

AGREEMENT FOR SERVICES #364-S1711

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Hunt & Sons, Inc., a California Corporation duly qualified to conduct business in the State of California, whose principal place of business is 5750 South Watt Avenue, Sacramento, CA 95829; (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide commercial cardlock fueling services for all El Dorado County owned vehicles; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provision of these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor agrees to furnish commercial cardlock fueling services for all County-owned vehicles at various locations which can be found here: <http://www.huntns.com/customer-resources/fuel-locations/>. Services shall include, but not be limited to:

- 24 hour fueling service available 7 days a week;
- Normal Business Hours - 7:00 am - 6:00 pm Monday through Friday, and 8:00 am - Noon on Saturdays. Toll Free Number (800-734-2999) available 24 hours, 7 days a week for emergencies, and during normal business hours for new and/or replacement card requests, technical support, and invoicing questions;
- At least two (2) grades of gasoline as well as filtered diesel at all Pacific Pride sites, in accordance with Revised Exhibit "B", marked "Pricing for Cardlock Fueling", incorporated herein and made by reference a part hereof;
- Vending Machines - (Motor Oils - Chevron Supreme Motor Oil 10W/30 (quarts); Chevron Delo 400 Heavy Duty Motor Oil 15W/40 (quarts and gallons); Chevron Delo 400 Heavy Duty Motor Oil 30W (quarts and gallons);
- Windshield washer and towels provided at all locations;
- Air and water available at both Placerville and El Dorado Hills locations;
- Canopies at both Placerville and El Dorado Hills location, over 16' truck clearance;
- Each Fleet vehicle will be issued a "Vehicle" card. Each requested employee will be issued his/her own personal Driver Identification Number ("DIN"). The "DIN" must be used in conjunction with a "Vehicle" card which is assigned to each Fleet vehicle, allowing drivers to fuel vehicles within the County fleet (some account restrictions may apply).
- Card Security and Controls:
 - Card control (issuing new cards, making requested modifications to existing cards, and terminating existing cards, as directed by the authorized County contact) - Contractor shall coordinate issuance, changing and destruction of cards upon written approval of the Contract Administrator or designee;
 - Programming of Cards; programming shall include but not be limited to: allocation by product; odometer entries; user defined code to enable tracking of project costs or otherwise code transactions; date/time activation control; flexibility in resetting limits, validating or invalidating access, allocation by total purchase per product;
 - Initial Card Order - Contractor shall deliver all new cards to be used by County within two (2) weeks of receiving writing request from Contract Administrator or designee; and
 - Replacement Cards - Contractor shall deliver requested replacement cards within 24 hours for any new and/or replacement card upon request from Contract Administrator or designee, except weekends and holidays, guarantee delivery on the next business day following the weekend or holiday.
- Training - Contractor shall furnish any necessary instruction or training to staff on the use of the cardlock fueling system as requested at any time during the term of this Agreement;

- Video/digital surveillance cameras shall be used at the following locations and shall be retained for a period of 120 days and shall be made available to County upon request:
 - Shingle Springs
 - Placerville

Reports - to be issued as hard copy via U.S. Mail or electronically on an “as requested” basis in a format to be determined by the County Purchasing Agent. All departmental requests for reports shall be approved by the County Purchasing Agent prior to release. Any costs associated with the preparation, production, and delivery of reports shall be solely borne by the Contractor.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of January 24, 2017 through January 23, 2019.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Contractor bi-monthly in arrears. For the purposes of this Agreement, the billing rate shall be in accordance with Exhibit "A," marked “Pricing for Cardlock Fueling,” incorporated herein and made by reference a part hereof. Prices shall be exempt from Federal Excise Tax. Sales Tax, Local Sale Tax, California Use Tax (Diesel), and California Motor Vehicle Fuel Tax (Gasoline) shall be listed separately on invoices and shall not be listed as components of the differential price. Prices shall be inclusive of any and all charges, levies, and or fees not listed hereinabove and shall be components of the differential price.

Prompt payment(s) (within 20 days from County’s receipt of invoice) shall receive a deduction of 0.5% off the invoice total. Prompt payment discount terms shall apply regardless of the payment method.

All bi-monthly invoices shall be sent directly to the user Department, broken out by index code/sub account, and shall include the following information:

- Card number and assigned name or vehicle;
- Location of each purchase;
- Date of each purchase;
- Time of day of purchase;
- Odometer reading;
- Type of product purchased;
- Price per gallon and product;
- Number of gallons by purchase;
- Net dollar amount for each purchase;
- Miles per gallon (if correct odometer is kept and all product is purchased through the cardlock)
- Total dollar amount for all cards on invoice; and
- Breakdown of purchase by state

Invoices shall be sent via U.S. Mail or electronically via e-mail or may be received in a format as determined by the County Purchasing Agent.

Payments shall be coordinated and established with the Auditor/Controller's Office; prompt payment discount term (0.5%/20 days) is available with the following options:

- Payment via Check
- EFT (Electronic Funds Transfer)
 - Using county's bank ABA number and checking account, money is electronically withdrawn directly from County's bank account and deposited into Contractor's bank account. (May be done automatically one/twice a month or weekly depending upon County's preference).
- Check by Fax
 - County faxes check (does not mail) then Contractor recreates the check and deposits immediately.
- Visa and/or MasterCard
 - County's Visa or MasterCard is kept safely on file in Contractor's office and is ran for payment either by County Consent (call in) or once/twice monthly automatically, depending upon County's preference.

