITY OF SANTA ROSA
GENERAL SERVICES AGREEMENT
WITH RAMOS OIL COMPANY, INC.
AGREEMENT NUMBER _____**

This "Agreement" is made as of this ____ day of _____, 2013, by and between the City of Santa Rosa, a municipal corporation ("City"), and Ramos Oil Company, Inc., a California Corporation, ("Contractor").

RECITALS

A. City desires to purchase diesel and unleaded regular gasoline and delivery services.

B. City desires to retain a qualified contractor to conduct the services described above in accordance with the terms of this Agreement.

C. Contractor represents to City that it is fully qualified to conduct the services described above.

D. The parties have negotiated upon the terms pursuant to which Contractor will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide to City the services described in City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel Section 2 dated August 7, 2013 and Contractor's bid dated August 20, 2013, all of which are attached hereto as Exhibits A and B (in order of precedence) which are incorporated by reference as though fully set forth herein. Contractor shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto solely for the purpose of defining the manner and scope of services to be provided by Contractor and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. The parties agree that any term contained in Exhibit B that adds to, varies or conflicts with the terms of this Agreement is null and void.

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2. TIME FOR PERFORMANCE

The services described herein shall be provided as set forth in Exhibits A and B. Contractor shall devote such time and effort to the performance of services as is necessary for the satisfactory and timely performance of Contractor's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

3. STANDARD OF PERFORMANCE

Contractor shall perform all services required under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's occupation in California. All products and services of whatsoever nature that Contractor provides to City pursuant to this Agreement shall conform to the standards of quality normally observed by persons currently practicing in Contractor's occupation, and shall be provided in accordance with any schedule of performance specified in Exhibit A. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, at any time during the term of this Agreement, desires the removal of any person assigned by Contractor to perform services pursuant to this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

4. COMPENSATION

The total of all fees paid to Contractor for the satisfactory performance and completion of all services set forth in Exhibits A and B shall not exceed the total sum of three hundred and fifty thousand dollars and no cents (\$350,000). The Chief Financial Officer is authorized to pay all proper claims from the appropriate IFAS keys.

5. BILLABLE RATES, PAYMENTS TO CONTRACTOR

a. Billable Rates. Contractor shall be paid for the performance of services at as set forth in Exhibit B.

b. Payments. Payments will be delayed where Contractor fails to provide the information required under subsection c.1 below or fails to comply with the insurance requirements in Attachment One to this Agreement. In no event shall the City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice.

c. Invoices. Payment will be made on a calendar-month basis in arrears. Invoices shall be submitted to the person and address specified in the Agreement, bid, or purchase order. In the event this Agreement becomes effective or terminates during the course of a month, the amount paid to the Contractor for the partial month shall be determined by prorating the amount on the basis of the number of calendar days involved. Processing of payment will be delayed for Contractor's failure to include reference to Agreement (including number) on the invoice **and for failure to maintain current insurance information with the City in accordance with**

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insurance requirements hereunder. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in the Contractor's invoice. Invoices for services provided in June or for any services not previously invoiced shall be submitted within 10 working days after June 30 to facilitate City fiscal year end closing. Failure to comply with this invoice submission requirement may delay payment.

In connection with any cash discount specified in the bid response, if applicable, or Contractor's Proposal, time will be computed from the date correct invoices are received by the person and address specified in the Agreement, bid, or purchase order. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check. All invoices shall contain the following information:

1. Contractor name and remittance address
2. Date of invoice issuance
3. Amount of invoice
4. City purchase order or Agreement number
5. Identification of Agreement or purchase order line item(s) (if multiple lines) and description of services provided
6. Date of completion of services
7. Detail of costs, including labor, materials, tax, etc.

d. Business Taxes. Contractor shall pay to the City when due all business taxes payable by Contractor under the provisions of Chapter 6-04 of the Santa Rosa City Code. The City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Contractor.

6. TERM, SUSPENSION, TERMINATION

a. The term of this Agreement shall be for two years commencing on the date it is made above. City and Contractor may, upon mutual written agreement of both parties, extend this Agreement for three one-year periods, one two-year period, one three-year period, or any combination not to exceed a total of three years.

b. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If City gives such notice of suspension, Contractor shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time by giving a written notice of termination to Contractor. If City gives such notice of termination, Contractor shall immediately cease rendering services pursuant to this Agreement. If City terminates this Agreement, City shall pay Contractor the reasonable value of services rendered by Contractor prior to termination. In this regard, Contractor shall furnish to City such information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Contractor. City shall not in any manner be liable for lost profits that might have been made by Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement.

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7. TERMINATION OF AGREEMENT FOR DEFAULT

If at any time 1) Contractor fails to conform to the requirements of this Agreement; 2) Contractor seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Contractor which may interfere with the performance of this Agreement; or 4) Contractor has failed to supply an adequate working force, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of this Agreement, which default is not fully corrected or remedied to the reasonable satisfaction of City within ten (10) days following the date a written notice thereof by City, then City shall have the right and power, at its option and without prejudice to any other rights or remedies it may have, to immediately terminate this Agreement. Any cost or expense incurred by City arising out of Contractor's breach or default hereunder, and for City's enforcement of these rights, shall be the obligation of Contractor and may, at City's discretion, be deducted from any amounts that may then be owing to Contractor under this Agreement, without any release or waiver of any other rights or remedies in law or equity to which City may be entitled.

8. INDEMNIFY AND HOLD HARMLESS AGREEMENT

Contractor shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same results from or arises out of the performance of this Agreement by Contractor, its officers, employees, agents, or sub-contractors, excepting only that resulting from the sole, active negligence or intentional misconduct of City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employees' benefits acts. The provisions of this Section 8 shall survive any expiration or termination of this Agreement.

9. INSURANCE REQUIREMENTS

Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated herein by this reference. Maintenance of the insurance coverages as set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Contractor in exchange for the City's agreement to make the payments prescribed hereunder. Failure by Contractor to (i) maintain or renew coverage, (ii) provide the City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the City as a material breach of this Agreement by Contractor, whereupon the City shall be entitled to all rights and remedies at law and in equity, including but not limited to the immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under this Agreement. In the event Contractor, with approval of the City pursuant to Section 11 below, retains or utilizes any subcontractors in the provision of any services to City under this Agreement, Contractor shall assure that any such

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subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in Attachment One.

10. LEGAL REQUIREMENTS AND PERMITS

Contractor represents and warrants that Contractor has all licenses, permits, City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Contractor to practice its occupation and provide services under this Agreement. Contractor shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.; (iii) OSHA; and (iv) the Immigration Reform and Control Act of 1986. Contractor shall, if requested by City, provide certification and evidence of such compliance. If Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

11. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not subcontract or assign any right or obligation under this Agreement without the written consent of the City. Any attempted or purported subcontract or assignment without City's written consent shall be void and of no effect. No right under this Agreement, or claim for money due or to become due hereunder, shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this Agreement or any part thereof and Contractor hereby agrees to indemnify and hold City harmless against any and all such claims. In the event Contractor obtains the prior written consent of City to assign monies due or to become due under this Agreement, Contractor shall provide City a copy of the instrument of assignment duly executed by Contractor, which shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work. Upon notice and request by the City, Contractor shall promptly remedy, to include termination of any subcontract as appropriate and necessary, any default or failure to perform in a satisfactory manner the work undertaken by any subcontractor. Contractor shall be fully responsible and accountable to the City for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by them, to the same extent that Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.

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12. BINDING EFFECT

This Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the parties, subject to the provisions of Section 11, above.

13. RETENTION OF RECORDS

Contractor shall be required to retain any records necessary to document the charges for the services to be performed under this Agreement and make such records available to the City for inspection at the City's request for a period of not less than four (4) years.

14. ENTIRE AGREEMENT

This document, including all Exhibits and Attachment One, contains the entire agreement between the parties and supersedes whatever oral or written understanding the parties may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Contractor, and by City, in accordance with applicable provisions of the Santa Rosa City Code.

15. SEVERABILITY

If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. WAIVER

Neither City acceptance of, or payment for, any service performed by Contractor, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

17. ENFORCEMENT OF AGREEMENT

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

18. CONTRACTOR NOT AGENT

Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.

19. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Contractor, in the performance of Contractor's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Contractor, such persons shall be entirely and exclusively under

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the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor’s assigned personnel and subcontractors.

d. The provisions of this Section 19 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

20. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

City

Jim Wright
Purchasing Agent
631 First Street, 2nd Floor
Santa Rosa, California 95404
Phone: (707) 543-3706
Fax: (707) 543-3703
jwright@srcity.org

Contractor

Dave Rose
Sales Representative
Ramos Oil Company, Inc.
1515 South River Road
W. Sacramento, California 95691
Phone: (916) 371-2570
Fax: (916) 371-0635
Cell: (916) 997-6257
daver@ramosoil.com

21. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to the City that it is (a) a duly organized and validly existing corporation, formed and in good standing under the laws of the State of California, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Contractor hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Contractor in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the General Services Agreement

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board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

CONTRACTOR:

CITY OF SANTA ROSA
a Municipal Corporation

Name of Firm: Ramos Oil Company, Inc.

TYPE OF BUSINESS ENTITY:
____ Individual/Sole Proprietor
____ Partnership
__X__ Corporation
____ Limited Liability Company
____ Other (please specify: _____)

By: _____
Print Name: _____
Title: _____

Signatures of Authorized Persons:

APPROVED AS TO FORM:

By: _____

Office of the City Attorney

Print Name: _____

ATTEST:

Title: _____

By: _____

City Clerk

Print Name: _____

Title: _____

Taxpayer I.D. No. 94-2248416

City of Santa Rosa Business Tax Cert. No.

Attachments:

- Attachment One - Insurance Requirements
- Exhibit A - City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel dated August 8, 2013
- Exhibit B - Contractor's bid dated August 20, 2013

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
GENERAL SERVICES AGREEMENTS**

- A. Insurance Policies:** Contractor shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 2 million per occurrence \$ 4 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
4. Pollution Liability	\$500,000	If the work involves lead-based paint or asbestos identification/remediation, the policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the policy must not contain mold exclusion and the definition of "Pollution" in the policy must include microbial matter, including mold.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
2. Liability policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the contract. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Self-insured retentions above \$10,000 must be approved by the City. At the City's option, Contractor may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Exhibit A

NOTICE

IF RECEIVING THIS IFB BY INTERNET, CALL (707) 543-3700 TO REGISTER AS A BIDDER. FAILURE TO REGISTER AS A BIDDER MAY RESULT IN YOUR FIRM NOT RECEIVING BID ADDENDUMS. FAILURE TO SUBMIT BID ADDENDUMS WITH BID MAY CAUSE YOUR BID TO BE CONSIDERED NON-RESPONSIVE.



INVITATION FOR BIDS 13-44

UNLEADED GASOLINE AND DIESEL FUEL

DATE ISSUED

August 8, 2013

BIDS DUE

(Bid Opening)

August 28, 2013 at 2:00 p.m.

635 1st Street – Second Floor
Santa Rosa, CA 95404

TO

Jim Wright, Purchasing Agent
City of Santa Rosa – Purchasing Office
635 First Street, 2nd Floor
Santa Rosa, CA 95404
(707) 543-3706
(707) 543-3703
jwright@srcity.org



The City of Santa Rosa does not discriminate on the basis of disability in the admissions or access to, or treatment of or employment in its programs or activities. Disability-related aids or services, including printed information in alternate formats, to enable persons with disabilities to participate in public meetings, programs, bid openings, and to deliver bid packages to the location specified herein, are available by contacting the Purchasing Agent, Jim Wright at (707) 543-3706 one week prior to the meeting, program, bid due date or formal bid opening.

**INVITATION FOR BIDS 13-44
UNLEADED GASOLINE AND DIESEL FUEL**

Sealed Bids, signed and in the original only, subject to the Invitation For Bids, Provisions and Specifications, will be received at City of Santa Rosa, **Purchasing Office, 635 First Street, 2nd Floor Santa Rosa, CA 95404 until 2:00 p.m., on Wednesday, August 28, 2013**, for unleaded gasoline and diesel fuel.

The Intent of this Invitation for Bids is to establish two-year term contract(s), with three one-year renewal options for the purchase of unleaded regular gasoline and diesel for the City of Santa Rosa in accordance with the terms, conditions and work specifications contained herein. The City may award on an “all or none” basis, or may make multiple awards by section if deemed in the best interest of the City.

The City may purchase unleaded regular gasoline and diesel outside of this contract if, in the opinion of the City, this is necessary to meet operation requirements.

Services shall include furnishing all qualified labor, product, equipment, and transportation necessary to perform the work outlined in this contract. All deliveries must be FOB destination.

