



County of Santa Cruz

569

DEPARTMENT OF PUBLIC WORKS

701 OCEAN STREET, ROOM 410, SANTA CRUZ, CA 950604070
(631) 454-2160 FAX (831) 454-2385 TDD (831) 454-2123

JOHN A. FANTHAM
DIRECTOR OF PUBLIC WORKS

AGENDA: January 26, 1999

January 13, 1999

SANTA CRUZ COUNTY BOARD OF SUPERVISORS

701 Ocean Street
Santa Cruz, California 95060

SUBJECT: FUEL TANK MAINTENANCE CONTRACT

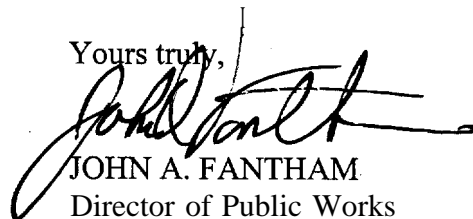
Members of the Board:

Nicholson Petroleum Maintenance currently provides repair and maintenance services for Public Works fueling facilities through a purchase order contract. The current purchase order is almost exhausted because of additional non-routine work that was necessary to meet the federal and state compliance date of December 22, 1998. It was critical to meet this compliance date in order to continue to receive fuel deliveries.

Our tanks are now in compliance, but there are not sufficient funds available in the purchase order to pay for routine maintenance services for the remainder of the year. Attached for your consideration is an Independent Contractor Agreement with Nicholson Petroleum that will provide for routine maintenance services. Sufficient funds are available for this contract.

It is therefore recommended that the Board of Supervisors approve the agreement with Nicholson Petroleum Maintenance in the amount of \$7,000.00 and authorize the Director of Public Works to sign the contract on behalf of the County.

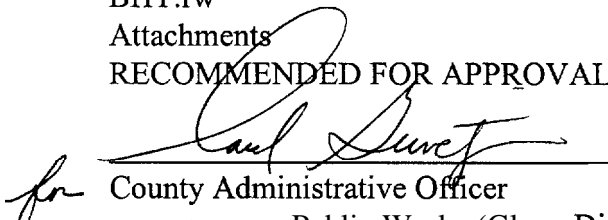
Yours truly,


JOHN A. FANTHAM
Director of Public Works

BHT:rw

Attachments

RECOMMENDED FOR APPROVAL:


County Administrative Officer
copy to: Public Works (Glenn DiOrio)

FTMR

55

Contract No. _____

INDEPENDENT CONTRACTOR AGREEMENT

THIS CONTRACT is entered into this ²⁶12 day of Jan 1999, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and NICHOLSON PETROLEUM MAINTENANCE, hereinafter called CONTRACTOR. The parties agree as follows:

1. DUTIES. CONTRACTOR agrees to exercise special skill to accomplish the following result: Perform maintenance and repair of Public Works fueling facilities at maintenance yards, as required.

2. COMPENSATION. In consideration for CONTRACTOR accomplishing said result, COUNTY agrees to pay CONTRACTOR as follows: Progress payments for services rendered, not-to-exceed \$7,000.00 total for the year.

3. TERM. The term of this contract shall be: Approval to June 30, 1999.

4. EARLY TERMINATION. Either party hereto may terminate this contract at any time by giving 30 days written notice to the other party.

5. INDEMNIFICATION FOR DAMAGES. TAXES AND CONTRIBUTIONS. CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons,

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTORS officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

6. INSURANCE. CONTRACTOR, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at a minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by County shall be excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

If CONTRACTOR utilizes one or more subcontractors in the performance of this Agreement, CONTRACTOR shall obtain and maintain Independent Contractor's Insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of CONTRACTOR in this Agreement, unless CONTRACTOR and COUNTY both initial here PW / _____.

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONTRACTOR has no employees and certifies to this fact by initialing here PL.

