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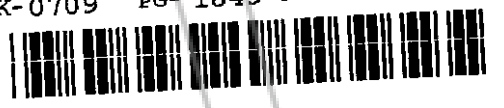
DOC # 0746777
07/09/2009 02:51 PM Deputy: SD
OFFICIAL RECORD
Requested By:
DC/PUBLIC WORKS

Assessor's Parcel Number: N/A

Date: JULY 8, 2009

Recording Requested By:

Douglas County - NV
Karen Ellison - Recorder
Page: 1 Of 13 Fee: 0.00
BK-0709 PG-1849 RPTT: 0.00



Name: EILEEN CHURCH, PUBLIC WORKS

Address:

City/State/Zip:

Real Property Transfer Tax: \$ N/A

CONTRACT #2009.181
(Title of Document)



J. 2009.181
2009 JUL -8 AM 11:00

**MATERIAL CONTRACT BETWEEN DOUGLAS COUNTY, NEVADA AND
WESTERN ENERGETIX**

THIS Contract made and entered into on this 18th day of June, 2009, by and between Douglas County, Nevada, a political subdivision of the State of Nevada ("County") and Western Energetix, a qualified vendor in the class of work required and/or materials to be supplied, hereinafter called, "Vendor".

FILED
CLERK
[Signature]
DEPUTY

WHEREAS, the County has awarded a contract to Vendor for providing materials and (where applicable) perform related services hereinafter mentioned in accordance with the proposal of said Vendor;

WHEREAS, the Vendor will provide the material and (where applicable) perform related services for the compensation stated in said proposal, for an amount which has been arrived at between the parties;

WHEREAS, each party is willing to and does assume joint liability for the contents of this Contract, and each party accordingly agrees that it shall not be construed against any party as a drafting party;

NOW, THEREFORE, IT IS AGREED as follows:

1. Scope:

The scope of this contract is generally defined as "Fuel Purchasing and Card Processing." The County's Contract Documents and Vendor's Entire Proposal are on file with the County. All terms, conditions and requirements contained within these Documents, including any and all addenda issued by the County, are hereby incorporated by reference into this Contract.

The Vendor shall perform within the time stipulated, the Contract as herein defined and shall provide and furnish any and all of the labor, materials, methods or processes, equipment implements, tools, machinery and equipment, and all utility, transportation and other services required to construct, install and put in complete order for use in a good and workmanlike manner all of the work covered by the Contract in connection with strict accordance with the plans and specifications therefore, which were approved by said County and are on file with the County, including any and all addenda issued by the County, and with the other contract documents hereinafter enumerated.

2. Payment:

As full consideration for the materials provided and related services to be performed by Vendor, County agrees to pay Vendor as set forth in accordance with the Fee Schedule set forth in the proposal, bid or quotation dated April 21, 2009 as provided in Attachment "A" of this contract. The County will not hire or directly compensate the Vendor's employees, assistants or subcontractors, if any. It is expressly understood and agreed that all materials provided and work performed by Vendor shall be subject to review as to its conformance with specifications by the County at the County's discretion. Payment of any invoice shall not be taken to mean that the County is satisfied with Vendor's services to the date of payment and shall not forfeit County's right to require the correction of any deficiencies.

3. Term:

This is a two year term contract from (7/1/09) to (6/30/11) with three (3) additional mutually agreeable 1-year options for renewal through (no later than) 6/30/14. The Vendor shall deliver the material called for in the specifications/proposal and within the delivery time specified and in accordance with the terms of the contract. The Vendor shall not alter or vary any terms or conditions

contained or incorporated herein, including but not limited to, the quantity, price, delivery date or date designated as After Receipt of Order (ARO) or date for commencement or completion of the contract as mutually agreed upon, unless such alteration or variation is consented to in writing by a duly authorized representative of the County.

The County reserves the right to cancel resultant Contract upon ten days written notice in the event the type and quality of the product is unsatisfactory or in default, subject to vendor's right to cure as outlined in termination clause.

This is a non-exclusive Contract and the County reserves the right to acquire the material and related services at its discretion, from other sources during the term of this Contract.

4. No Unfair Employment Practices:

In connection with the performance of work under this Agreement, Vendor agrees not to discriminate against any employee or applicant because of race, creed, color, national origin, disability, sex, sexual orientation or age. Such agreement shall include, but not be limited to, the following: recruitment or recruitment advertising, rates or pay or other forms of compensation, and selection. Any violation of these provisions by Vendor shall constitute a material breach of contract.

