



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: April 16, 2024

or Procurement Director Award:

* = Mandatory, information must be provided

***Contractor/Vendor Name/Grantor (DBA):**

Flyers Energy, LLC (Headquarters: Auburn, CA)

***Project Title/Description:**

Motor Vehicle Fuel

***Purpose:**

Award: Master Agreement No. MA-PO-24-155. This Master Agreement is for an initial term of one (1) year in the annual award amount of \$700,000.00 (including sales tax). Administering Department: Fleet Services.

***Procurement Method:**

Pursuant to Pima County Procurement Code 11.24.010, Cooperative procurement authorized, for Requisition No. 24-122, the Procurement Director approved the use of City of Tucson, which was awarded through competitive procedures reasonably similar to those set forth by Pima County Procurement Code.

PRCUID: 517823

Attachment: Cooperative Procurement Agreement

***Program Goals/Predicted Outcomes:**

To provide Pima County Fleet Services with purchasing and delivering automotive fuels and exhaust additives.

***Public Benefit:**

The cost-effective purchase and supply of gasoline and diesel for County vehicles and equipment to perform operational, administrative, and transportation functions and keep fuel stations supplied in case of emergencies.

***Metrics Available to Measure Performance:**

Verify pricing using OPIS daily rates and the discounts provided by fuel contractors. Measure the timeframe from fuel order to site delivery at each County station.

***Retroactive:**

No

TO: COB 3/26/2024
VERSION 1
14 PAGES

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: MA Department Code: PO Contract Number (i.e., 15-123): 24-155
Commencement Date: 04/30/2024 Termination Date: 04/29/2025 Prior Contract Number (Synergen/CMS): N/A
[X] Expense Amount \$ 700,000.00 * [] Revenue Amount: \$ N/A

*Funding Source(s) required: Fleet Services Ops

Funding from General Fund? [] Yes [X] No If Yes \$ N/A %

Contract is fully or partially funded with Federal Funds? [] Yes [X] No

If Yes, is the Contract to a vendor or subrecipient?

Were insurance or indemnity clauses modified? [] Yes [X] No
If Yes, attach Risk's approval.

Vendor is using a Social Security Number? [] Yes [X] No
If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):

Amendment No.: AMS Version No.:

Commencement Date: New Termination Date:

Prior Contract No. (Synergen/CMS):

[] Expense [] Revenue [] Increase [] Decrease

Amount This Amendment: \$

Is there revenue included? [] Yes [] No If Yes \$

*Funding Source(s) required:

Funding from General Fund? [] Yes [] No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards)

[X] Award [] Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):

Commencement Date: Termination Date: Amendment Number:

[] Match Amount: \$ [] Revenue Amount: \$

*All Funding Source(s) required:

*Match funding from General Fund? [] Yes [] No If Yes \$ %

*Match funding from other sources? [] Yes [] No If Yes \$ %

*Funding Source:

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Procurement Officer: Maria Julia Canizales Digitally signed by Maria Julia Canizales Date: 2024.03.20 09:53:18 -07'00' Division Manager: Ana Wilber Digitally signed by Ana Wilber Date: 2024.03.20 10:23:50

Department: Procurement Director: Terri Spencer Digitally signed by Terri Spencer Date: 2024.03.20 11:42:21 -07'00' Telephone: (520) 724-8167

Department Director Signature: Ray Ochotorena Digitally signed by Ray Ochotorena Date: 2024.03.25 11:21:11 -07'00' Date:

Deputy County Administrator Signature: Date: 3-25-2024

County Administrator Signature: Date: 3/26/24

Pima County Procurement Department	
Administering Department: Fleet Services	
Project:	Motor Vehicle Fuel
Contractor:	Flyers Energy, LLC
	2360 Linbergh St.
	Auburn, CA 95602
Amount:	\$700,000.00
Contract No.:	MA-PO-24-155
Funding:	Fleet Services Ops