(2) Automobile Liability Insurance for each of CONTRACTOR's vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONTRACTOR's employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by CONTRACTOR is not a material part of performance of this Agreement and CONTRACTOR and COUNTY both certify to this fact by initialing here PW / _____.

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad-form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$1,000,000.00 combined single limit, if, and only if, this Subparagraph is initialed by CONTRACTOR and COUNTY PW / _____

B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, CONTRACTOR agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. CONTRACTOR may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations

and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz.” 572

(3) All required insurance policies shall be endorsed to contain the following clause:

“This insurance shall not be canceled until after thirty (30) days prior written notice has been given to: Glenn DiOrio, 701 Ocean Street, Room 410, Santa Cruz, CA 95060

(4) CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to:

7. EQUAL EMPLOYMENT OPPORTUNITY. During and in relation to the performance of this Agreement, CONTRACTOR agrees as follows:

A. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, transfer. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Agreement provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status, or any other non-merit factor unrelated to job duties. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR's solicitation of goods and services. Definitions for Minority/Women/Disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) The CONTRACTOR shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 4012) identifying the sex, race, physical or mental disability and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority/Women/Disabled Business Enterprises.

(3) In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further agreements with the COUNTY.

573

(4) The CONTRACTOR shall cause the foregoing provisions of this Subparagraph 7B. to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

8. INDEPENDENT CONTRACTOR STATUS. CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control which, by agreement, COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) the skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that CONTRACTOR is an independent contractor.

By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Agreement is in fact an independent contractor.

9. CONTRACTOR represents that its operations are in compliance with applicable County planning, environmental and other laws or regulations.

10. CONTRACTOR is responsible to pay prevailing wages and maintain records as^{5 7 4} required by Labor Code Section 1770 and following.

11. NONASSIGNMENT. CONTRACTOR shall not assign this agreement without the prior written consent of the COUNTY.

12. RETENTION AND AUDIT OF RECORDS. CONTRACTOR shall retain records pertinent to this Agreement for a period of not less than five (5) years after final payment under this Agreement or until a final audit report is accepted by COUNTY, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Agreement.

13. PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this Agreement shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

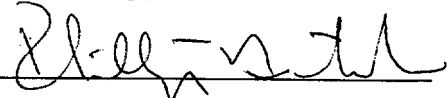
14. ATTACHMENTS. This Agreement includes the following attachments: None

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

COUNTY OF SANTA CRUZ

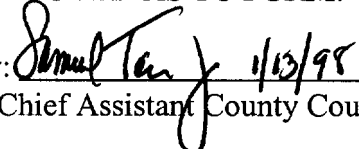
CONTRACTOR
NICHOLSON PETROLEUM
MAINTENANCE

By: _____
Director of Public Works

By:  _____

Address: 798 Lighthouse Avenue, No. 193
Monterey, CA 93940
Telephone: (83 1) 655-3744

APPROVED AS TO FORM:

By:  1/13/98
Chief Assistant County Counsel

DISTRIBUTION: Auditor-Controller
Contractor
Public Works



CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

1/ 4/1999

PRODUCER

William Ritchey Ins. Agency
P. O. BOX 160
Delano, CA 93216
(805) 725-2063

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND
CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE
DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE
POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY LETTER A GOLDEN EAGLE INSURANCE CORP. 575