5. No Illegal Harassment:

Violation of the County's harassment policy, which is incorporated by reference and available from the Human Resource Division, by the Vendor, its officers, employees, agents, consultants, subcontractors and anyone from whom it is legally liable, while performing or failing to perform Vendor's duties under this Contract shall be considered a material breach of contract.

6. Acceptance by the County:

It is expressly understood and agreed that all materials provided and related work done by the Vendor shall be subject to inspection and acceptance by the County at its discretion, and that any progress inspections and approval by the County of any item or work shall not forfeit the right of the County to require the correction of faulty workmanship or material at any time during the course of the contract, although previously approved by oversight. Nothing herein contained shall relieve the Vendor of the responsibility for proper delivery of materials required under the terms of this Contract until all materials have been accepted by the County.

7. Waiver:

No waiver of any term, provision or condition of this Contract, whether by conduct or otherwise, in any one or more instances, shall be deemed to be nor shall it be construed as a further or continuing waiver of any such term, provision or condition of this Contract. No waiver shall be effective unless it is in writing and signed by the party making it.

8. Notices:

All notices required to be given in writing by this Contract shall be deemed to be received (i) upon delivery if personally delivered, or (ii) when receipt is signed for if mailed by certified or registered mail, postage prepaid, or by express delivery service or courier, when addressed as follows (or sent to such other address as a Party may specify in a notice to the others):

Department of Public Works
Douglas County
Attn: Chris Oakden
P.O. Box 218
Minden, NV 89423

VENDOR:

Kerrie Kraff
Western Energetix
655 S. Stanford Way
Sparks, NV 89431

9. Jurisdiction and Venue:

Any action or proceeding seeking to do so must be brought in the courts of the State of Nevada, County of Washoe, or if the party can acquire subject-matter jurisdiction, in the United States District Court for the District of Nevada in the County of Reno. Each of the parties consents to the personal jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on either party by sending it certified mail to the respective addresses designated for notice.

10. Indemnity:

Vendor agrees to hold harmless, indemnify, and defend County, its officers, agents, employees, and volunteers from any loss or liability, financial or otherwise resulting from any and all claims, demands, suits, actions, or causes of action, caused by any action, either direct or passive, the omission, failure to act, or negligence on the part of Vendor, its employees, agents, representatives, or Subcontractors arising out of the performance of work under this Agreement by Vendor, or by others under the direction or supervision of Vendor.

If County's personnel are involved in defending such actions, Vendor shall reimburse County for the time and costs spent by such personnel at the rate charged County for such services by private professionals.

In determining the nature of the claim against County, the incident underlying the claim shall determine the nature of the claim, notwithstanding the form of the allegations against County.

Nothing in this contract shall be interpreted to waive nor does the County, by entering into this contract, waive any of the provisions found in Chapter 41 of the Nevada Revised Statutes.

11. Licenses and Permits:

The Vendor shall procure at his own expense all necessary licenses and permits and shall adhere to all the laws, regulations and ordinances applicable to the performance of this Contract.

12. Insurance:

Vendor shall provide proof of Commercial General Liability Insurance and Automobile Liability, Professional Liability and Workers' Compensation if applicable, prior to initiation of any services. Coverage shall be from a company authorized to transact business in the State of Nevada and the County and shall meet the following minimum specifications:

VENDOR'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT VENDORS CONFER WITH THEIR RESPECTIVE INSURANCE CARRIERS OR BROKERS TO DETERMINE IN ADVANCE OF BID SUBMISSION THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS AS PRESCRIBED AND PROVIDED HEREIN. IF ANY VENDOR FAILS TO COMPLY STRICTLY WITH THE INSURANCE REQUIREMENTS, THAT VENDOR MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

INDUSTRIAL INSURANCE

It is understood and agreed that there shall be no Industrial Insurance coverage provided for Vendor or any Sub-Contractor of the Vendor by the County. Vendor agrees, as a precondition to the performance of any work under this Agreement and as a precondition to any obligation of the County to make any payment under this Agreement to provide County with a certificate issued by an insurer

in accordance with NRS 616B.627 and with a certificate of an insurer showing coverage pursuant to NRS 617.210.

It is further understood and agreed by and between County and Vendor that Vendor shall procure, pay for, and maintain the above mentioned industrial insurance coverage at Vendor's sole cost and expense.

Should Vendor be self-funded for Industrial Insurance, Vendor shall so notify County in writing prior to the signing of this Contract. County reserves the right to approve said retentions, and may request additional documentation, financial or otherwise, for review prior to the signing of this Contract.