COOPERATIVE PROCUREMENT AGREEMENT

1. Parties, Background and Purpose.

- 1.1. Parties. This Contract is between Pima County, a political subdivision of the State of Arizona ("County"), and Flyers Energy, LLC ("Contractor").
- 1.2. Purpose. The Pima County Fleet Services requires Motor Vehicle Fuel.
- 1.3. Authority. County is authorized by Pima County Code § 11.24.010 and A.R.S. § 41-2632 to enter into cooperative purchasing arrangements. The County has entered into such an agreement with City of Tucson.
- 1.4. Contract.
 - 1.4.1. City of Tucson entered into a contract (230087) for specified goods and services with Contractor, which is currently in effect (the "City of Tucson Contract"). The Contract is incorporated into this Contract by this reference.
 - 1.4.2. G.2. Cooperative Purchasing of the City of Tucson Contract provides that another governmental entity with which City of Tucson has a cooperative purchasing agreement may, with Contractor's approval, purchase products and services at the same prices and under the same terms as in the City of Tucson Contract.

2. Term.

- 2.1. Initial Term. This Contract commences on April 30, 2024 and will terminate on April 29, 2025 (the "Term"). If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.
- 2.2. Scope of Services. Contractor will provide County with the services describe in **Exhibit A: General Specifications** (2 pages), at the dates and times described on Exhibit A or, if Exhibit A contains no dates or time frames, then upon demand. Contractor must comply with all requirements and specifications in the City of Tucson Contract, except were altered by this Contract.

2.3. Order of Precedence. All services provided under this Contract are subject to the terms of the following documents. In the event of conflicting terms between the incorporated documents, the following order of precedence, superior to subordinate, dictates the order in which these conflicts will be resolved.

2.3.1. Amendments to this Contract.

2.3.2. This Cooperative Procurement Agreement No. MA-PO-24-155.

2.3.3. To the extent applicable, the City of Tucson Contract.

2.3.4. To the extent applicable, the Contractor's Terms and Conditions.

3. **Key Personnel**. Contractor will employ suitably trained and skilled professional personnel to perform all services under this Contract. Prior to changing any key personnel, especially those key personnel County relied upon in making this Contract, Contractor will obtain the approval of County. The key personnel include the following staff:

Name: <u>Ryan Caldwell</u>	Title: <u>AZ Operations Manager</u>
Name: <u>Tony Avita</u>	Title: <u>Tucson Bulk Plant Manager</u>
Name: _____	Title: _____

4. **Compensation and Payment.**

4.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Exhibit B: Pricing Page 1** pages). Those rates will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.

4.2. Not-To-Exceed ("NTE") Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$700,000.00 (the "NTE Amount"). The NTE Amount can only be changed by a formal amendment executed by the Parties pursuant to Section 31. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.

4.3. Sales Taxes. The payment amounts or rates in **Exhibit B: Pricing Page** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.

4.4. Timing of Invoices. Contractor will invoice County on a monthly basis unless a different billing period is set forth in **Exhibit B: Pricing Page**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.

4.5. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.

4.6. Invoice Submittal. Invoices are to be sent to:

Pima County Finance & Risk Management – Accounts Payable
P.O. Box 791
Tucson, AZ 85701

4.7. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 22 below, question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.

5. **Insurance**. The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII, unless otherwise approved by County. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

5.1. Minimum Scope and Limits of Insurance. Contractor will procure and maintain at its own expense, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

5.1.1. Commercial General Liability (CGL). Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

5.1.2. Business Automobile Liability. Bodily Injury and Property Damage for any owned, leased, hired, and/or non-owned automobiles assigned to or used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 Each Accident.

5.1.3. Workers' Compensation (WC) and Employers' Liability. Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers' Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each person - disease.

5.1.4. Pollution Liability: For losses caused by pollution conditions that arise from the operations of the Contractor as described in the Scope of Services section of this Contract with limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

The policy must include coverage for pollution losses arising out of completed operations.

The policy is to be written on an "occurrence" basis with no sunset clause. In the event that the Pollution Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract. That either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of ten (10) years beginning at the time this Contract is terminated.