Total amount of this Agreement shall not exceed two million dollars (\$2,000,000.00) for the two (2) year period, inclusive of authorized vending machine purchases in accordance with this Agreement.

ARTICLE IV

Taxes: Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VI

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VII

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VIII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subContractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE IX

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE X

Audit by California State Auditor: Contractor acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XI

Default, Termination, and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

ARTICLE XII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO
Chief Administrative Office
Procurement and Contracts Division
360 Fair Lane
Placerville, CA 95667
ATTN: Purchasing Agent

Or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

HUNT & SONS, INC.
5750 South Watt Avenue
Sacramento, CA 95829
ATTN: R. Dean Hunt, President

Or to such other location as the Contractor directs.

ARTICLE XIII

Change of Address: In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XIV

Indemnity: The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subContractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XV

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only

insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XVI

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XVII

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this

Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XVIII

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Contractor attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Contractor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

ARTICLE XIX

California Residency (Form 590): If Contractor is a California resident, Contractors must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XX

Nonresident Withholding: If Contractor is not a California resident, Contractor shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Contractor shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

ARTICLE XXI

Taxpayer Identification Number (Form W-9): All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXII

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

ARTICLE XXIII

Licenses: Contractor hereby represents and warrants that Contractor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXIV

Administrator: The County Officer or employee with responsibility for administering this Agreement is Ashley Wells, Department Analyst, Chief Administrative Office, Procurement and Contracts Division, or successor.

ARTICLE XXV

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXVI

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXVII

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXVIII

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

ARTICLE XXIX

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Contract Administrator Concurrence:

By: _____

Ashley Wells
Department Analyst
Chief Administrative Office
Procurement and Contracts Division

Dated: _____

Requesting Department Head Concurrence:

By: _____

Don Ashton, MPA
Chief Administrative Officer

Dated: _____

//

//

//

//

//

//

//

//

//

//

//

//

//

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Chair
Board of Supervisors
"County"

ATTEST:
James S. Mitrison
Clerk of the Board of Supervisors

By: _____

Deputy Clerk

Dated: _____

-- CONTRACTOR --

HUNT & SONS, INC.
A California Corporation

By: _____

R. Dean Hunt
President
"Contractor"

Dated: _____

By: _____

Corporate Secretary

Dated: _____

364-S1711
EXHIBIT "A" – PRICING FOR CARDLOCK FUELING

Pricing – Pacific Pride

Vehicle Cards – \$1.50/single card (new and replacement) with no charge for programming changes.

DOMESTIC SITES (Unbranded)

Gasoline – OPIS Weekly (Sacramento) Unbranded Average plus \$0.075 cpg

Diesel Fuel – OPIS Weekly (Sacramento) Average plus \$0.075 cpg

- | | |
|--|--|
| - 4220 Motherlode Drive, Shingle Springs | - 11345 White Rock, Rancho Cordova |
| - 9687 Gore Road, Sacramento | - 5800 So. Watt Ave., Sacramento |
| - 1201 Fee Drive, Sacramento | - 4200 Roseville Road, North Highlands |
| - 4000 Cincinnati, Rocklin | - 6540 Wentworth Springs Rd., Georgetown |

DOMESTIC SITES (Branded)

Gasoline & Diesel Fuel – OPIS Weekly (Sacramento) Chevron plus \$0.075 cpg

- 2891 Mosquito Road, Placerville

FOREIGN SITES (Unbranded)

Gasoline – OPIS Weekly (Sacramento) Unbranded Average plus \$0.115 cpg

Diesel Fuel – OPIS Weekly (Sacramento) Average plus \$0.115 cpg

FOREIGN SITES (Branded)

Gasoline & Diesel Fuel – OPIS Weekly (Sacramento) Brand plus \$0.115 cpg

Pricing – CFN

FOREIGN SITES (Branded)

Gasoline & Diesel Fuel – OPIS Daily (Sacramento) plus \$0.115 cpg

Proposed Payment Discount

Deduct 0.5% off the invoice total if payment is received within twenty (20) days from County's receipt of invoice.

Training to be done on an "as requested" basis at no charge to County.

(1) Pricing to be in accordance with "OPIS – Unbranded Average"*** weekly prices. However, if unforeseen circumstances warrant Franchisor billing Contractor at the daily OPIS – Unbranded Average prices, due to uncontrollable market events and the increases being \$0.05 or more, pricing for County shall also be billed at the daily pricing.

For weekly pricing, Contractor shall use "Wednesday OPIS Daily – Unbranded Average"*** prices at the 5:30 Eastern timeframe for the coming week for both grades of fuel. If daily pricing is required, Contractor shall use the "OPIS – Unbranded Average"*** daily reports (any given day) to adjust the prices charged to County, effective the next business day AND upon notification to County by Contractor.

(2) For County Departments traveling outside of the Sacramento Area, Contractor shall furnish to County daily pricing for that specific location on an "as needed" basis.

*** Except for Branded sites where the Branded OPIS price for the assigned Brand will be used.