

AUTOMOTIVE FUEL SALES AGREEMENT BETWEEN THE COUNTY OF SAN DIEGO AND THE PORT OF SAN DIEGO

This agreement ("Agreement") is made and entered into on January 1, 2017 by and between the County of San Diego, a political subdivision of the State of California ("County"), and The Port of San Diego in the State of California ("Agency"), with reference to the following facts:

RECITALS

- A. The County's Department of General Services, Fleet Management Division, currently maintains 25 fuel sites located throughout the County of San Diego.
- B. These sites provide fuel for County vehicles that are assigned to various County departments and/or agencies.
- C. The County of San Diego has the capability to sell fuel to other government agencies including, but not limited to, federal, State, county, and city agencies and special districts.
- D. The County wishes to sell fuel to Agency, and Agency wishes to purchase fuel from County, subject to the terms of this Agreement.

NOW THEREFORE, the County and Agency agree as follows:

- 1. Agency's cost for fuel shall be the County's current cost per gallon plus the surcharge annually approved by the County's Cost Commission to cover costs associated with fuel management. Agency shall pay County within thirty (30) days of Agency's receipt of an invoice.
- 2. County fuel sites are controlled by an automated fuel system. The County will provide sufficient fuel access devices as requested by agencies purchasing fuel from the County of San Diego. Additionally, the County will provide sufficient access devices (key fobs, pass-codes, etc.) to secured County facilities for the purpose of accessing fuel. Upon termination of this Agreement for any reason, Agency shall return all fuel and facility access devices within thirty (30) days.
- 3. The Agency shall reimburse the County for all damage to fueling equipment caused by Agency or its personnel. The Agency agrees to pay any costs incurred by the County for the cleanup and disposal of hazardous waste that may result from negligent operation of equipment by Agency employees.
- 4. The Agency agrees to take all reasonable measures to maintain site security by securing access gates, reporting suspicious activities at County facilities and any other action deemed necessary to maintain a secure fuel supply.

5. The County makes no warranty or representation regarding the availability of fuel and reserves the right to restrict access to fuel or fueling facilities. However, the County will make reasonable efforts to supply fuel in emergency situations.
6. County shall not be liable for, and Agency shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Agency or its contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Agency shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.
7. The term of this Agreement shall be from January 1, 2017 through December 31, 2022, unless earlier terminated by either party upon ninety (90) days' written notice to the other party.

Marcus J. Cromartie
Director, General Services Department

Date: _____

Marko Medved, P.E., CEM
Director, Department of General Services

Date: _____