Pollution coverage must apply to all phases of the work described in the Scope of Services in this Contract.

- 5.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.
- 5.2.1. Claims Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
- 5.2.2. Additional Insured Endorsement. The General Liability and Business Automobile Liability policies must each be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to vicarious liability arising out of the activities performed by or on behalf of the Contractor. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.
- 5.2.3. Subrogation Endorsement. The General Liability, Business Automobile Liability, and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- 5.2.4. Primary Insurance Endorsement. The Contractor's policies shall stipulate that the insurance afforded by the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).
- 5.2.5. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 5.2.6. Subcontractors. Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that

each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

- 5.3. Notice of Cancellation. Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice must be mailed, emailed, hand-delivered or sent via facsimile transmission to the County Contracting Representative, and must include the County project or contract number and project description.
 - 5.4. Verification of Coverage. Contractor shall furnish County with certificates of insurance (valid ACORD form or equivalent approved by County) as required by this Contract. An authorized representative of the insurer shall sign the certificates. Each certificate must be included.
 - 5.4.1. The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate.
 - 5.4.2. A notation of policy deductibles or SIRs relating to the specific policy.
 - 5.4.3. Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.
 - 5.5. All certificates and endorsements, as required by this written agreement, are to be received and approved by County before and be in effect not less than 15 days prior to, commencement of work. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
 - 5.6. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the County project or contract number and project description on the certificate. County reserves the right to require complete copies of all insurance policies required by this Contract at any time.
 - 5.7. Approval and Modifications. County's Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager, and does not require a formal Contract amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.
- 6. Indemnification.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out

of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

7. Laws and Regulations.

- 7.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.
- 7.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.
- 7.3. Choice of Law: Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

8. **Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.
9. **Subcontractors.** Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
10. **Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County prior written approval. County may withhold approval at its sole discretion.
11. **Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

12. Americans with Disabilities Act. Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C.§§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

13. Authority to Contract. Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

14. Full and Complete Performance. The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

15. Cancellation for Conflict of Interest. This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

16. Termination by County.

16.1. Without Cause. County may terminate this Contract at any time, without cause, by serving a written notice upon Contractor at least 30 days before the effective date of the termination. In the event of such termination, County only obligation to Contractor will be payment for services rendered prior to the date of termination.

16.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.

16.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

17. Notice. Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:
Terri Spencer, Procurement Director
Pima County Procurement
150 W Congress, 5th Floor
Tucson, AZ 85701
520.724.3722
terri.spencer@pima.gov

Contractor:
Kevin Hoover, Director of Bulk Plant Operations
Flyers Energy, LLC
2360 Linbergh St.
Auburn, CA, 95602
(951) 233-1916
Kevinh@4flyers.com

18. Non-Exclusive Contract. Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.

- 19. Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
- 20. Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.
- 21. Use of County Data.** Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not intentionally grant any third-party access to County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).
- 22. Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
- 23. Public Records.**
- 23.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents related to this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 23.2. Records Marked Confidential, Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

24. Legal Arizona Workers Act Compliance.

- 24.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 24.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.
- 24.3. Remedies for Breach of Warranty. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.
- 24.4. Subcontractors. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 25 by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to ensure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

25. Grant Compliance. Not applicable.

26. Written Orders. County will order products or services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail or telephone.

Contractor must not supply materials or services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for materials or services not documented by a County Delivery Order (DO).

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this Contract. In particular, Contractor will not provide goods or services other than those described in this Contract, in excess of the

Maximum Payment Amount, or after the Term of the Contract has ended, without a Contract amendment properly executed and issued by County, as provided below. Any items provided in excess of that stated in this Contract are at Contractor's own risk.

- 27. Counterparts.** The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.
- 28. Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
- 29. Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394 if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Contract that the Company is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.
- 30. Amendment.** The County may extend or revise this Contract by notifying Contractor in writing of the change, which notice will be in the form of a revised "Master Agreement." If Contractor does not object in writing to the proposed changes within ten (10) calendar days after receipt of the notice, Contractor will be deemed to have accepted the changes, and the revision will be binding on the parties, effective as of the date the notice was issued. If Contractor objects to one or more of the changes, then the proposed changes will be deemed to be ineffective.
- 31. Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, the parties have approved this Cooperative Procurement Agreement and agree to be bound by the terms and conditions of the Contract on the dates written below.