MINIMUM LIMITS OF INSURANCE

Vendor shall maintain coverages and limits no less than:

1. General Liability: \$1,000,000 (or amount customarily carried by Vendor, whichever is greater) combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be increased to equal twice the required occurrence limit or revised to apply separately to this project or location.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.
3. Workers' Compensation: Consultant shall provide proof of worker's compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapters 616A-D and all other related chapters is not required.

Vendor will maintain Vendor liability insurance during the term of this Agreement and for a period of three (3) years from the date of substantial completion of the project. In the event that Vendor goes out of business during the term of this Agreement or the three (3) year period described above, Vendor shall purchase Extended Reporting Coverage for claims arising out of Vendor's negligent acts, errors and omissions committed during the term of the Vendor Liability Policy.

Should County and Vendor agree that higher Vendor coverage limits are needed warranting a project policy, project coverage shall be purchased and the premium for limits exceeding the above amount shall be borne by County. County retains the option to purchase project insurance through Vendor's insurer or its own source.

OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a. County, its officers, agents, employees, and volunteers are to be included as insureds as respects damages and defense arising from: activities performed by or on behalf of Vendor, including the insured's general supervision of Vendor; products and completed operations of Vendor; premises owned, occupied, or used by Vendor; or automobiles owned, leased, hired, or borrowed by the Vendor. The coverage shall contain no special limitations on the scope of protection afforded to County, its officers, employees, or volunteers.

- b. Vendor's insurance coverage shall be Primary insurance as respects County, its officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, employees, or volunteers shall be excess of Vendor's insurance and shall not contribute with it in any way.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to County, its officers, agents, employees, or volunteers.
- d. Vendor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or non-renewed by either Vendor or by the insurer, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to County except for nonpayment of premium.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a Best's rating of no less than A-: VII. County, with the approval of the Risk Manager, may accept coverage with carriers having lower Best's ratings upon review of financial information concerning Vendor and insurance carrier. County reserves the right to require that Vendor's insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted list.

VERIFICATION OF COVERAGE

Vendor shall furnish County with certificates of insurance and with original endorsements affecting coverage required by this contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Prior to the start of any Work, Vendor must provide the following documents to County, Attention: Douglas County Department of Public Works, P.O. Box 218, Minden, Nevada 89423:

- A. **Certificate of Insurance.** Vendor must provide a Certificate of Insurance form to the County to evidence the insurance policies and coverage required of Vendor.
- B. **Additional Insured Endorsements.** An original Additional Insured Endorsement, signed by an authorized insurance company representative, must be submitted to the County, by attachment to the Certificate of Insurance, to evidence the endorsement of the County as additional insured.
- C. **Policy Cancellation Endorsement.** Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to specify that without thirty (30) days prior written notice to the County, the policy shall not be cancelled, non-renewal or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address specified above. A copy of this signed endorsement must be attached to the Certificate of Insurance.
- D. **Bonds (as Applicable).** Bonds as required and/or defined in the original bid documents.

All certificates and endorsements are to be addressed to the County Public Works Department and be received and approved by County before work commences. The County reserves the right to require complete certified copies of all required insurance policies at any time.

SUBCONTRACTORS

Vendor shall include all Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

MISCELLANEOUS CONDITIONS

1. Vendor shall be responsible for and remedy all damage or loss to any property, including property of County, caused in whole or in part by Vendor, any subcontractor, or anyone employed, directed, or supervised by Vendor.
2. Nothing herein contained shall be construed as limiting in any way the extent to which Vendor may be held responsible for payment of damages to persons or property resulting from its operations or the operations of any subcontractors under it.
3. In addition to any other remedies County may have if Vendor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, County may, at its sole option:
 - a. Purchase such insurance to cover any risk for which County may be liable through the operations of Vendor under this Agreement and deduct or retain the amount of the premiums for such insurance from any sums due under the Agreement;
 - b. Order Vendor to stop work under this Agreement and/or withhold any payments which become due Vendor here under until Vendor demonstrates compliance with the requirements hereof; or,
 - c. Terminate the Agreement.

13. Material Breach of Contract:

In the event Vendor fails to deliver the product and related services as contracted for herein, to the satisfaction of the County or otherwise fails to perform any provisions of this Contract, the County, after providing five (5) days written notice and vendor's failure to cure such breach within the time allowed in the County's notice, may without waiving any other remedy, make good the deficiencies and deduct the actual cost of providing alternative products and related services from payment due the Vendor. Non-performance after the first notice of non-performance shall be considered a material breach of contract.

14. Force Majeure:

Neither party to the Contract shall be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. County may terminate the Contract upon written notice after determining such delay or default will reasonably prevent successful performance of the Contract.