Do not add State of California sales tax or any of the taxes or fees the City is required to pay in your margin quoted. Any additional costs such as: fuel and insurance surcharges and CA UST diesel and gas charges, must be included in your margin quoted.

Section 1

Truck and Trailer Delivery

LOCATIONS	# OF TANKS	STORAGE CAPACITY IN GALLONS	TYPE OF FUEL	ESTIMATED 2-YR USAGE	INCREASE/ MARGIN PER GALLON OVER PULL POINT RACK AT REFINERY
Municipal Services Center – North 55 Stony Point Road	1	15,000	Regular Unleaded gasoline	500,000	
Municipal Services Center – North 55 Stony Point Road	2	35,000	Diesel	800,000	

Section 2

Bobtail Delivery

LOCATIONS	# OF TANKS	TANK SIZE IN GALS	TYPE OF FUEL	ESTIMATED 2-YR USAGE	INCREASE/ MARGIN PER GALLON OVER PULL POINT RACK AT REFINERY
Laguna Treatment Plant 4300 Llano Road	1	15,000	Red Dye Diesel	50,000	
Brown Farm 2200 Llano Road	1	500	Unleaded Regular Gasoline	2,000	
Brown Farm 2200 Llano Road	1	500	Diesel	4,000	
Fire Station #1 955 Sonoma Avenue	1	2,000	Diesel	9,000	
Fire Station #3 3311 Coffey Lane	1	500	Diesel	7,000	
Fire Station #4 1775 Yulupa Avenue	1	800	Diesel	5,000	
Fire Station #5 3480 Parker Hill Road	1	500	Diesel	6,000	
Fire Station #6 205 Calistoga Road	1	500	Diesel	3,000	
Misc. Utilities Dept. Pump Stations and Wells	12	various	Red Dye Diesel	500	

BID

In compliance with the above, the undersigned offers and agrees, if this IFB is accepted, within ninety (90) calendar days from date of opening, to furnish any or all of the items upon which prices are offered at the price set opposite each item, delivered at the designated point(s) within the time specified in the Schedule. Discounts will be allowed for prompt payment as follows:

N/A percent, 20 calendar days; _____ percent, 30 calendar days.

Name and Address of Bidder:	Signature of Person Authorized to Sign:
Phone No.	
Date of Bid:	Please Type Signer's Name and Title:

BID ITEM(S) AVAILABLE FOR OTHER AGENCY "PIGGY-BACK" PROCUREMENT:

YES NO

NOTE: Prospective sellers are referred to GENERAL PROVISIONS for terms and conditions of OTHER AGENCY "PIGGY-BACK" PROCUREMENTS.

SPECIFICATIONS

It is the intent of these specifications to describe the unleaded gasoline and diesel fuel that shall meet or exceed the specifications described in the following minimum specifications.

Any deviation from the written specifications shown in the Invitation For Bids shall be noted in the Exceptions Section of the Invitation. (See Required Data Section – Page 26 of 39)

Attention should also be directed to the Required Data Section of the bid in order to provide the data required.

In order to receive full consideration, submitted bids must fully follow these Specifications and the Invitation for Bids' Special Provisions and General Provisions.

**MINIMUM SPECIFICATIONS FOR
UNLEADED GASOLINE AND DIESEL FUEL**

GASOLINE: Unleaded regular gasoline minimum 87 Octane

DIESEL: Ultra Low Sulfur and Red Dye

1. Must meet ASTM designation D-975 (Grade 2-D)
2. Maximum final boiling point of 675 degrees Fahrenheit.
3. Minimum cetane No. 40.
4. Maximum sulfur content of 0.50% by weight.

SPECIAL PROVISIONS

CONTRACT PERIOD: The resulting contract shall be in effect from November 1, 2013 or date of award if subsequent thereto for a period of two years, with the option to renew the contract for three 1-year extensions, or any combination not exceeding a total of three years upon written consent of the contractual parties.

ORDERS: Orders against the contract will be placed by a duly authorized City employee or according to a schedule provided by a duly authorized City employee, unless notified differently in writing.

DELIVERY REQUIREMENTS:

1. The vendor shall be required to complete all deliveries within twenty-four (24) hours from time of request, except when requested on a Friday or prior to a holiday, which shall cause delivery to be made on the next regularly scheduled City work day.
2. Truck and trailer fuel deliveries will require a copy of the bill of lading from the refinery. Copies of the bill of lading can either be delivered to MSC-North Warehouse, 55 Stony Point Road, Santa Rosa, or faxed to (707) 543-4217, or emailed to the Stores Specialist within twenty-four (24) hours of delivery for all sites.
3. All bobtail fuel deliveries to be metered by a Sonoma County Department of Weights and Measures approved metering device and the tank shall be stick measured before delivery by the driver. All delivery tags shall be annotated as to each type of reading for amounts delivered.
4. Each delivery tag for gasoline shall be annotated as to octane level of fuel delivered. At least once quarterly, if desired, the City will randomly monitor gasoline octane. This once per quarter testing cost shall be borne by the contractor. Any testing beyond one time, in any particular calendar quarter, shall be the responsibility of the City.
5. The delivery sites are listed on Pages 2 and 3 of this Invitation for Bids. Deliveries shall be coordinated through the Purchasing Division or a duly authorized City employee.

6. All prices shall be F.O.B. delivered to the designated City of Santa Rosa site as listed on Pages 2 and 3, unless otherwise specified. All delivery charges to be included in the margins bid on Pages 2 and 3.
7. Diesel fuel delivery shall be verified with each delivery site involved, and where deemed necessary by the City, shall be delivered at least once each week so as to reduce the chance of water contamination and bacteria build-up. In no case shall fuel levels be allowed to drop below 20% of fuel capacity where deemed necessary by the City. Vendor(s) agree, by submission, to replace any contaminated fuel, caused by contractor delay in delivery, within 24 hours of such notification by the City.
8. Bobtail deliveries as described in Section 2 will be necessary for the smaller quantity deliveries of fuel, but in no case shall there be a need for less than 100 gallons per delivery site. Any delivery that does not meet the above criteria may be charged at the appropriate gallon cost.
9. Emergency Product Delivery: If, in the event that unforeseen circumstances should create a fuel shortage and/or a priority delivery schedule, the vendor agrees that the City of Santa Rosa will be guaranteed a first delivery priority of fuel to maintain all City Emergency Services. The vendor will furnish emergency fuel deliveries within twenty-four (24) hours from receipt of order when necessary.

Please indicate if you will comply with this requirement: YES_____ NO_____

10. Each vendor to provide their delivery assets within 150 miles radius of the Santa Rosa area:

- a. Number of Truck and Trailers: _____ Capacity: _____gallons.
- b. Number of Bobtail Trucks: _____ Capacity: _____gallons
- c. Number of Drivers: _____
- d. Number of Dispatchers: _____

Please state whether the above list is:

Contractor owned:	_____
Contractor leased/rented:	_____
Subcontractor owned:	_____
Independent Owner/Operator:	_____
Other:	_____

If Subcontractor owned please provided the following:

Name: _____	Contact person: _____
Address: _____	Telephone number: _____

If other, please explain: _____

Comments: _____

OTHER REQUIREMENTS:

1. Each bidder shall conform to California Business and Professional Code, Section 13520, to wit:

Basis of settlement: temperature corrected gallonage - - "It is unlawful for any distributor, or for any broker, to sell any product to a retailer or to any person, when the quantity distributed in the single delivery, to a single location is 5,000 gallons or more, as or purporting to be gasoline or diesel fuel, unless the distributor or broker, as the case may be, offers to invoice the purchaser for such gasoline or diesel fuel on the basis of temperature-corrected gallonage to 60 degrees Fahrenheit, for all such deliveries to the purchaser, over a period of twelve (12) consecutive months, and settles his account with the purchaser on the same basis."

2. Vapor recovery systems for gasoline must be on all contractor delivery systems and shall carry systems that are compatible with the vapor recovery system of each tank at each delivery site to which such gasoline is required to be delivered.

Further, the vapor recovery system of each conveyance shall be in compliance with all regulations by the local and state authority, or the U.S. Environmental Protection Agency, whichever has authority over jurisdiction of recovery of gasoline vapors.

3. The contractor shall use reasonable care to avoid damage or contamination of existing buildings, equipment, asphalt, soil or vegetation, at any City delivery site. If the contractor causes damage or contamination, he shall replace the damaged items or repair the damage at no expense the City, and to the satisfaction of the City.
4. Free Time and Detention Rates: Upon arrival of contractor's delivery equipment at delivery site(s), specify below the free time offered and detention rates that may apply. Detention rate(s) beyond free time shall apply only with respect to delays caused by the City.

Specify here the free time offered: _____

Specify here the detention rate to be charge, after expiration of free time, for any City caused delay in delivery: _____

BID PRICING:

1. The City of Santa Rosa does not agree to purchase any maximum or minimum amounts with the award of this bid, quantities listed are estimates only.
2. Bidder shall bid fuel at increase/margin over their "pull point" rack price for each bid item; "pull point" rack being the actual vendor's price paid to the refinery.
3. The determination of the price payable for each delivery of an item shall be accomplished by adding increase or margin to the Contractor's "pull point" rack price on the date of delivery.
4. No upward price adjustment shall be due the Contractor, when a Contractor delay beyond the 24-hour notice, causes a price increase after the City places an order, unless the Contractor's failure to make earlier delivery results from causes which are beyond the control of and without fault of the Contractor.

5. After orders are placed, Contractor is expected to shop refineries for the most competitive rack price available and purchase product from that refinery for delivery to the City.
6. All prices quoted shall be F.O.B. destination, all Santa Rosa delivery sites and exclusive of California State Sales Taxes.
7. The quoted markup (increase or margin) offered shall remain firm throughout the contract period, although the City may receive the benefit of any rebates, allowances, or other price reduction incentives offered to customers of the Contractor, including any passthrough incentives from the refineries.

BID EVALUATION:

Bids shall be evaluated by applying the margins bid for each item to the average price paid for these items by the City for the previous three month period ending July 31, 2013, times the estimated bi-annual usage plus applicable taxes. The lowest bidder will be determined by adding the extended amounts for Section 1 and for Section 2, with each section evaluated independently.

AUDITING OF INVOICES:

The City reserves the right to periodically audit pull point rack invoices of the successful bidder to ensure the prices being charged to the City are as specified in the bid.

REFERENCES:

Bidders shall provide the names and locations of comparable contracts with other municipalities or government agencies or private companies operating under this model bid within the past five (5) years.

CITY OF SANTA ROSA CONTRACT:

The successful bidder will be required to sign a contract substantially similar to the sample contract provided as Attachment A, and shall comply with the insurance requirements therein. Should the bidder be unwilling to sign this contract as is, the reasons why must be stated in the Required Data Section, Exceptions to the Specifications of this Invitation for Bids on Page 26 of 39.

GENERAL PROVISIONS

Bids: Discounts for prompt payment must be shown on bid, otherwise prices will be considered net. Prompt payment discounts of less than 30 days following final acceptance of the equipment/materials by the City will not be factored into the evaluation of bids. Unless prices and all information requested are complete, bid may be disregarded and given no consideration.

This Invitation For Bids shall result in a firm, fixed price contract to purchase.

In case of default by the vendor, the City of Santa Rosa may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to

the vendor, the difference between the price named in the contract or purchase order and actual cost thereof to the City of Santa Rosa. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.

All prices and bids must be in ink or typewritten. No pencil figures or erasures are permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing the bid. All bids must be signed with the firm's name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

Submission of Bids: Each bid must be submitted on the prescribed form in a sealed envelope with a bid number, closing date and time on the outside. Each bid must be signed as indicated above.

Information must be furnished complete in compliance with the terms, conditions, provisions and specifications of the Invitation For Bids. The information requested and the manner of submission is essential to permit prompt evaluation of all bids on a fair and uniform basis. Accordingly, the City reserves the right to declare as non-responsive, and reject any bid in which material information requested is not furnished or where indirect or incomplete answers or information is provided.

Bids shall be for the total net price including all applicable taxes and charges, delivered F.O.B., City of Santa Rosa.

Bids and modifications or corrections thereof received after the closing time specified will not be considered.

No telegraphic, telephone or facsimile of bids will be accepted. If a photocopy is to be submitted, it must be signed in original, in ink.

If you do not bid, return this Invitation For Bids and state reason; otherwise your name may be removed from our mailing list.

All or Nothing Bids: If your bid is on an "all or nothing" basis, so state in the Exceptions Section on page 26 of 39 of this Invitation For Bids. If a seller elects to bid "all or none" as a part of his bid, the City will be bound by that condition and will not accept bids on individual items or group items for that bid. If the City awards to an "all or nothing" seller, that award shall be for the proposal as a whole or no part thereof.