Pima County

Chair, Board of Supervisors

Date

Flyers Energy, LLC



Authorized Officer Signature

Tom Di Mercurio CEO

Printed Name and Title

03/18/2024

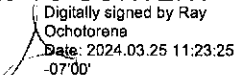
Date

ATTEST

Clerk of the Board

Date

APPROVED AS TO CONTENT

Ray
Ochotorena 
Digitally signed by Ray
Ochotorena
Date: 2024.03.25 11:23:25
-07'00'

Department Head

03/25/2024

Date

This contact template has been approved as to form by the Pima County Attorney's Office.

Exhibit A: General Specifications (2 pages)

1. Plant Pick Up:

- 1.1. Contractors must have a Tucson facility and adequate staff to assist in the plant pickup of ultra-low Diesel for County service trucks. The average capacity of a Pima County service truck is 900 gallons.
- 1.2. County reserves the right to inspect the Contractor's facility during working hours.

2. Delivery:

- 2.1. Contractor must deliver diesel fuel to selected County priority emergency diesel-powered generators located at 3434 E. 22nd Street, Tucson, Arizona, on an as-needed basis or during an emergency incident. Deliveries of quantities as small as 900 gallons may be required; see the list below.
 - PECOC01 1347 gallons AST
 - PECOC02 1347 gallons AST
 - PECOC03 1347 gallons AST
- 2.2. Contractor will provide fuel polishing on as-needed basis for County generators.
- 2.3. Delivery to 190 W Pennington Street location must be between 6:00 p.m. and 6:00 a.m.
- 2.4. Diesel fuel deliveries to Ajo, AZ must be full load (6000 gallon +).
- 2.5. Contractor must provide the County with Diesel in the estimated amounts and at the prices outlined in Exhibit B: Pricing Page (1 page). Deliveries must be made with prior arrangements between the County and the contractor to ensure a definite delivery time and date.
- 2.6. Deliveries of 2,000 gallons or less shall be made by metered trucks with a meter reading indicated on the delivery ticket. More than one delivery may be listed on each invoice; however, each delivery and quantity must be itemized.
- 2.7. Contractor must take dipstick or clock gauge readings before and after each delivery and record them on the delivery ticket. Water-finding paste shall be used on the measuring devices when gauging fuel tanks, and any water cut shall be noted on the delivery ticket.

3. Above Ground Storage Locations:

Deliveries of fuel to Mission Road, Houghton Road, Richey Road, Ajo Way, Ina Road, Green Valley, Ajo, AZ and Marana will require the contractor to pump into above ground storage tanks. The addressed are listed on the Exhibit B: Pricing Page (1 Page).

4 Field Service Deliveries:

Wet fueling services for remote sites to be determined as needed, will be located within Pima County. In the event wet fueling services are required, County will provide contractor with date and location of service. The hourly labor rate and any minimum or maximum charges would be applicable in the event the County implements such a request during the contract period.

Exhibit A: General Specifications (continued)

5. Delivery Ticket:

A copy of the signed delivery ticket must be left with the authorized Agency representative signing for the fuel delivered, presented to the vehicle operator for plant pickup, or left in a designated secure location. The delivery ticket must include the following:

- Contractor's name and address
- Delivery location & agency
- Grade of fuel
- Gross gallons - of fuel
- Net gallons - of fuel

6. Full Load Deliveries:

- 6.1. County considers deliveries of 6,000 gallons or more to be full load deliveries.
- 6.2. Contractors shall state their minimum gallon requirements considered to be full loads for Diesel.
- 6.3. Full Load + Split Full Load is when a product is delivered to multiple locations or tanks.
- 6.4. A Full Load may be split between sites or multiple tanks.