COMPANY LETTER B

COMPANY LETTER C

COMPANY LETTER D

COMPANY LETTER E

INSURED

PHILLIP NICHOLSON DBA:
NICHOLSON PETROLEUM MAINT.
1581 HOFFMAN STREET
MONTEREY CA 93940

COVERAGES

MIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD
INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS
CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS,
EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO TR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY				
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	CCP 53636841	01/08/99	01/08/00	GENERAL AGGREGATE \$ 1,000,000
	CLAIMS MADE: <input checked="" type="checkbox"/> OCCUR.				PRODUCTS-COMP/OP AGG. \$ 1,000,000
	OWNER'S & CONTRACTOR'S PROT.				PERSONAL & ADV. INJURY \$ 1,000,000
					EACH OCCURRENCE \$ 1,000,000
					FIRE DAMAGE (Any one fire) \$ 100,000
					MED. EXPENSE (Any one person) \$ 5,000
	AUTOMOBILE LIABILITY				
A	ANY AUTO	CCP 536368	01/08/99	01/08/00	COMBINED SINGLE LIMIT \$ 1,000,000
	ALL OWNED AUTOS				
	<input checked="" type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> HIRED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE \$
	GARAGE LIABILITY				EACH OCCURRENCE \$
	EXCESS LIABILITY				AGGREGATE \$
	UMBRELLA FORM				
	OTHER THAN UMBRELLA FORM				STATUTORY LIMITS
	WORKER'S COMPENSATION				EACH ACCIDENT \$
	AND				DISEASE - POLICY LIMIT \$
	EMPLOYERS LIABILITY				DISEASE - EACH EMPLOYEE \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

CERTIFICATE HOLDER IS NAMED ADDITIONAL INSURED FOR LIABILITY RESPECTS
THEIR INTEREST IN OPERATION OF NAMED INSURED

CERTIFICATE HOLDER

COUNTY OF SANTA CRUZ
DEPT OF PUBLIC WORKS-OPER. SANI.
1750 LODGE STREET
SANTA CRUZ CA 95060

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE
EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO
MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE
LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR
LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Charlene Salmon

COUNTY OF SANTA CRUZ
REQUEST FOR APPROVAL OF AGREEMENT

576

TO: Board of Supervisors
County Administrative Officer
County Counsel
Auditor-Controller

FROM:

PUBLIC WORKS

(Dept.)

Ym McElwain

(Signature)

12/29/98

(Date)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

1. Said agreement is between the COUNTY OF SANTA CRUZ (Agency)
NICHOLSON PETROLEUM MAINTENANCE
and 798 LIGHTHOUSE AVENUE, NO. 193, MONTEREY, CA 93940 (Name & Address)

2. The agreement will provide FOR MAINTENANCE AND REPAIR SERVICES FOR PUBLIC WORKS
FUELING FACILITIES.

3. The agreement is needed BECAUSE THIS WORK CAN BE HANDLED MOST EXPEDITIOUSLY BY CONTRACT.

4. Period of the agreement is from BOARD APPROVAL to JUNE 30, 1999

5. Anticipated cost is \$ 7,000.00 (Fixed amount; Monthly rate; Not to exceed)

6. Remarks: CONTRACT AMOUNT \$7,000.00; OVERHEAD \$490.00; TOTAL \$7,490.00.

7. Appropriations are budgeted in 600450 PO0207 (601000) (Index#) 3475 (Subobject)

NOTE: APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74

Appropriations are available and encumbered.

Contract No.

C081769

Date 12/30/98

GARY A. KNUTSON, Auditor - Controller

By Linda Chen Deputy.

Proposal reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the DIRECTOR OF PUBLIC WORKS to execute the same on behalf of the DEPARTMENT OF

PUBLIC WORKS (Agency).

Remarks:

gm (Analyst)

fruchholz

By

County Administrative Officer

Date 1/15/99

Agreement approved as to form. Date _____

BHT:rw

Distribution:

Bd. of Supv. - White
Auditor-Controller - Blue
County Counsel - ORANGE
Co. Admin. Officer - Canary
Auditor-Controller - Pink
Originating Dept. - Goldenrod

*To Orig. Dept. if rejected.

State of California)
County of Santa Cruz) ss

I _____ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz,
State of California, do hereby certify that the foregoing request for approval of agreement was approved by
said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered
in the minutes of said Board on _____

County Administrative Officer

_____ 19 _____

By _____ Deputy Clerk

55
ADM - 29 (6/95)