Other Agency "Piggy-Back" Procurements: Other municipalities, fire districts or public agencies in Sonoma County may be interested in purchasing equipment as procured through this solicitation. The seller is to indicate in the Schedule beginning on Page 5 of this Invitation For Bids if pricing offered in this bid will be extended to other public agencies in this area not later than ninety (90) days after award by the City of Santa Rosa. Any such "piggy-back" awards will be made independently by each agency, and the City of Santa Rosa is not an agent, partner or representative of these agencies and is not obligated or liable for any action of debts that may arise out of such independently negotiated "piggy-back" procurements.

Delivery: The delivery date or term within which the proposed item(s) will be delivered shall be stated in the space provided under Delivery Information. Failure by the successful seller to notify the City of Santa Rosa immediately of any delivery beyond the stated date or terms is cause for him to be held responsible for damages incurred as a result of an extended delivery time.

Warranty: The seller shall state on the Required Data Section the terms and conditions of the warranty being offered with the equipment bid.

It is understood by the sellers, and a condition of these specifications to which all sellers agree, that the City will not issue complete acceptance until the above warranty is furnished to the City by means of filing with the City Purchasing Agent.

In all purchases by the City of Santa Rosa, availability and accessibility of warranty service, and service after warranty may be considered in determining the low seller. *[NOTE: Refer to Special Provisions Section and/or Minimum Specifications for any additional terms and conditions.]*

Material and Equipment Specified by Name: Whenever any material or equipment is specified by patent or proprietary name or by the name of the manufacturer, unless stated differently, such specification shall be considered as if followed by the words "or acceptable equal", whether or not such words appear. The seller may offer material or equipment with equal or better qualities and performance in substitution for those specified which he considers would be in the City's interest to accept. No verbal offers for substitution will be acknowledged or considered from sellers, distributors, manufacturers or subcontractors. Any such offers shall be made in writing to the Purchasing Agent for his consideration with the submission of the proposal and the seller shall include sufficient data which, together with any other data the City may require, will enable the City to assess the acceptability of the material or equipment. Such acceptance by the City shall not relieve the seller from full responsibility from the efficiency and quality and performance of the substitute material or equipment, in the same manner and degree as the material and equipment specified by name.

It should be understood that specifying a brand name, components and/or equipment in these specifications shall not relieve the seller from full responsibility to produce the products in accordance with the performance warranty and contractual requirements. The seller is responsible for notifying the City of any inappropriate brand name, component and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

Materials and Workmanship: Materials used shall be of new and recent manufacture and best quality.

Bid Postponement and Amendment: The City of Santa Rosa reserves the right to revise or amend the specifications up to the time set for opening the bids. Such revisions and amendments, if any, shall be announced by amendments to this solicitation. Copies of such amendments shall be furnished to all prospective sellers. Prospective sellers are defined as those sellers listed on the City's Invitation For Bids list for this material, or who have obtained bid documents subsequent to the bid advertisement. If the revisions and amendments require changes in quantities or prices proposed, or both, the date set for opening bids may be postponed by such number of days as in the opinion of the City shall enable sellers to revise their bids. In any case, the bid opening shall be at least five (5) working days after the last amendment, and the amendment shall include an announcement of the new date, if applicable, for the opening of bids.

Single Bid Response: If only one bid is received in response to the Invitation For Bids, a detailed cost proposal may be requested of the single Seller. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

Bid Withdrawal: After the bids are opened, bids may not be withdrawn for ninety (90) calendar days. Prior to the date/time set for the bid opening, however, bids may be modified or withdrawn by the Seller's authorized representative in person, or by written telegraphic notice. If bids are modified or withdrawn in person, the authorized representative shall make his identity known and shall sign a receipt for the bid. Written or telegraphic notices shall be received in the office designated on Page No. 1 of this Invitation For Bids no later than the exact date/time for the bid opening. A telegraphic modification or withdrawal received in the designated office by telephone from the receiving telegraph office no later than the date/time set for the bid opening shall be considered if such message is confirmed by a copy of the telegram.

Award: The City of Santa Rosa reserves the right to accept bids, award bids and/or not award bids on individual items listed, on group items, or on the proposal as a whole; to reject any and all bids, to waive any informality in the bids, and to accept the bid that appears from all consideration to be for the best interest of the City of Santa Rosa.

In determining and evaluating the best bid, the prices will not necessarily be controlling, but quality, equality, efficiency, utility, general terms, delivery, suitability of the equipment/material offered, and the reputation of the equipment/material in general use will also be considered with any other relevant factors. The Purchasing Agent shall be the sole judge in the determination of these matters.

Notice of bid award, if bid be awarded, will be made within ninety (90) days of opening of bids to the lowest responsive and responsible seller, whose bid proposal complies with all the requirements in the Invitation For Bids. Receipt of the official Purchase Order of the City of Santa Rosa covering the supplies, materials, equipment or services as described in the Bid will indicate the award of the bid and a contract to purchase.

Order Acknowledgment: The successful seller, after receipt of a City of Santa Rosa Purchase Order, shall be required to furnish the City Purchasing Agent, when made available, a copy of the factory order acknowledgment or production date(s) for the equipment/material ordered.

Contract Administration: Except as otherwise specifically provided in this Invitation For Bids, and the resulting Purchase Contract or Purchase Order, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified. Service may also be made by mail, by placing a notice, submittal or communication in an envelope with the proper first-class postage affixed thereto and addressed as indicated, and depositing said envelope in the United States mail (see Required Data Section).

Option to Increase Quantity of Ordered Units: The City reserves the right to increase the quantity of ordered units shown on this Invitation For Bids by issuance on the original purchase order or an additional purchase order not later than ninety (90) days after award of bid. The successful seller agrees to furnish to the City the additional ordered units at the unit price offered in this Bid.

Modification: The City of Santa Rosa, at any time prior to the delivery date specified on the resulting Purchase Order or Purchase Contract, may issue a written order for any modifications. Such modifications shall be the result of negotiation and agreement between both parties.

Oral change orders are not permitted. No change in this Invitation For Bids or resulting Purchase Order or Purchase Contract shall be made unless the City of Santa Rosa gives its prior written approval from the office of the Purchasing Agent. The Seller shall be liable for all costs resulting from any unauthorized changes to the Invitation For Bids, Purchase Order or Purchase Contract.

Termination of Contract to Purchase: If at any time, in the opinion of the City, upon recommendation of the Purchasing Agent, 1) seller fails to conform to the requirements of this contract; or 2) seller seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceedings are commenced against seller which may interfere with the performance of the contract; or 4) seller has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in any by the terms of the contract, notice thereof in writing may be served upon him, and should he neglect or refuse to provide means for a satisfactory compliance with the contract as directed by the Purchasing Agent within the time specified in such notice the City in any such case shall have the right and power, at its option and without prejudice to any other right it may have, to terminate the contract. Any excess of the cost arising there from will be charged against the seller and his sureties, who will be liable thereof. In the event of such termination, all monies due the seller or retained under terms of the contract shall be forfeited to the City; but such forfeiture will not release the seller or his sureties from liability for failure to fulfill the contract.

Inspection: The City reserves the right and shall be at liberty to inspect all materials and workmanship and shall have the right to reject all materials and workmanship which do not conform to the equipment/material specification provided; however, the City is under no duty to make such inspection. Should it be determined, after inspection that a conditional acceptance exists and corrections are needed to bring the equipment/material up to the specifications of the bid award, the City, for the purpose of earning the discount, may extend the date of complete acceptance beyond the date of delivery.

Title: Title to the equipment/material shall pass to the City at the F.O.B. point designated under Delivery, subject to the right of the City to reject upon inspection.

Acceptance and Payment: Acceptance shall be made at the time all equipment/material is operational and in proper working order as determined by and to the satisfaction of the City of Santa Rosa. Acceptance of the equipment/material shall be determined on the basis of technical completeness, performance and adherence to the operational requirements and functions of the specifications.

Payment will be scheduled within thirty (30) days upon complete delivery and acceptance of all material/equipment and receipt of an original and one (1) copy of an invoice complying with the terms and conditions of the award. The City reserves the right to withhold up to ten percent (10%) of the purchase price in the event there is a conditional acceptance.

In connection with any discount for prompt payment specified on this Invitation For Bid, time will be computed from the date of complete acceptance of the equipment/material, or from date correct invoices are received in the City Finance Office, if the latter date is later than the date of complete acceptance. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.

Non-compliance with any one of the following requirements shall constitute a conditional acceptance:

1. Adherence to the general construction and performance specifications.
2. Reasonable opportunity for equipment/material inspection by City Purchasing Department.
3. Receipt of manuals (if applicable).
4. Receipt of warranty statement.

Assignment and Subcontracting: The seller shall not assign or subcontract the work, or any part thereof, without the previous written consent of the City, nor shall he assign, by power of attorney or otherwise, any of the money payable under this contract unless written consent of the City has been obtained. No right under this contract, not claim for money due or to become due hereunder shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this contract or any part thereof, unless such assignment has been authorized by the written consent of the City. In case the seller is permitted to assign monies due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by him, his subcontract shall be immediately terminated by the seller upon notice from the City. The seller shall be fully responsible and accountable to the City for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. Nothing contained in this contract shall create any contractual relation between any subcontract and the City.

Indemnify and Hold Harmless Agreement: Seller agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the City, its officers, and employees, from actions, claims, damages, disabilities or the cost of litigation that are asserted by any person or entity to the extent arising out of the negligent acts or omissions or willful misconduct in the performance by the seller hereunder, whether or not there is concurrent negligence on the part of the City, but excluding liability due to the active negligence or willful misconduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for seller or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts.

Seller shall be liable to City for any loss of or damage to City property arising from seller's negligence or willful misconduct.

Patents and Royalties: All costs involved in fees, royalties or claims for any patented invention, article, process or method that may be used upon or in any manner connected with the supply of this material shall be paid by the seller. Should the seller, his agent or employees or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under the contract, the seller shall promptly substitute other articles, materials or appliances in lieu thereof equal finish, efficiency, quality, suitability and market value, and satisfactory in all respects to the City. Or in the event that the City elects, in lieu of such substitution, to have supplied and to retain and use any such inventions, articles, materials or plans as may be required to be supplied the seller shall pay such royalties and secure such valid licenses as may be requisite for the City, its officers, agents, and employees, or any of them to use such invention, article, materials or appliances without being disturbed or in any way interfered with by any proceeding in the law or equity on account thereof. Should the seller neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then in the event the City shall have the right to make such substitution or the City may pay such royalties and secure such licenses and charge the seller even though final payment under the contract may have been made.

Federal and State Tax: Prices quoted shall not include Federal Excise Tax. California Sales Tax of nine and one-half percent (9.50%) will be paid in accordance with the contract payment schedule.

Legality: If any provisions of this Invitation For Bids shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

California Law: This Invitation For Bids shall be governed according to the laws of the State of California.

Compliance with Laws and Regulations: All materials, parts and equipment furnished pursuant to these specifications shall be in compliance with the laws and regulations of the State of California and OSHA. The seller shall, if requested by the City, supply certification and evidence of such compliance.

Retention of Records: The seller shall be required to retain any records necessary to document the charges for goods to be provided or services to be performed and make such records available to the City for inspection at the City's request for a period of four (4) years.

Recycled Content, Recyclability:

- A. **Recycled Content Preference:** It is the City policy, whenever practicable, to purchase functional products which contain, in order of preference:
1. the highest percentage of post-consumer recovered material available in the marketplace; and
 2. the highest percentage of secondary waste recovered material available in the market place.
- B. **Recyclability and Waste Reduction:** In addition to the recovered material content of a product, important criteria in selecting products shall also be:
1. the ability of the product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs; and
 2. the volume and toxicity of waste and by-product a given product and its packaging generate in their manufacture, use, recycling, and disposal. Products and packaging designed to minimize waste and toxic by-products in their manufacture, use, recycling, and disposal shall be preferred.
- C. **Equipment Compatibility:** Equipment purchased or rented by the City shall be compatible, whenever practicable, with the use of recycled-content products.
- D. **Definitions:** For the purposes of this general provision, a "recycled product" means all materials, goods, and supplies, no less than 50% of the total weight of which consists of secondary and post-consumer waste with not less than 10% of its total weight consisting of weight consisting of post-consumer waste. "Post-consumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item, and does not include manufacturing waste. "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. [Source: California Public Contract Code, Section 12200]

Bid Contents: This proposal consists of the Invitation For Bids, Bid, Provisions, Specifications, Attachments and other terms and conditions as are attached or incorporated by reference in the schedule of the Invitation For Bids.

Federal Transit Authority Requirements. Bidders and the successful seller(s) are subject to, and shall comply with, the following bolded provisions.