7. Partial Load Deliveries:

A partial load is a delivery less than the Agencies full load requirement regardless of delivery vehicle.

8. WET HOSE FUELING (on-site mobile fueling):

County may utilize wet fueling services for remote sites to be determined. The hourly labor rate and any minimum or maximum charges will apply should locations be added during the contract period.

Exhibit B: Pricing Page (1 Page)

Group 3 Diesel Fuel

Item No.	Agency	Service Type	Diesel Type	Location	Tank Style	Tank Capacity (Gallons)	Estimated Annual Usage (Gallons)	Partial Load Margin (Markup or Markdown)	
14	Pima County	Delivery	Clear UL SD	1301 S. Mission Road Tucson UST Exemption # 1001502.17	AST	15,000	Full Load + Split Full Load: Partial Load: 173,173	\$ 0.0100	
15	Pima County	Delivery	Clear UL SD	4700 S. Houghton Road Tucson	AST	5,000	Full Load + Split Full Load: Partial Load: 18,656	\$ 0.0100	
16	Pima County	Delivery	Clear UL SD	3355 N. Dodge Boulevard Tucson UST Exemption #1001281-13	AST	4,000	Full Load + Split Full Load: Partial Load: 15,518	\$ 0.0100	
17	Pima County	Delivery	Clear UL SD	4901 W. Ina Road Tucson	Automated AST	15,000	Full Load + Split Full Load: Partial Load: 21,559	\$ 0.0100	
18	Pima County	Delivery	Clear UL SD	12600 N. Sanders Road Marana	AST	5,000	Full Load + Split Full Load: Partial Load: 3,045	\$ 0.0100	
19	Pima County	Delivery	Clear UL SD	1131 N. Well Road Ajo	UST	12,000	Full Load + Split Full Load: Partial Load: 17,823	\$ 0.1100	
20	Pima County	Delivery	Clear UL SD	Bar LY - 5800 Reddington Road San Manuel	AST	1,200	Full Load + Split Full Load: Partial Load: 2,000	\$ 0.0600	
21	Pima County	Delivery	Clear UL SD	2500 E. Ajo Way Tucson	AST	500	Full Load + Split Full Load: Partial Load: 7,200	\$ 0.0600	
22	Pima County	Delivery	Clear UL SD	2343 E. Tournament Way Tucson	AST	300	Full Load + Split Full Load: Partial Load: 3,600	\$ 0.0600	
23	Pima County	Delivery	Clear UL SD	3434 E. 22nd Street Tucson	AST (3 tanks)	1,350	Full Load + Split Full Load: Partial Load: 720	\$ 0.0600	
24	Pima County	Delivery	Clear UL SD	2500 E. Ajo Way Tucson	AST	660	Full Load + Split Full Load: Partial Load: 240	\$ 0.0600	
25	Pima County	Delivery	Clear UL SD	8850 S. Camino Loma Alta	AST	1,026	Full Load + Split Full Load: 350	\$ 0.0600	
							Partial Load:		
26	Pima County	Delivery	Clear UL SD	Tucson 1270 W. Silverlake Tucson	AST UST (2 tanks)	2,400	Full Load + Split Full Load: Partial Load: 1,000	\$ 0.0600	
27	Pima County	Delivery	Clear UL SD	2250 E. Ajo Way Tucson	AST (2 tanks)	1,500	Full Load + Split Full Load: Partial Load: 245	\$ 0.0600	
28	Pima County	Delivery	Clear UL SD	North Swan Road, North of Avenida Shelly Tucson	AST	683	Full Load + Split Full Load: Partial Load: 235	\$ 0.0600	
29	Pima County	Bulk Plant Pickup	Clear UL SD	Contractor's Tucson Facility (TBD)	N/A	1,800	Full Load + Split Full Load: 13,407	\$ 0.0600	
							Pima County Total Usage - Clear ULSD	278,771	
							All Agencies Total Usage - Clear ULSD	668,391	
							All Agencies Total Usage - Dyed ULSD	14,420	
							All Agencies Total Usage (All)	682,811	