15. Termination:

Failure to Cure:

The County may terminate the Contract for material breach of contract upon ten (10) days written notice and recover all damages, deducting any amount still due the Vendor from damages owed to the County, or seek other remedy including action against all bonds. The Vendor may terminate the Contract for material breach of contract upon thirty (30) days written notice to the County.

Non-Funding:

Continuance of this contract beyond the fiscal year (July – June) in which the contract was initiated shall be contingent upon appropriation of the requisite funds in the ensuing fiscal year(s) and the termination of this contract due to lack of appropriation shall be without penalty.

Convenience:

The County may terminate this agreement for any reason without penalty upon giving thirty (30) days written notice to the Vendor. In the event of termination, the full extent of County liability shall be limited to an equitable adjustment and payment for materials and related services authorized by and received to the satisfaction of the County prior to termination.

16. Assignment:

All of the terms, conditions and provisions of this Contract, and any amendments thereto, shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The Vendor shall not assign this Contract without the written consent of the County which will not be unreasonably withheld.

17. Entire Contract:

This Contract constitutes the entire agreement of the parties and shall supersede all prior offers, negotiations, agreements and contracts whether written or oral. Any modifications to the terms and conditions of this Contract must be in writing and signed by both parties.

18. Severability:

If any part of this Contract is found to be void it will not affect the validity of the remaining terms of this Contract which will remain in full force and effect.

19. Headings:

Paragraph titles or captions contained in this Contract are inserted only as a matter of convenience and for reference only, and in no way define, limit, extend, or describe the scope of this Contract or the intent of any provision thereof.

20. Singular Includes the Plural; Gender; Title Reference:

Whenever the singular number is used in this Contract and when required by the context, the same shall include the plural, and the use of any gender, be it masculine, feminine or neuter, shall include all of the genders, and the word "person" or "entity" shall include corporation, firm, partnership, or any other combination or association.

The use of the title "Bidder", "Vendor", "Contractor" or "Consultant" within this contract or associated bid document(s) shall be deemed interchangeable and shall refer to the person or entity with whom the County is contracting for the service or product referenced within this contract.

21. Execution:


The parties agree to execute such additional documents and to take such additional actions as are reasonably necessary or desirable to carry out the purposes hereof. They also agree, acknowledge and represent that all corporate authorizations have been obtained for the execution of this Contract and for the compliance with each and every term hereof. Each undersigned officer, representative or employee represents that he or she has the authority to execute this Contract on behalf of the party for whom he or she is signing.

IN WITNESS WHEREOF, the County has caused this Contract to be executed by its officers thereunto duly authorized and the Consultant has subscribed same, all on the day and year first above written.

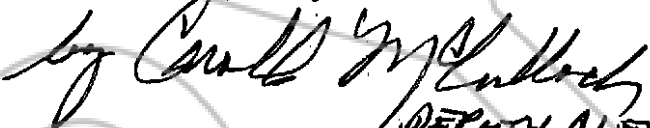
WESTERN ENERGETIX

DOUGLAS COUNTY, NEVADA

By: 
Kerri Kraff
Nevada Cardlock Manager

By: 
Chair, Nancy McDermid
Douglas County Board of Commissioners

ATTEST: 
Ted Thran, County Clerk

by 
DEPUTY CLERK

COPY

Attachment "A"

Written quote (dated 4/21/09) referencing County pricing and reference to TMCC agreement follows this page.

COPY



ATTACHMENT "A"

April 21, 2009

Douglas County
P.O. Box 218
Minden, NV 89423

RE: Fuel Purchasing and Card Processing

Dear Chris Oakden,

As a cardlock customer of Western Energetix, please know that we appreciate the opportunity to have served you and other government agencies for many years. Western Energetix is the Largest Commercial Fuel Network in the State of Nevada, with more than 70 fueling sites, two terminals, and seven bulk plants from Truckee to Elko. We operate more than 50 trucks in Nevada, hauling fuel to nearly every part of the State.

This agreement mirrors the terms of the TMCC signed agreement dated 3-03-09.