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
- 6. Energy Conservation Requirements**
- 7. Clean Water Requirements**
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
- 10. Lobbying**
- 11. Access to Records and Reports**
- 12. Federal Changes**
13. Bonding Requirements
- 14. Clean Air**
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
- 19. No Government Obligation to Third Parties**
- 20. Program Fraud and False or Fraudulent Statements and Related Acts**
- 21. Termination**
- 22. Government-wide Debarment and Suspension (Nonprocurement)**
23. Privacy Act
- 24. Civil Rights Requirements**
- 25. Breaches and Dispute Resolution**
26. Patent and Rights in Data
27. Transit Employee Protective Agreements
- 28. Disadvantaged Business Enterprises (DBE)**
29. [Reserved]
- 30. Incorporation of Federal Transit Administration (FTA) Terms**
31. Drug and Alcohol Testing

Titles and sources of authority references for all of the Federal Transit Authority clauses are listed in this document. However, only those clauses applicable to this specific bid and resulting contract are detailed with the full requirements articulated.

1. FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 CFR Part 301-10

This section does not apply to this contract.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)

49 CFR Part 661

This section does not apply to this contract.

3. CHARTER BUS AND SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(d)

49 CFR Part 604

This section does not apply to this contract.

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241

46 CFR Part 381

This section does not apply to this contract.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49

CFR Part 41

This section does not apply to this contract.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. BUS TESTING

49 U.S.C. 5323(c)

49 CFR Part 665

This section does not apply to this contract.

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323

49 CFR Part 663

This section does not apply to this contract.

10. LOBBYING

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through

other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
<u>I State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	None None unless ¹ non-competitive award	Those imposed on state pass thru to Contractor	None Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
<u>II Non State Grantees</u> a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects	Yes ³ Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes Yes	Yes Yes	Yes Yes	Yes Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between City and FTA (available on FTA website), as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS

This section does not apply to this contract.

14. CLEAN AIR
42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS
42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

This section does not apply to this contract.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

This section does not apply to this contract.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

This section does not apply to this contract.

18. RESERVED

This section does not apply to this contract.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS
31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1E

See Termination of Contract to Purchase provision

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. PRIVACY ACT

5 U.S.C. 552

This section does not apply to this contract.

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

FTA Circular 4220.1E

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the City of Santa Rosa Purchasing Agent. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Purchasing Agent. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Purchasing Agent shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the City of Santa Rosa, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Santa Rosa and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Santa Rosa is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Santa Rosa or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401

49 CFR Parts 18 and 19

This section does not apply to this contract.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333

29 CFR Part 215

This section does not apply to this contract.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The City's overall goal for DBE participation is 6.6%.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49

CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City of Santa Rosa deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

The successful bidder/offer or will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- c. A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of the section. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the City's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.
- d. The contractor must promptly notify City of Santa Rosa, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of City of Santa Rosa.

29. [RESERVED]

This section does not apply to this contract.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Santa Rosa requests which would cause City of Santa Rosa to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331

49 CFR Parts 653 and 654

This section does not apply to this contract.

REQUIRED

DATA

FORMS

List of Forms:

Exceptions to Specifications

References

Designated Contact

REFERENCES
Preferably Municipalities Operating Under the Model Bid

- 1) Government Agency _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 2) Government Agency _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 3) Government Agency _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 4) Government Agency _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 5) Company _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 6) Company _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 7) Company _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

- 8) Company _____
Location _____
Contact Person _____
Phone No. _____
Length of Service _____

REQUIRED DATA

Designated Contact

Bidder is required to indicate in the space provided below, the designated contact individuals name and address as requested under Notification in the General Provisions Section of the Invitation for Bids.

City of Santa Rosa

Jim Wright
Purchasing Agent
City of Santa Rosa – Purchasing Office
635 First Street, 2nd Floor
Santa Rosa, CA 95404
707-543-3706 Voice
707-543-3703 Fax
jwright@srcity.org

Contractor

**ATTACHMENT A
(SAMPLE)
CITY OF SANTA ROSA
GENERAL SERVICES AGREEMENT
WITH [NAME OF CONTRACTOR]
AGREEMENT NUMBER _____**

This "Agreement" is made as of this ____ day of _____, 2013 [leave date blank until all parties have signed or until Council approves], by and between the City of Santa Rosa, a municipal corporation ("City"), and [add Contractor's full name, for example, "XYZ Sales Corporation" or "ABC Contracting, LLC" or "ABC Enterprises, LP", or "John Smith, dba Smith Contracting"] a [add type of legal entity and state of entity formation or incorporation, for example, a "California Corporation," or a "Delaware Limited Liability Company," or a "Nevada Limited Partnership," or a "sole proprietor"], ("Contractor").

RECITALS

A. City desires to purchase diesel and unleaded regular gasoline and delivery services.

B. City desires to retain a qualified contractor to conduct the services described above in accordance with the terms of this Agreement.

C. Contractor represents to City that it is fully qualified to conduct the services described above.

D. The parties have negotiated upon the terms pursuant to which Contractor will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide to City the services described in City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel dated August 7, 2013 and Contractor's bid dated _____, all of which are attached hereto as Exhibits A and B (in order of precedence) which are incorporated by reference as though fully set forth herein. Contractor shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto solely for the purpose of defining the manner and scope of services to be provided by Contractor and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. The parties agree that any term contained in Exhibit B that adds to, varies or conflicts with the terms of this Agreement is null and void.

2. TIME FOR PERFORMANCE

The services described herein shall be provided as set forth in Exhibits A and B. Contractor shall devote such time and effort to the performance of services as is necessary for the satisfactory and timely performance of Contractor's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

3. STANDARD OF PERFORMANCE

Contractor shall perform all services required under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's occupation in California. All products and services of whatsoever nature that Contractor provides to City pursuant to this Agreement shall conform to the standards of quality normally observed by persons currently practicing in Contractor's occupation, and shall be provided in accordance with any schedule of performance specified in Exhibit A. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, at any time during the term of this Agreement, desires the removal of any person assigned by Contractor to perform services pursuant to this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

4. COMPENSATION

The total of all fees paid to Contractor for the satisfactory performance and completion of all services set forth in Exhibits A and B shall not exceed the total sum of \$_____. The Chief Financial Officer is authorized to pay all proper claims from the appropriate IFAS keys.

5. BILLABLE RATES, PAYMENTS TO CONTRACTOR

a. Billable Rates. Contractor shall be paid for the performance of services as set forth in Exhibit B.

b. Payments. Payments will be delayed where Contractor fails to provide the information required under subsection c.1 below or fails to comply with the insurance requirements in Attachment One to this Agreement. In no event shall the City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice.

c. Invoices. Payment will be made on a calendar-month basis in arrears. Invoices shall be submitted to the person and address specified in the Agreement, bid, or purchase order. In the event this Agreement becomes effective or terminates during the course of a month, the amount paid to the Contractor for the partial month shall be determined by prorating the amount on the basis of the number of calendar days involved. Processing of payment will be delayed for Contractor's failure to include reference to Agreement (including number) on the invoice **and for failure to maintain current insurance information with the City in accordance with insurance requirements hereunder.** In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in the Contractor's

invoice. Invoices for services provided in June or for any services not previously invoiced shall be submitted within 10 working days after June 30 to facilitate City fiscal year end closing. Failure to comply with this invoice submission requirement may delay payment.

In connection with any cash discount specified in the bid response, if applicable, or Contractor's Proposal, time will be computed from the date correct invoices are received by the person and address specified in the Agreement, bid, or purchase order. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check. All invoices shall contain the following information:

1. Contractor name and remittance address
2. Date of invoice issuance
3. Amount of invoice
4. City purchase order or Agreement number
5. Identification of Agreement or purchase order line item(s) (if multiple lines) and description of services provided
6. Date of completion of services
7. Detail of costs, including labor, materials, tax, etc.

d. Business Taxes. Contractor shall pay to the City when due all business taxes payable by Contractor under the provisions of Chapter 6-04 of the Santa Rosa City Code. The City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Contractor.

6. TERM, SUSPENSION, TERMINATION

a. The term of this Agreement shall be for two years commencing on the date it is made above. City and Contractor may, upon mutual written agreement of both parties, extend this Agreement for three one-year periods, one two-year period, one three-year period, or any combination not to exceed a total of three years.

b. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If City gives such notice of suspension, Contractor shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time by giving a written notice of termination to Contractor. If City gives such notice of termination, Contractor shall immediately cease rendering services pursuant to this Agreement. If City terminates this Agreement, City shall pay Contractor the reasonable value of services rendered by Contractor prior to termination. In this regard, Contractor shall furnish to City such information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Contractor. City shall not in any manner be liable for lost profits that might have been made by Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement.

7. TERMINATION OF AGREEMENT FOR DEFAULT

If at any time 1) Contractor fails to conform to the requirements of this Agreement; 2) Contractor seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Contractor which may interfere with the performance of this Agreement; or 4) Contractor has failed to supply an adequate working force, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended

in and by the terms of this Agreement, which default is not fully corrected or remedied to the reasonable satisfaction of City within ten (10) days following the date a written notice thereof by City, then City shall have the right and power, at its option and without prejudice to any other rights or remedies it may have, to immediately terminate this Agreement. Any cost or expense incurred by City arising out of Contractor's breach or default hereunder, and for City's enforcement of these rights, shall be the obligation of Contractor and may, at City's discretion, be deducted from any amounts that may then be owing to Contractor under this Agreement, without any release or waiver of any other rights or remedies in law or equity to which City may be entitled.

8. INDEMNIFY AND HOLD HARMLESS AGREEMENT

Contractor shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same results from or arises out of the performance of this Agreement by Contractor, its officers, employees, agents, or sub-contractors, excepting only that resulting from the sole, active negligence or intentional misconduct of City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employees' benefits acts. The provisions of this Section 8 shall survive any expiration or termination of this Agreement.

9. INSURANCE REQUIREMENTS

Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated herein by this reference. Maintenance of the insurance coverages as set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Contractor in exchange for the City's agreement to make the payments prescribed hereunder. Failure by Contractor to (i) maintain or renew coverage, (ii) provide the City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the City as a material breach of this Agreement by Contractor, whereupon the City shall be entitled to all rights and remedies at law and in equity, including but not limited to the immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under this Agreement. In the event Contractor, with approval of the City pursuant to Section 11 below, retains or utilizes any subcontractors in the provision of any services to City under this Agreement, Contractor shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in Attachment One.

10. LEGAL REQUIREMENTS AND PERMITS

Contractor represents and warrants that Contractor has all licenses, permits, City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Contractor to practice its occupation and provide services under this Agreement. Contractor shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which

prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.; (iii) OSHA; and (iv) the Immigration Reform and Control Act of 1986. Contractor shall, if requested by City, provide certification and evidence of such compliance. If Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

11. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not subcontract or assign any right or obligation under this Agreement without the written consent of the City. Any attempted or purported subcontract or assignment without City's written consent shall be void and of no effect. No right under this Agreement, or claim for money due or to become due hereunder, shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this Agreement or any part thereof and Contractor hereby agrees to indemnify and hold City harmless against any and all such claims. In the event Contractor obtains the prior written consent of City to assign monies due or to become due under this Agreement, Contractor shall provide City a copy of the instrument of assignment duly executed by Contractor, which shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work. Upon notice and request by the City, Contractor shall promptly remedy, to include termination of any subcontract as appropriate and necessary, any default or failure to perform in a satisfactory manner the work undertaken by any subcontractor. Contractor shall be fully responsible and accountable to the City for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by them, to the same extent that Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.

12. BINDING EFFECT

This Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the parties, subject to the provisions of Section 11, above.

13. RETENTION OF RECORDS

Contractor shall be required to retain any records necessary to document the charges for the services to be performed under this Agreement and make such records available to the City for inspection at the City's request for a period of not less than four (4) years.

14. ENTIRE AGREEMENT

This document, including all Exhibits and Attachment One, contains the entire agreement between the parties and supersedes whatever oral or written understanding the parties may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Contractor, and by

City, in accordance with applicable provisions of the Santa Rosa City Code.

15. SEVERABILITY

If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. WAIVER

Neither City acceptance of, or payment for, any service performed by Contractor, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

17. ENFORCEMENT OF AGREEMENT

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

18. CONTRACTOR NOT AGENT

Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.

19. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by

reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Contractor, in the performance of Contractor's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors.

d. The provisions of this Section 19 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

20. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

<u>City</u>	<u>Contractor</u>
Jim Wright	_____
Purchasing Agent	_____
631 First Street, 2 nd Floor	_____
Santa Rosa, California 95404	_____
Phone: (707) 543-3706	_____
Fax: (707) 543-3703	_____

21. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to the City that it is (a) a duly organized and validly existing [enter type of entity], formed and in good standing under the laws of the State of [enter state of formation for corporations, LPs and LLCs], (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Contractor hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Contractor in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

CONTRACTOR:

CITY OF SANTA ROSA
a Municipal Corporation

Name of Firm: _____

TYPE OF BUSINESS ENTITY (*check one*):

- _____ Individual/Sole Proprietor
- _____ Partnership
- _____ Corporation
- _____ Limited Liability Company
- _____ Other (please specify: _____)

By: _____

Print Name: _____

Title: _____

Signatures of Authorized Persons:

APPROVED AS TO FORM:

By: _____

Office of the City Attorney

Print Name: _____

ATTEST:

Title: _____

By: _____

City Clerk

Print Name: _____

Title: _____

Taxpayer I.D. No. _____

City of Santa Rosa Business Tax Cert. No.

Attachments:

Attachment One - Insurance Requirements

Exhibit A - City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel dated August 8, 2013
Exhibit B – Contractor's bid dated _____

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
GENERAL SERVICES AGREEMENTS**

- A. Insurance Policies:** Contractor shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 2 million per occurrence \$ 4 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
4. Pollution Liability	\$500,000	If the work involves lead-based paint or asbestos identification/remediation, the policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the policy must not contain mold exclusion and the definition of "Pollution" in the policy must include microbial matter, including mold.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
2. Liability policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the contract. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Self-insured retentions above \$10,000 must be approved by the City. At the City's option, Contractor may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

NOTICE

IF RECEIVING THIS IFB BY INTERNET, CALL (707) 543-3700 TO REGISTER AS A BIDDER. FAILURE TO REGISTER AS A BIDDER MAY RESULT IN YOUR FIRM NOT RECEIVING BID ADDENDUMS. FAILURE TO SUBMIT BID ADDENDUMS WITH BID MAY CAUSE YOUR BID TO BE CONSIDERED NON-RESPONSIVE.



**INVITATION FOR BIDS
13-44**

UNLEADED GASOLINE AND DIESEL FUEL

DATE ISSUED

August 8, 2013

BIDS DUE

(Bid Opening)

August 28, 2013 at 2:00 p.m.

635 1st Street – Second Floor
Santa Rosa, CA 95404

TO

Jim Wright, Purchasing Agent
City of Santa Rosa – Purchasing Office
635 First Street, 2nd Floor
Santa Rosa, CA 95404
(707) 543-3706
(707) 543-3703
jwright@srcity.org



The City of Santa Rosa does not discriminate on the basis of disability in the admissions or access to, or treatment of or employment in its programs or activities. Disability-related aids or services, including printed information in alternate formats, to enable persons with disabilities to participate in public meetings, programs, bid openings, and to deliver bid packages to the location specified herein, are available by contacting the Purchasing Agent, Jim Wright at (707) 543-3706 one week prior to the meeting, program, bid due date or formal bid opening.

INVITATION FOR BIDS 13-44
UNLEADED GASOLINE AND DIESEL FUEL

Sealed Bids, signed and in the original only, subject to the Invitation For Bids, Provisions and Specifications, will be received at City of Santa Rosa, **Purchasing Office, 635 First Street, 2nd Floor Santa Rosa, CA 95404 until 2:00 p.m., on Wednesday, August 28, 2013**, for unleaded gasoline and diesel fuel.

The Intent of this Invitation for Bids is to establish two-year term contract(s), with three one-year renewal options for the purchase of unleaded regular gasoline and diesel for the City of Santa Rosa in accordance with the terms, conditions and work specifications contained herein. The City may award on an "all or none" basis, or may make multiple awards by section if deemed in the best interest of the City.

The City may purchase unleaded regular gasoline and diesel outside of this contract if, in the opinion of the City, this is necessary to meet operation requirements.

Services shall include furnishing all qualified labor, product, equipment, and transportation necessary to perform the work outlined in this contract. All deliveries must be FOB destination.

Do not add State of California sales tax or any of the taxes or fees the City is required to pay in your margin quoted. Any additional costs such as: fuel and insurance surcharges and CA UST diesel and gas charges, must be included in your margin quoted.

Section 1

Truck and Trailer Delivery

LOCATIONS	# OF TANKS	STORAGE CAPACITY IN GALLONS	TYPE OF FUEL	ESTIMATED 2-YR USAGE	INCREASE/ MARGIN PER GALLON OVER PULL POINT RACK AT REFINERY
Municipal Services Center – North 55 Stony Point Road	1	15,000	Regular Unleaded gasoline	500,000	.049
Municipal Services Center – North 55 Stony Point Road	2	35,000	Diesel	800,000	.059

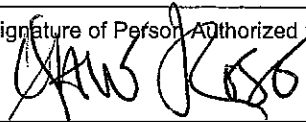
Section 2**Bobtail Delivery**

LOCATIONS	# OF TANKS	TANK SIZE IN GALS	TYPE OF FUEL	ESTIMATED 2-YR USAGE	INCREASE/ MARGIN PER GALLON OVER PULL POINT RACK AT REFINERY
Laguna Treatment Plant 4300 Llano Road	1	15,000	Red Dye Diesel	50,000	.059
Brown Farm 2200 Llano Road	1	500	Unleaded Regular Gasoline	2,000	.19
Brown Farm 2200 Llano Road	1	500	Diesel	4,000	.19
Fire Station #1 955 Sonoma Avenue	1	2,000	Diesel	9,000	.19
Fire Station #3 3311 Coffey Lane	1	500	Diesel	7,000	.19
Fire Station #4 1775 Yulupa Avenue	1	800	Diesel	5,000	.19
Fire Station #5 3480 Parker Hill Road	1	500	Diesel	6,000	.19
Fire Station #6 205 Calistoga Road	1	500	Diesel	3,000	.19
Misc. Utilities Dept. Pump Stations and Wells	12	various	Red Dye Diesel	500	.19

BID

In compliance with the above, the undersigned offers and agrees, if this IFB is accepted, within ninety (90) calendar days from date of opening, to furnish any or all of the items upon which prices are offered at the price set opposite each item, delivered at the designated point(s) within the time specified in the Schedule. Discounts will be allowed for prompt payment as follows:

N/A percent, 20 calendar days; 0 percent, 30 calendar days.

Name and Address of Bidder: Ramos Oil Company, Inc. 1515 S. River Rd. W. Sacto., Ca. Phone No. 916-371-2570 95691	Signature of Person Authorized to Sign: 
Date of Bid: 08-20-2013	Please Type Signer's Name and Title: Dave Rose

BID ITEM(S) AVAILABLE FOR OTHER AGENCY "PIGGY-BACK" PROCUREMENT:

 YES X NO

NOTE: Prospective sellers are referred to GENERAL PROVISIONS for terms and conditions of OTHER AGENCY "PIGGY-BACK" PROCUREMENTS.

SPECIFICATIONS

It is the intent of these specifications to describe the unleaded gasoline and diesel fuel that shall meet or exceed the specifications described in the following minimum specifications.

Any deviation from the written specifications shown in the Invitation For Bids shall be noted in the Exceptions Section of the Invitation. (See Required Data Section – Page 26 of 39)

Attention should also be directed to the Required Data Section of the bid in order to provide the data required.

In order to receive full consideration, submitted bids must fully follow these Specifications and the Invitation for Bids' Special Provisions and General Provisions.

**MINIMUM SPECIFICATIONS FOR
UNLEADED GASOLINE AND DIESEL FUEL**

GASOLINE: Unleaded regular gasoline minimum 87 Octane

DIESEL: Ultra Low Sulfur and Red Dye

1. Must meet ASTM designation D-975 (Grade 2-D)
2. Maximum final boiling point of 675 degrees Fahrenheit.
3. Minimum cetane No. 40.
4. Maximum sulfur content of 0.50% by weight.

SPECIAL PROVISIONS

CONTRACT PERIOD: The resulting contract shall be in effect from November 1, 2013 or date of award if subsequent thereto for a period of two years, with the option to renew the contract for three 1-year extensions, or any combination not exceeding a total of three years upon written consent of the contractual parties.

ORDERS: Orders against the contract will be placed by a duly authorized City employee or according to a schedule provided by a duly authorized City employee, unless notified differently in writing.

DELIVERY REQUIREMENTS:

1. The vendor shall be required to complete all deliveries within twenty-four (24) hours from time of request, except when requested on a Friday or prior to a holiday, which shall cause delivery to be made on the next regularly scheduled City work day.
2. Truck and trailer fuel deliveries will require a copy of the bill of lading from the refinery. Copies of the bill of lading can either be delivered to MSC-North Warehouse, 55 Stony Point Road, Santa Rosa, or faxed to (707) 543-4217, or emailed to the Stores Specialist within twenty-four (24) hours of delivery for all sites.
3. All bobtail fuel deliveries to be metered by a Sonoma County Department of Weights and Measures approved metering device and the tank shall be stick measured before delivery by the driver. All delivery tags shall be annotated as to each type of reading for amounts delivered.
4. Each delivery tag for gasoline shall be annotated as to octane level of fuel delivered. At least once quarterly, if desired, the City will randomly monitor gasoline octane. This once per quarter testing cost shall be borne by the contractor. Any testing beyond one time, in any particular calendar quarter, shall be the responsibility of the City.
5. The delivery sites are listed on Pages 2 and 3 of this Invitation for Bids. Deliveries shall be coordinated through the Purchasing Division or a duly authorized City employee.

- 6. All prices shall be F.O.B. delivered to the designated City of Santa Rosa site as listed on Pages 2 and 3, unless otherwise specified. All delivery charges to be included in the margins bid on Pages 2 and 3.
- 7. Diesel fuel delivery shall be verified with each delivery site involved, and where deemed necessary by the City, shall be delivered at least once each week so as to reduce the chance of water contamination and bacteria build-up. In no case shall fuel levels be allowed to drop below 20% of fuel capacity where deemed necessary by the City. Vendor(s) agree, by submission, to replace any contaminated fuel, caused by contractor delay in delivery, within 24 hours of such notification by the City.
- 8. Bobtail deliveries as described in Section 2 will be necessary for the smaller quantity deliveries of fuel, but in no case shall there be a need for less than 100 gallons per delivery site. Any delivery that does not meet the above criteria may be charged at the appropriate gallon cost.
- 9. Emergency Product Delivery: If, in the event that unforeseen circumstances should create a fuel shortage and/or a priority delivery schedule, the vendor agrees that the City of Santa Rosa will be guaranteed a first delivery priority of fuel to maintain all City Emergency Services. The vendor will furnish emergency fuel deliveries within twenty-four (24) hours from receipt of order when necessary.

Please indicate if you will comply with this requirement: YES X NO

10. Each vendor to provide their delivery assets within 150 miles radius of the Santa Rosa area:

- a. Number of Truck and Trailers: 13 Capacity: 9000 gallons.
- b. Number of Bobtail Trucks: 25 Capacity: 4500 gallons
- c. Number of Drivers: 50
- d. Number of Dispatchers: 6

Please state whether the above list is:

Contractor owned:	<u>Yes</u>
Contractor leased/rented:	<u> </u>
Subcontractor owned:	<u> </u>
Independent Owner/Operator:	<u> </u>
Other:	<u> </u>

If Subcontractor owned please provided the following:

Name: <u> </u>	Contact person: <u> </u>
Address: <u> </u>	Telephone number: <u> </u>
<u> </u>	
<u> </u>	

If other, please explain:

Comments:

OTHER REQUIREMENTS:

1. Each bidder shall conform to California Business and Professional Code, Section 13520, to wit:

Basis of settlement: temperature corrected gallonage - - "It is unlawful for any distributor, or for any broker, to sell any product to a retailer or to any person, when the quantity distributed in the single delivery, to a single location is 5,000 gallons or more, as or purporting to be gasoline or diesel fuel, unless the distributor or broker, as the case may be, offers to invoice the purchaser for such gasoline or diesel fuel on the basis of temperature-corrected gallonage to 60 degrees Fahrenheit, for all such deliveries to the purchaser, over a period of twelve (12) consecutive months, and settles his account with the purchaser on the same basis."

2. Vapor recovery systems for gasoline must be on all contractor delivery systems and shall carry systems that are compatible with the vapor recovery system of each tank at each delivery site to which such gasoline is required to be delivered.

Further, the vapor recovery system of each conveyance shall be in compliance with all regulations by the local and state authority, or the U.S. Environmental Protection Agency, whichever has authority over jurisdiction of recovery of gasoline vapors.

3. The contractor shall use reasonable care to avoid damage or contamination of existing buildings, equipment, asphalt, soil or vegetation, at any City delivery site. If the contractor causes damage or contamination, he shall replace the damaged items or repair the damage at no expense the City, and to the satisfaction of the City.
4. Free Time and Detention Rates: Upon arrival of contractor's delivery equipment at delivery site(s), specify below the free time offered and detention rates that may apply. Detention rate(s) beyond free time shall apply only with respect to delays caused by the City.