1. Western Energetix proposes the following for its Commercial Cards

1. Domestic CFN Locations: CFN Network Sites owed by Western Energetix (WE).
3 grades of gasoline, clear diesel, will be priced at, daily OPIS Rack Average, plus freight, plus \$0.09 cents per gallon, less applicable tax exemptions. Bio-Dsl will be priced at OPIS Rack Average for clear diesel, plus freight, plus \$.050 per 5% blend of Bio, less applicable tax exemptions. RFG will be priced at daily Sacramento OPIS Rack Average, plus freight, plus \$0.09 cents per gallon, less applicable tax exemptions.
2. CFN Network Sites: CFN sites not owned by WE
All fuel products will be priced at daily OPIS Rack Average, plus freight, plus \$0.11 cents per gallon, less applicable tax exemptions.
3. Retail Locations: Remote Western Energetix and Fleetwide Network Sites.
All fuel products will be priced at, cash price plus \$0.05 cents per gallon, less applicable tax exemptions.
4. Government Owned Locations: All fuel products will be priced at daily OPIS Rack Average, plus freight, plus \$0.14 cents per gallon, less applicable tax exemptions.
5. Proprietary Owned Agency Locations: 3 grades of gasoline, clear diesel, will be priced at daily OPIS Rack Average, plus freight, plus \$.075 cents per gallon, less applicable tax exemptions. Bio-Dsl will be priced at OPIS Rack Average for clear diesel, plus freight, plus \$.050 per 5% blend of Bio, less applicable tax exemptions. RFG will be priced at daily Sacramento OPIS Rack Average, plus freight, plus \$0.075 cents per gallon, less applicable tax exemptions. Set-up fee for site upgrades has been waived and site controller is the property of Western Energetix. Repairs and maintenance of Site Controller is Western Energetix responsibility. Site equipment, repairs, upgrades to equipment and ground maintenance is the Site Owners responsibility. Western Energetix will provide fuel management through cardlock processing, and card management.
6. Propane: Propane purchased for tanks and bottle usage will be priced at cash plus \$0.05.
7. Carwashes and Oil Changes: Services will be billed at 10% off store cash price.

2. Additional Features

Electronic file transfers
On-line card management
Customized account set-up
Local Customer Service, 24/7
Alternative Fuels available at locations within Reno and Sparks
New cards, lockout cards, and replacement of cards at no cost

3. RFG Storage at Sparks Terminal

Our Sparks Terminal has adequate inventory on hand at all times through our new 20,000 gallon RFG storage tank. RFG is transported via truck from Sacramento and held as inventory at our Sparks Bulk Plant, where the product is then transported to its final destination of City, County and Cardlock facilities. MSDS sheets are available as needed.

4. RFG Implementation to Cardlock Facilities

The process of getting product into the Cardlock Facility at 175 Nugget Ave, Sparks will take effect immediately. So there is no interruption of alternative fuel purchased for the City of Sparks, our goal will be to have RFG in place before April 1, 2009.

5. Emergency Fueling Provision

Western Energetix and Gulf Transportation fully utilize 50 tankers, tank wagons and bobtail trucks in Nevada 24 hours a day. Our largest concentration of tankers and trucks is 20 vehicles at the Sparks Terminal. In the event of a state or local emergency, cardlock government agencies are our first priority. Western Energetix will draw upon the resources of tank wagons, bobtail trucks and retail locations for fuel inventory.

Manual Nozzles

In the event of a prolonged power outage, Western Energetix has nine 12VDC specially manufactured fuel nozzles that can be installed and used to dispense fuel from our tanks in the ground at a flow capacity of approximately 15 to 20 gallons per minute. Nozzles are stored for use at our unattended cardlock locations in Sparks, Reno and Carson City cardlock facilities.

Western Energetix maintenance personnel stationed in Sparks are trained and authorized to install and operate this equipment. We require two hours per location to install manual nozzles. Once installed, two Western Energetix personnel can operate each nozzle. In the event that there is a prolonged power outage and we receive notification that assistance is required, Western Energetix will make its best efforts to respond, travel, set up, and operate our 12v pumps where needed for emergency vehicles only. To ensure all available fuel is reserved for emergency use, no other private vehicles will be allowed to fuel while the power is out and manual nozzles are in place. Ideally, an armed guard would be on site to turn away private and non-emergency vehicles.

A note about text messaging: It is advisable to train all employees who have cell phones to use the SMS text-message feature on their mobile phones and have emergency communications plan numbers available or stored in their cell phones. Text messages can be sent and received when regular cell phone service is overloaded or intermittent.

A list of emergency contact names and numbers will be provided upon request.

Western Energetix looks forward to continuing a business relationship with the Douglas County. Should you have any further questions, please feel free to contact me at 775-689-1234, ext. 2633.

Sincerely,

Kerrie Kraff
Nevada Cardlock Manager

COPY

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and on record in my office.

DATE: July 8, 2009
[Signature] Clerk of the 8th Judicial District Court
of the State of Nevada, in and for the County of Douglas.
By [Signature] Deputy