Specify here the free time offered: 1 Hour

Specify here the detention rate to be charge, after expiration of free time, for any City caused delay in delivery: \$75 per hour

BID PRICING:

1. The City of Santa Rosa does not agree to purchase any maximum or minimum amounts with the award of this bid, quantities listed are estimates only.
2. Bidder shall bid fuel at increase/margin over their "pull point" rack price for each bid item; "pull point" rack being the actual vendor's price paid to the refinery.
3. The determination of the price payable for each delivery of an item shall be accomplished by adding increase or margin to the Contractor's "pull point" rack price on the date of delivery.
4. No upward price adjustment shall be due the Contractor, when a Contractor delay beyond the 24-hour notice, causes a price increase after the City places an order, unless the Contractor's failure to make earlier delivery results from causes which are beyond the control of and without fault of the Contractor.

5. After orders are placed, Contractor is expected to shop refineries for the most competitive rack price available and purchase product from that refinery for delivery to the City.
6. All prices quoted shall be F.O.B. destination, all Santa Rosa delivery sites and exclusive of California State Sales Taxes.
7. The quoted markup (increase or margin) offered shall remain firm throughout the contract period, although the City may receive the benefit of any rebates, allowances, or other price reduction incentives offered to customers of the Contractor, including any passthrough incentives from the refineries.

BID EVALUATION:

Bids shall be evaluated by applying the margins bid for each item to the average price paid for these items by the City for the previous three month period ending July 31, 2013, times the estimated bi-annual usage plus applicable taxes. The lowest bidder will be determined by adding the extended amounts for Section 1 and for Section 2, with each section evaluated independently.

AUDITING OF INVOICES:

The City reserves the right to periodically audit pull point rack invoices of the successful bidder to ensure the prices being charged to the City are as specified in the bid.

REFERENCES:

Bidders shall provide the names and locations of comparable contracts with other municipalities or government agencies or private companies operating under this model bid within the past five (5) years.

CITY OF SANTA ROSA CONTRACT:

The successful bidder will be required to sign a contract substantially similar to the sample contract provided as Attachment A, and shall comply with the insurance requirements therein. Should the bidder be unwilling to sign this contract as is, the reasons why must be stated in the Required Data Section, Exceptions to the Specifications of this Invitation for Bids on Page 26 of 39.

GENERAL PROVISIONS

Bids: Discounts for prompt payment must be shown on bid, otherwise prices will be considered net. Prompt payment discounts of less than 30 days following final acceptance of the equipment/materials by the City will not be factored into the evaluation of bids. Unless prices and all information requested are complete, bid may be disregarded and given no consideration.

This Invitation For Bids shall result in a firm, fixed price contract to purchase.

In case of default by the vendor, the City of Santa Rosa may procure the articles or services from other sources and may deduct from any monies due, or that may thereafter become due to

the vendor, the difference between the price named in the contract or purchase order and actual cost thereof to the City of Santa Rosa. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.

All prices and bids must be in ink or typewritten. No pencil figures or erasures are permitted. Mistakes may be crossed out and corrections inserted adjacent thereto and must be initialed in ink by person signing the bid. All bids must be signed with the firm's name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.

Submission of Bids: Each bid must be submitted on the prescribed form in a sealed envelope with a bid number, closing date and time on the outside. Each bid must be signed as indicated above.

Information must be furnished complete in compliance with the terms, conditions, provisions and specifications of the Invitation For Bids. The information requested and the manner of submission is essential to permit prompt evaluation of all bids on a fair and uniform basis. Accordingly, the City reserves the right to declare as non-responsive, and reject any bid in which material information requested is not furnished or where indirect or incomplete answers or information is provided.

Bids shall be for the total net price including all applicable taxes and charges, delivered F.O.B., City of Santa Rosa.

Bids and modifications or corrections thereof received after the closing time specified will not be considered.

No telegraphic, telephone or facsimile of bids will be accepted. If a photocopy is to be submitted, it must be signed in original, in ink.

If you do not bid, return this Invitation For Bids and state reason; otherwise your name may be removed from our mailing list.

All or Nothing Bids: If your bid is on an "all or nothing" basis, so state in the Exceptions Section on page 26 of 39 of this Invitation For Bids. If a seller elects to bid "all or none" as a part of his bid, the City will be bound by that condition and will not accept bids on individual items or group items for that bid. If the City awards to an "all or nothing" seller, that award shall be for the proposal as a whole or no part thereof.

Other Agency "Piggy-Back" Procurements: Other municipalities, fire districts or public agencies in Sonoma County may be interested in purchasing equipment as procured through this solicitation. The seller is to indicate in the Schedule beginning on Page 5 of this Invitation For Bids if pricing offered in this bid will be extended to other public agencies in this area not later than ninety (90) days after award by the City of Santa Rosa. Any such "piggy-back" awards will be made independently by each agency, and the City of Santa Rosa is not an agent, partner or representative of these agencies and is not obligated or liable for any action of debts that may arise out of such independently negotiated "piggy-back" procurements.

Delivery: The delivery date or term within which the proposed item(s) will be delivered shall be stated in the space provided under Delivery Information. Failure by the successful seller to notify the City of Santa Rosa immediately of any delivery beyond the stated date or terms is cause for him to be held responsible for damages incurred as a result of an extended delivery time.

Warranty: The seller shall state on the Required Data Section the terms and conditions of the warranty being offered with the equipment bid.

It is understood by the sellers, and a condition of these specifications to which all sellers agree, that the City will not issue complete acceptance until the above warranty is furnished to the City by means of filing with the City Purchasing Agent.

In all purchases by the City of Santa Rosa, availability and accessibility of warranty service, and service after warranty may be considered in determining the low seller. *[NOTE: Refer to Special Provisions Section and/or Minimum Specifications for any additional terms and conditions.]*

Material and Equipment Specified by Name: Whenever any material or equipment is specified by patent or proprietary name or by the name of the manufacturer, unless stated differently, such specification shall be considered as if followed by the words "or acceptable equal", whether or not such words appear. The seller may offer material or equipment with equal or better qualities and performance in substitution for those specified which he considers would be in the City's interest to accept. No verbal offers for substitution will be acknowledged or considered from sellers, distributors, manufacturers or subcontractors. Any such offers shall be made in writing to the Purchasing Agent for his consideration with the submission of the proposal and the seller shall include sufficient data which, together with any other data the City may require, will enable the City to assess the acceptability of the material or equipment. Such acceptance by the City shall not relieve the seller from full responsibility from the efficiency and quality and performance of the substitute material or equipment, in the same manner and degree as the material and equipment specified by name.

It should be understood that specifying a brand name, components and/or equipment in these specifications shall not relieve the seller from full responsibility to produce the products in accordance with the performance warranty and contractual requirements. The seller is responsible for notifying the City of any inappropriate brand name, component and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

Materials and Workmanship: Materials used shall be of new and recent manufacture and best quality.

Bid Postponement and Amendment: The City of Santa Rosa reserves the right to revise or amend the specifications up to the time set for opening the bids. Such revisions and amendments, if any, shall be announced by amendments to this solicitation. Copies of such amendments shall be furnished to all prospective sellers. Prospective sellers are defined as those sellers listed on the City's Invitation For Bids list for this material, or who have obtained bid documents subsequent to the bid advertisement. If the revisions and amendments require changes in quantities or prices proposed, or both, the date set for opening bids may be postponed by such number of days as in the opinion of the City shall enable sellers to revise their bids. In any case, the bid opening shall be at least five (5) working days after the last amendment, and the amendment shall include an announcement of the new date, if applicable, for the opening of bids.

Single Bid Response: If only one bid is received in response to the Invitation For Bids, a detailed cost proposal may be requested of the single Seller. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

Bid Withdrawal: After the bids are opened, bids may not be withdrawn for ninety (90) calendar days. Prior to the date/time set for the bid opening, however, bids may be modified or withdrawn by the Seller's authorized representative in person, or by written telegraphic notice. If bids are modified or withdrawn in person, the authorized representative shall make his identity known and shall sign a receipt for the bid. Written or telegraphic notices shall be received in the office designated on Page No. 1 of this Invitation For Bids no later than the exact date/time for the bid opening. A telegraphic modification or withdrawal received in the designated office by telephone from the receiving telegraph office no later than the date/time set for the bid opening shall be considered if such message is confirmed by a copy of the telegram.

Award: The City of Santa Rosa reserves the right to accept bids, award bids and/or not award bids on individual items listed, on group items, or on the proposal as a whole; to reject any and all bids, to waive any informality in the bids, and to accept the bid that appears from all consideration to be for the best interest of the City of Santa Rosa.

In determining and evaluating the best bid, the prices will not necessarily be controlling, but quality, equality, efficiency, utility, general terms, delivery, suitability of the equipment/material offered, and the reputation of the equipment/material in general use will also be considered with any other relevant factors. The Purchasing Agent shall be the sole judge in the determination of these matters.

Notice of bid award, if bid be awarded, will be made within ninety (90) days of opening of bids to the lowest responsive and responsible seller, whose bid proposal complies with all the requirements in the Invitation For Bids. Receipt of the official Purchase Order of the City of Santa Rosa covering the supplies, materials, equipment or services as described in the Bid will indicate the award of the bid and a contract to purchase.

Order Acknowledgment: The successful seller, after receipt of a City of Santa Rosa Purchase Order, shall be required to furnish the City Purchasing Agent, when made available, a copy of the factory order acknowledgment or production date(s) for the equipment/material ordered.

Contract Administration: Except as otherwise specifically provided in this Invitation For Bids, and the resulting Purchase Contract or Purchase Order, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified. Service may also be made by mail, by placing a notice, submittal or communication in an envelope with the proper first-class postage affixed thereto and addressed as indicated, and depositing said envelope in the United States mail (see Required Data Section).

Option to Increase Quantity of Ordered Units: The City reserves the right to increase the quantity of ordered units shown on this Invitation For Bids by issuance on the original purchase order or an additional purchase order not later than ninety (90) days after award of bid. The successful seller agrees to furnish to the City the additional ordered units at the unit price offered in this Bid.

Modification: The City of Santa Rosa, at any time prior to the delivery date specified on the resulting Purchase Order or Purchase Contract, may issue a written order for any modifications. Such modifications shall be the result of negotiation and agreement between both parties.

Oral change orders are not permitted. No change in this Invitation For Bids or resulting Purchase Order or Purchase Contract shall be made unless the City of Santa Rosa gives its prior written approval from the office of the Purchasing Agent. The Seller shall be liable for all costs resulting from any unauthorized changes to the Invitation For Bids, Purchase Order or Purchase Contract.

Termination of Contract to Purchase: If at any time, in the opinion of the City, upon recommendation of the Purchasing Agent, 1) seller fails to conform to the requirements of this contract; or 2) seller seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceedings are commenced against seller which may interfere with the performance of the contract; or 4) seller has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in any by the terms of the contract, notice thereof in writing may be served upon him, and should he neglect or refuse to provide means for a satisfactory compliance with the contract as directed by the Purchasing Agent within the time specified in such notice the City in any such case shall have the right and power, at its option and without prejudice to any other right it may have, to terminate the contract. Any excess of the cost arising there from will be charged against the seller and his sureties, who will be liable thereof. In the event of such termination, all monies due the seller or retained under terms of the contract shall be forfeited to the City; but such forfeiture will not release the seller or his sureties from liability for failure to fulfill the contract.

Inspection: The City reserves the right and shall be at liberty to inspect all materials and workmanship and shall have the right to reject all materials and workmanship which do not conform to the equipment/material specification provided; however, the City is under no duty to make such inspection. Should it be determined, after inspection that a conditional acceptance exists and corrections are needed to bring the equipment/material up to the specifications of the bid award, the City, for the purpose of earning the discount, may extend the date of complete acceptance beyond the date of delivery.

Title: Title to the equipment/material shall pass to the City at the F.O.B. point designated under Delivery, subject to the right of the City to reject upon inspection.

Acceptance and Payment: Acceptance shall be made at the time all equipment/material is operational and in proper working order as determined by and to the satisfaction of the City of Santa Rosa. Acceptance of the equipment/material shall be determined on the basis of technical completeness, performance and adherence to the operational requirements and functions of the specifications.

Payment will be scheduled within thirty (30) days upon complete delivery and acceptance of all material/equipment and receipt of an original and one (1) copy of an invoice complying with the terms and conditions of the award. The City reserves the right to withhold up to ten percent (10%) of the purchase price in the event there is a conditional acceptance.

In connection with any discount for prompt payment specified on this Invitation For Bid, time will be computed from the date of complete acceptance of the equipment/material, or from date correct invoices are received in the City Finance Office, if the latter date is later than the date of complete acceptance. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.

Non-compliance with any one of the following requirements shall constitute a conditional acceptance:

1. Adherence to the general construction and performance specifications.
2. Reasonable opportunity for equipment/material inspection by City Purchasing Department.
3. Receipt of manuals (if applicable).
4. Receipt of warranty statement.

Assignment and Subcontracting: The seller shall not assign or subcontract the work, or any part thereof, without the previous written consent of the City, nor shall he assign, by power of attorney or otherwise, any of the money payable under this contract unless written consent of the City has been obtained. No right under this contract, not claim for money due or to become due hereunder shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this contract or any part thereof, unless such assignment has been authorized by the written consent of the City. In case the seller is permitted to assign monies due or to become due under this contract, the instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by him, his subcontract shall be immediately terminated by the seller upon notice from the City. The seller shall be fully responsible and accountable to the City for the acts and omissions of his subcontractors, and of persons directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. Nothing contained in this contract shall create any contractual relation between any subcontract and the City.

Indemnify and Hold Harmless Agreement: Seller agrees to accept responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the City, its officers, and employees, from actions, claims, damages, disabilities or the cost of litigation that are asserted by any person or entity to the extent arising out of the negligent acts or omissions or willful misconduct in the performance by the seller hereunder, whether or not there is concurrent negligence on the part of the City, but excluding liability due to the active negligence or willful misconduct of the City. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for seller or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts.

Seller shall be liable to City for any loss of or damage to City property arising from seller's negligence or willful misconduct.

Patents and Royalties: All costs involved in fees, royalties or claims for any patented invention, article, process or method that may be used upon or in any manner connected with the supply of this material shall be paid by the seller. Should the seller, his agent or employees or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under the contract, the seller shall promptly substitute other articles, materials or appliances in lieu thereof equal finish, efficiency, quality, suitability and market value, and satisfactory in all respects to the City. Or in the event that the City elects, in lieu of such substitution, to have supplied and to retain and use any such inventions, articles, materials or plans as may be required to be supplied the seller shall pay such royalties and secure such valid licenses as may be requisite for the City, its officers, agents, and employees, or any of them to use such invention, article, materials or appliances without being disturbed or in any way interfered with by any proceeding in the law or equity on account thereof. Should the seller neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then in the event the City shall have the right to make such substitution or the City may pay such royalties and secure such licenses and charge the seller even though final payment under the contract may have been made.

Federal and State Tax: Prices quoted shall not include Federal Excise Tax. California Sales Tax of nine and one-half percent (9.50%) will be paid in accordance with the contract payment schedule.

Legality: If any provisions of this Invitation For Bids shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

California Law: This Invitation For Bids shall be governed according to the laws of the State of California.

Compliance with Laws and Regulations: All materials, parts and equipment furnished pursuant to these specifications shall be in compliance with the laws and regulations of the State of California and OSHA. The seller shall, if requested by the City, supply certification and evidence of such compliance.

Retention of Records: The seller shall be required to retain any records necessary to document the charges for goods to be provided or services to be performed and make such records available to the City for inspection at the City's request for a period of four (4) years.

Recycled Content, Recyclability:

- A. **Recycled Content Preference:** It is the City policy, whenever practicable, to purchase functional products which contain, in order of preference:
1. the highest percentage of post-consumer recovered material available in the marketplace; and
 2. the highest percentage of secondary waste recovered material available in the market place.
- B. **Recyclability and Waste Reduction:** In addition to the recovered material content of a product, important criteria in selecting products shall also be:
1. the ability of the product and its packaging to be reused, reconditioned for use, or recycled through existing recycling collection programs; and
 2. the volume and toxicity of waste and by-product a given product and its packaging generate in their manufacture, use, recycling, and disposal. Products and packaging designed to minimize waste and toxic by-products in their manufacture, use, recycling, and disposal shall be preferred.
- C. **Equipment Compatibility:** Equipment purchased or rented by the City shall be compatible, whenever practicable, with the use of recycled-content products.
- D. **Definitions:** For the purposes of this general provision, a "recycled product" means all materials, goods, and supplies, no less than 50% of the total weight of which consists of secondary and post-consumer waste with not less than 10% of its total weight consisting of weight consisting of post-consumer waste. "Post-consumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item, and does not include manufacturing waste. "Secondary waste" means fragments of products or finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. [Source: California Public Contract Code, Section 12200]

Bid Contents: This proposal consists of the Invitation For Bids, Bid, Provisions, Specifications, Attachments and other terms and conditions as are attached or incorporated by reference in the schedule of the Invitation For Bids.

Federal Transit Authority Requirements. Bidders and the successful seller(s) are subject to, and shall comply with, the following bolded provisions.

1. Fly America Requirements
2. Buy America Requirements
3. Charter Bus and School Bus Requirements
4. Cargo Preference Requirements
5. Seismic Safety Requirements
- 6. Energy Conservation Requirements**
- 7. Clean Water Requirements**
8. Bus Testing
9. Pre-Award and Post Delivery Audit Requirements
- 10. Lobbying**
- 11. Access to Records and Reports**
- 12. Federal Changes**
13. Bonding Requirements
- 14. Clean Air**
15. Recycled Products
16. Davis-Bacon and Copeland Anti-Kickback Acts
17. Contract Work Hours and Safety Standards Act
18. [Reserved]
- 19. No Government Obligation to Third Parties**
- 20. Program Fraud and False or Fraudulent Statements and Related Acts**
- 21. Termination**
- 22. Government-wide Debarment and Suspension (Nonprocurement)**
23. Privacy Act
- 24. Civil Rights Requirements**
- 25. Breaches and Dispute Resolution**
26. Patent and Rights in Data
27. Transit Employee Protective Agreements
- 28. Disadvantaged Business Enterprises (DBE)**
29. [Reserved]
- 30. Incorporation of Federal Transit Administration (FTA) Terms**
31. Drug and Alcohol Testing

Titles and sources of authority references for all of the Federal Transit Authority clauses are listed in this document. However, only those clauses applicable to this specific bid and resulting contract are detailed with the full requirements articulated.

1. FLY AMERICA REQUIREMENTS**49 U.S.C. § 40118****41 CFR Part 301-10**

This section does not apply to this contract.

2. BUY AMERICA REQUIREMENTS**49 U.S.C. 5323(j)****49 CFR Part 661**

This section does not apply to this contract.

3. CHARTER BUS AND SCHOOL BUS REQUIREMENTS**49 U.S.C. 5323(d)****49 CFR Part 604**

This section does not apply to this contract.

4. CARGO PREFERENCE REQUIREMENTS**46 U.S.C. 1241****46 CFR Part 381**

This section does not apply to this contract.

5. SEISMIC SAFETY REQUIREMENTS**42 U.S.C. 7701 et seq. 49****CFR Part 41**

This section does not apply to this contract.

6. ENERGY CONSERVATION REQUIREMENTS**42 U.S.C. 6321 et seq.****49 CFR Part 18**

Energy Conservation - The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS**33 U.S.C. 1251**

Clean Water - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. BUS TESTING**49 U.S.C. 5323(c)****49 CFR Part 665**

This section does not apply to this contract.

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS**49 U.S.C. 5323****49 CFR Part 663**

This section does not apply to this contract.

10. LOBBYING**31 U.S.C. 1352****49 CFR Part 19****49 CFR Part 20**

Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A.

Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]

- Lobbying Certification and Disclosure of Lobbying Activities for third party contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d)

- Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that contractors file the certification required by 49 CFR Part 20, Appendix A.

Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.
3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through

other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

7. FTA does not require the inclusion of these requirements in subcontracts.

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I State Grantees						
a. Contracts below SAT (\$100,000)	None	Those imposed on state pass thru to Contractor	None	None	None	None
b. Contracts above \$100,000/Capital Projects	None unless ¹ non-competitive award		Yes, if non-competitive award or if funded thru ² 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award
II Non State Grantees						
a. Contracts below SAT (\$100,000)	Yes ³	Those imposed on non-state Grantee pass thru to Contractor	Yes	Yes	Yes	Yes
b. Contracts above \$100,000/Capital Projects	Yes ³		Yes	Yes	Yes	Yes

Sources of Authority:

¹ 49 USC 5325 (a)

² 49 CFR 633.17

³ 18 CFR 18.36 (i)

12. FEDERAL CHANGES

49 CFR Part 18

Federal Changes - Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between City and FTA (available on FTA website), as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS

This section does not apply to this contract.

14. CLEAN AIR

42 U.S.C. 7401 et seq

40 CFR 15.61

49 CFR Part 18

Clean Air - (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

This section does not apply to this contract.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

This section does not apply to this contract.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

This section does not apply to this contract.

18. RESERVED

This section does not apply to this contract.

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

49 U.S.C. 5307

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

**49 U.S.C. Part 18
FTA Circular 4220.1E**

See Termination of Contract to Purchase provision

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**Suspension and Debarment**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. PRIVACY ACT

5 U.S.C. 552

This section does not apply to this contract.

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION**49 CFR Part 18****FTA Circular 4220.1E**

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the City of Santa Rosa Purchasing Agent. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Purchasing Agent. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Purchasing Agent shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the City of Santa Rosa, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Santa Rosa and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Santa Rosa is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Santa Rosa or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA**37 CFR Part 401****49 CFR Parts 18 and 19**

This section does not apply to this contract.

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS**49 U.S.C. § 5310, § 5311, and § 5333****29 CFR Part 215**

This section does not apply to this contract.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)**49 CFR Part 26**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The City's overall goal for DBE participation is 6.6%.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49

CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City of Santa Rosa deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offer or will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- c. A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of the section. Federal law (49 CFR 26.29) requires that any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the City's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.
- d. The contractor must promptly notify City of Santa Rosa, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of City of Santa Rosa.

29. [RESERVED]

This section does not apply to this contract.

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1E

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Santa Rosa requests which would cause City of Santa Rosa to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331

49 CFR Parts 653 and 654

This section does not apply to this contract.

REQUIRED

DATA

FORMS

List of Forms:

Exceptions to Specifications

References

Designated Contact

REFERENCES
Preferably Municipalities Operating Under the Model Bid

- | | |
|----------------------|---|
| 1) Government Agency | <u>City of Davis</u> |
| Location | <u>1818 5th Street Davis, Ca. 95616</u> |
| Contact Person | <u>Dan Doolan</u> |
| Phone No. | <u>530-757-5653</u> |
| Length of Service | <u>10 years</u> |
| | |
| 2) Government Agency | <u>City of Stockton</u> |
| Location | <u>1465 S. Stockton, St. Stockton, Ca. 95206</u> |
| Contact Person | <u>Concepcion</u> |
| Phone No. | <u>209-937-8712</u> |
| Length of Service | <u>5 years</u> |
| | |
| 3) Government Agency | <u>City of Yuba City</u> |
| Location | <u>1201 Civic Center Blvd. Yuba City, Ca. 95993</u> |
| Contact Person | <u>Ken Reiche</u> |
| Phone No. | <u>530-822-4646</u> |
| Length of Service | <u>5 years</u> |
| | |
| 4) Government Agency | <u>City of Fairfield</u> |
| Location | <u>1000 Webster Street Fairfield, Ca. 94533</u> |
| Contact Person | <u>Scott Lundgren</u> |
| Phone No. | <u>707-428-7375</u> |
| Length of Service | <u>10 Years</u> |
| | |
| 5) Company | <u>City of Lincoln</u> |
| Location | <u>600 6th Street Lincoln, Ca. 95648</u> |
| Contact Person | <u>Bill Smull</u> |
| Phone No. | <u>916-645-3314</u> |
| Length of Service | <u>15 years</u> |
| | |
| 6) Company | <u>City of Rio vista</u> |
| Location | <u>one Main Street Rio Vista, Ca. 94571</u> |
| Contact Person | _____ |
| Phone No. | <u>707-374-4346</u> |
| Length of Service | <u>5 years</u> |
| | |
| 7) Company | _____ |
| Location | _____ |
| Contact Person | _____ |
| Phone No. | _____ |
| Length of Service | _____ |
| | |
| 8) Company | _____ |
| Location | _____ |
| Contact Person | _____ |
| Phone No. | _____ |
| Length of Service | _____ |

REQUIRED DATA**Designated Contact**

Bidder is required to indicate in the space provided below, the designated contact individuals name and address as requested under Notification in the General Provisions Section of the Invitation for Bids.

City of Santa Rosa

Jim Wright
Purchasing Agent
City of Santa Rosa – Purchasing Office
635 First Street, 2nd Floor
Santa Rosa, CA 95404
707-543-3706 Voice
707-543-3703 Fax
jwright@srcity.org

Contractor

Dave Rose
Sales Representative
Ramos Oil Company, Inc.
1515 South River Road
West Sacramento, Ca. 95691
916-997-6257 (Cell)
916-371-2570 (Office)
916-371-0635 (Fax)

daver@ramosoil.com

**ATTACHMENT A
(SAMPLE)
CITY OF SANTA ROSA
GENERAL SERVICES AGREEMENT
WITH [NAME OF CONTRACTOR]
AGREEMENT NUMBER _____**

This "Agreement" is made as of this ____ day of _____, 2013 [leave date blank until all parties have signed or until Council approves], by and between the City of Santa Rosa, a municipal corporation ("City"), and [add Contractor's full name, for example, "XYZ Sales Corporation" or "ABC Contracting, LLC" or "ABC Enterprises, LP", or "John Smith, dba Smith Contracting"] a [add type of legal entity and state of entity formation or incorporation, for example, a "California Corporation," or a "Delaware Limited Liability Company," or a "Nevada Limited Partnership," or a "sole proprietor"], ("Contractor").

RECITALS

A. City desires to purchase diesel and unleaded regular gasoline and delivery services.

B. City desires to retain a qualified contractor to conduct the services described above in accordance with the terms of this Agreement.

C. Contractor represents to City that it is fully qualified to conduct the services described above.

D. The parties have negotiated upon the terms pursuant to which Contractor will provide such services and have reduced such terms to writing.

AGREEMENT

NOW, THEREFORE, City and Contractor agree as follows:

1. SCOPE OF SERVICES

Contractor shall provide to City the services described in City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel dated August 7, 2013 and Contractor's bid dated _____, all of which are attached hereto as Exhibits A and B (in order of precedence) which are incorporated by reference as though fully set forth herein. Contractor shall provide these services at the time, place, and in the manner specified in Exhibit A. Exhibit A is attached hereto solely for the purpose of defining the manner and scope of services to be provided by Contractor and is not intended to, and shall not be construed so as to, modify or expand the terms, conditions or provisions contained in this Agreement. The parties agree that any term contained in Exhibit B that adds to, varies or conflicts with the terms of this Agreement is null and void.

2. TIME FOR PERFORMANCE

The services described herein shall be provided as set forth in Exhibits A and B. Contractor shall devote such time and effort to the performance of services as is necessary for the satisfactory and timely performance of Contractor's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

3. STANDARD OF PERFORMANCE

Contractor shall perform all services required under this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor's occupation in California. All products and services of whatsoever nature that Contractor provides to City pursuant to this Agreement shall conform to the standards of quality normally observed by persons currently practicing in Contractor's occupation, and shall be provided in accordance with any schedule of performance specified in Exhibit A. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, at any time during the term of this Agreement, desires the removal of any person assigned by Contractor to perform services pursuant to this Agreement, because City, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, Contractor shall remove such person immediately upon receiving notice from City of the desire of City for the removal of such person.

4. COMPENSATION

The total of all fees paid to Contractor for the satisfactory performance and completion of all services set forth in Exhibits A and B shall not exceed the total sum of \$_____. The Chief Financial Officer is authorized to pay all proper claims from the appropriate IFAS keys.

5. BILLABLE RATES, PAYMENTS TO CONTRACTOR

a. Billable Rates. Contractor shall be paid for the performance of services at as set forth in Exhibit B.

b. Payments. Payments will be delayed where Contractor fails to provide the information required under subsection c.1 below or fails to comply with the insurance requirements in Attachment One to this Agreement. In no event shall the City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice.

c. Invoices. Payment will be made on a calendar-month basis in arrears. Invoices shall be submitted to the person and address specified in the Agreement, bid, or purchase order. In the event this Agreement becomes effective or terminates during the course of a month, the amount paid to the Contractor for the partial month shall be determined by prorating the amount on the basis of the number of calendar days involved. Processing of payment will be delayed for Contractor's failure to include reference to Agreement (including number) on the invoice **and for failure to maintain current insurance information with the City in accordance with insurance requirements hereunder.** In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in the Contractor's

invoice. Invoices for services provided in June or for any services not previously invoiced shall be submitted within 10 working days after June 30 to facilitate City fiscal year end closing. Failure to comply with this invoice submission requirement may delay payment.

In connection with any cash discount specified in the bid response, if applicable, or Contractor's Proposal, time will be computed from the date correct invoices are received by the person and address specified in the Agreement, bid, or purchase order. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check. All invoices shall contain the following information:

1. Contractor name and remittance address
2. Date of invoice issuance
3. Amount of invoice
4. City purchase order or Agreement number
5. Identification of Agreement or purchase order line item(s) (if multiple lines) and description of services provided
6. Date of completion of services
7. Detail of costs, including labor, materials, tax, etc.

d. Business Taxes. Contractor shall pay to the City when due all business taxes payable by Contractor under the provisions of Chapter 6-04 of the Santa Rosa City Code. The City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Contractor.

6. TERM, SUSPENSION, TERMINATION

a. The term of this Agreement shall be for two years commencing on the date it is made above. City and Contractor may, upon mutual written agreement of both parties, extend this Agreement for three one-year periods, one two-year period, one three-year period, or any combination not to exceed a total of three years.

b. City shall have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If City gives such notice of suspension, Contractor shall immediately suspend its activities under this Agreement, as specified in such notice.

c. City shall have the right to terminate this Agreement for convenience at any time by giving a written notice of termination to Contractor. If City gives such notice of termination, Contractor shall immediately cease rendering services pursuant to this Agreement. If City terminates this Agreement, City shall pay Contractor the reasonable value of services rendered by Contractor prior to termination. In this regard, Contractor shall furnish to City such information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Contractor. City shall not in any manner be liable for lost profits that might have been made by Contractor had the Agreement not been terminated or had Contractor completed the services required by this Agreement.

7. TERMINATION OF AGREEMENT FOR DEFAULT

If at any time 1) Contractor fails to conform to the requirements of this Agreement; 2) Contractor seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Contractor which may interfere with the performance of this Agreement; or 4) Contractor has failed to supply an adequate working force, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended

in and by the terms of this Agreement, which default is not fully corrected or remedied to the reasonable satisfaction of City within ten (10) days following the date a written notice thereof by City, then City shall have the right and power, at its option and without prejudice to any other rights or remedies it may have, to immediately terminate this Agreement. Any cost or expense incurred by City arising out of Contractor's breach or default hereunder, and for City's enforcement of these rights, shall be the obligation of Contractor and may, at City's discretion, be deducted from any amounts that may then be owing to Contractor under this Agreement, without any release or waiver of any other rights or remedies in law or equity to which City may be entitled.

8. INDEMNIFY AND HOLD HARMLESS AGREEMENT

Contractor shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same results from or arises out of the performance of this Agreement by Contractor, its officers, employees, agents, or sub-contractors, excepting only that resulting from the sole, active negligence or intentional misconduct of City, its employees, officials, or agents. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employees' benefits acts. The provisions of this Section 8 shall survive any expiration or termination of this Agreement.

9. INSURANCE REQUIREMENTS

Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated herein by this reference. Maintenance of the insurance coverages as set forth in Attachment One is a material element of this Agreement and a material part of the consideration provided by Contractor in exchange for the City's agreement to make the payments prescribed hereunder. Failure by Contractor to (i) maintain or renew coverage, (ii) provide the City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the City as a material breach of this Agreement by Contractor, whereupon the City shall be entitled to all rights and remedies at law and in equity, including but not limited to the immediate termination of this Agreement. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under this Agreement. In the event Contractor, with approval of the City pursuant to Section 11 below, retains or utilizes any subcontractors in the provision of any services to City under this Agreement, Contractor shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in Attachment One.

10. LEGAL REQUIREMENTS AND PERMITS

Contractor represents and warrants that Contractor has all licenses, permits, City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Contractor to practice its occupation and provide services under this Agreement. Contractor shall perform all services described herein in compliance with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which

prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.; (iii) OSHA; and (iv) the Immigration Reform and Control Act of 1986. Contractor shall, if requested by City, provide certification and evidence of such compliance. If Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

11. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not subcontract or assign any right or obligation under this Agreement without the written consent of the City. Any attempted or purported subcontract or assignment without City's written consent shall be void and of no effect. No right under this Agreement, or claim for money due or to become due hereunder, shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this Agreement or any part thereof and Contractor hereby agrees to indemnify and hold City harmless against any and all such claims. In the event Contractor obtains the prior written consent of City to assign monies due or to become due under this Agreement, Contractor shall provide City a copy of the instrument of assignment duly executed by Contractor, which shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or materials supplied for the performance of work. Upon notice and request by the City, Contractor shall promptly remedy, to include termination of any subcontract as appropriate and necessary, any default or failure to perform in a satisfactory manner the work undertaken by any subcontractor. Contractor shall be fully responsible and accountable to the City for the acts and omissions of its subcontractors, and of persons directly or indirectly employed by them, to the same extent that Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the City.

12. BINDING EFFECT

This Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the parties, subject to the provisions of Section 11, above.

13. RETENTION OF RECORDS

Contractor shall be required to retain any records necessary to document the charges for the services to be performed under this Agreement and make such records available to the City for inspection at the City's request for a period of not less than four (4) years.

14. ENTIRE AGREEMENT

This document, including all Exhibits and Attachment One, contains the entire agreement between the parties and supersedes whatever oral or written understanding the parties may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Contractor, and by

City, in accordance with applicable provisions of the Santa Rosa City Code.

15. SEVERABILITY

If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. WAIVER

Neither City acceptance of, or payment for, any service performed by Contractor, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

17. ENFORCEMENT OF AGREEMENT

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court located in Sonoma County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such court, and consent to service of process issued by such court.

18. CONTRACTOR NOT AGENT

Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligations whatsoever.

19. INDEPENDENT CONTRACTOR

a. It is understood and agreed that Contractor (including Contractor's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement, and Contractor shall be issued a Form 1099 for its services hereunder. As an independent contractor, Contractor hereby agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by

reason of this Agreement or by reason of the nature and/or performance of any services under this Agreement.

b. It is further understood and agreed by the parties hereto that Contractor, in the performance of Contractor's obligations hereunder, is subject to the control and direction of City as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the City does not require that Contractor use City facilities, equipment or support services or work in City locations in the performance of this Agreement.

c. If, in the performance of this Agreement, any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by Contractor. It is further understood and agreed that Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of Contractor's assigned personnel and subcontractors.

d. The provisions of this Section 19 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between City and Contractor. Contractor may represent, perform services for, or be employed by such additional persons or companies as Contractor sees fit.

20. NOTICES

Except as otherwise specifically provided in this Agreement, any notice, submittal or communication required or permitted to be served on a party hereto, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage affixed thereto, and addressed as indicated below, and depositing said envelope in the United States mail to:

City

Jim Wright
Purchasing Agent
631 First Street, 2nd Floor
Santa Rosa, California 95404
Phone: (707) 543-3706
Fax: (707) 543-3703

Contractor

21. AUTHORITY; SIGNATURES REQUIRED FOR CORPORATIONS

Contractor hereby represents and warrants to the City that it is (a) a duly organized and validly existing [enter type of entity], formed and in good standing under the laws of the State of [enter state of formation for corporations, LPs and LLCs], (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Contractor hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Contractor in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

Executed as of the day and year first above stated.

CONTRACTOR:

CITY OF SANTA ROSA
a Municipal Corporation

Name of Firm: _____

TYPE OF BUSINESS ENTITY (*check one*):
____ Individual/Sole Proprietor
____ Partnership
____ Corporation
____ Limited Liability Company
____ Other (please specify: _____)

By: _____

Print Name: _____

Title: _____

Signatures of Authorized Persons:

APPROVED AS TO FORM:

By: _____

Office of the City Attorney

Print Name: _____

ATTEST:

Title: _____

By: _____

City Clerk

Print Name: _____

Title: _____

Taxpayer I.D. No. _____

City of Santa Rosa Business Tax Cert. No.

Attachments:

Attachment One - Insurance Requirements

Exhibit A - City's Invitation for Bids 13-44 Unleaded Gasoline and Diesel dated August 8, 2013
Exhibit B – Contractor's bid dated _____

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
GENERAL SERVICES AGREEMENTS**

- A. Insurance Policies:** Contractor shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 2 million per occurrence \$ 4 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and excess insurance but excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, then hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
4. Pollution Liability	\$500,000	If the work involves lead-based paint or asbestos identification/remediation, the policy must not contain lead-based paint or asbestos exclusions. If the work involves mold identification, the policy must not contain mold exclusion and the definition of "Pollution" in the policy must include microbial matter, including mold.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled by either party, except after prior written notice has been provided to the entity in accordance with the policy provisions.
2. Liability policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Contractor's insurance coverage shall be primary and any insurance or self-insurance maintained by City shall be excess of the Contractor's insurance and shall not contribute with it; and,
 - b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Contractor shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the contract. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Contractor from waiving any right of recovery prior to loss. Contractor hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Self-insured retentions above \$10,000 must be approved by the City. At the City's option, Contractor may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.