

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: PUBLIC WORKS

BOARD AGENDA# \*C-1

Urgent \_\_\_\_\_ Routine

AGENDA DATE OCTOBER 5, 2004

CEO Concurs with Recommendation YES \_\_\_\_\_ NO \_\_\_\_\_  
(Information Attached)

4/5 Vote Required YES \_\_\_\_\_ NO

SUBJECT: APPROVAL TO AWARD CONTRACT TO DONLEE PUMP COMPANY OF CERES, CALIFORNIA, FOR PURCHASE AND INSTALLATION OF AN ABOVE GROUND FUEL STORAGE AND DISPENSING SYSTEM AT THE PUBLIC WORKS MORGAN ROAD LOCATION

STAFF RECOMMENDATIONS:

1. AWARD CONTRACT FOR \$112,841.67 TO DONLEE PUMP COMPANY OF CERES, CALIFORNIA, FOR PURCHASE AND INSTALLATION OF ABOVE GROUND FUEL STORAGE AND DISPENSING SYSTEM; AND,
2. AUTHORIZE THE PURCHASING AGENT TO ESTABLISH A CONTRACT WITH DONLEE PUMP COMPANY OF CERES, CALIFORNIA, FOR THE CONTRACT AMOUNT OF \$112,841.67.

FISCAL IMPACT:

The contract amount of \$112,841.67 is included in Public Works Morgan Shop's fiscal year 2004/2005 budget. This budget unit is funded through equipment rental fees. The installation of on site fuel tanks is anticipated to result in increased efficiency of approximately \$50,000.00 annually.

BOARD ACTION AS FOLLOWS:

No. 2004-778

On motion of Supervisor Simon, Seconded by Supervisor Paul  
 and approved by the following vote,  
 Ayes: Supervisors: Paul, Mayfield, Grover, Simon, and Chairman Caruso  
 Noes: Supervisors: None  
 Excused or Absent: Supervisors: None  
 Abstaining: Supervisor: None

- 1)  Approved as recommended
- 2) \_\_\_\_\_ Denied
- 3) \_\_\_\_\_ Approved as amended
- 4) \_\_\_\_\_ Other:

MOTION:

1010-08  
 ATTEST: Christine Ferraro  
 CHRISTINE FERRARO TALLMAN, Clerk

File No.

APPROVAL TO AWARD CONTRACT TO DONLEE PUMP COMPANY OF CERES, CALIFORNIA, FOR PURCHASE AND INSTALLATION OF AN ABOVE GROUND FUEL STORAGE AND DISPENSING SYSTEM AT THE PUBLIC WORKS MORGAN ROAD LOCATION

PAGE 2

**DISCUSSION:**

Prior to 1998, Stanislaus County Public Works vehicles were fueled at the Road & Bridge Division's Morgan Road location. The Roads Division utilized underground tanks for the storage and dispensing of fuel. The underground tanks were removed in 1998 to comply with State regulations. Subsequently, the Roads Division has been purchasing fuel from an offsite vendor.

As a result, the time necessary to transport equipment to and from the fueling station has impacted employee and equipment productivity by approximately \$50,000 per year. To mitigate these costs, the Public Works Department has partnered with Fleet Services to develop a facility to be utilized by all County vehicles, including First Responders. This facility is to be located at Public Works Morgan Road Facility.

A Request for Proposal was initiated and two valid proposals were received. A summary of those proposals follows:

Donlee Pump Company, Ceres, CA	\$112,841.67
Cal, Inc., Vacaville, CA	\$186,615.00

The Public Works Department requests the contract be awarded to Donlee Pump Company, for their proposal amount of \$112,841.67.

**POLICY ISSUES:**

This action is consistent with the Board's policy of promoting efficient government operations.

**STAFFING IMPACT:**

There is no staffing impact associated with this item.

**AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR SERVICES**

This Agreement For Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and Donlee Pump Company. ("Contractor") on October 6, 2004.

**Recitals**

WHEREAS, the County has a need for services involving furnishing and installing an above ground fuel dispensing and storage system; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**Terms and Conditions**

1. **Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the

requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

## 2. Consideration

2.1 County shall pay Contractor as set forth in Exhibit A.

2.2 Except as expressly provided in Exhibit A of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

## 3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the

State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

#### 4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

#### 5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

#### 6. Insurance

6.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property

damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of the Contractor; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

6.4 The Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or

volunteers.

6.6 The Contractor'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.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. 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. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.

## 7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's

officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

## 8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee,



and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

## 9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

## 10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

## 11. Nondiscrimination

During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code

sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus  
Department of Public Works  
Attention: David Nordell, Assistant Director  
Operation Division  
1716 Morgan Road  
Modesto CA 95358

To Contractor: Donlee Pump Company  
2825 Railroad Avenue  
Ceres CA 95307

15. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect which would conflict in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

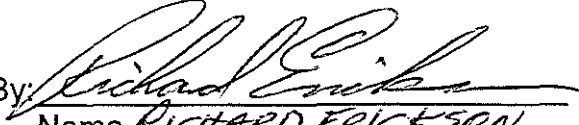
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS

DONLEE PUMP COMPANY

By:   
Arck Purchasing Agent

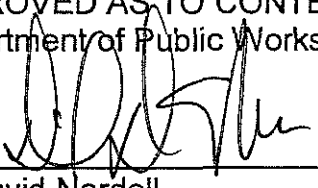
"County"

By:   
Name RICHARD ERICKSON  
Title PRESIDENT

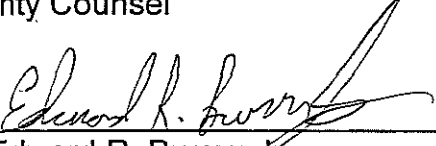
"Contractor"

Taxpayer Identification No. 94-2786131

APPROVED AS TO CONTENT:  
Department of Public Works

By:   
David Nordell  
Assistant Director

APPROVED AS TO FORM:  
Michael H. Krausnick  
County Counsel

By:   
Edward R. Burroughs  
Deputy County Counsel

C:\Documents\FORMS\IND-CON Agmt.wpd

## **EXHIBIT A**

### **A. SCOPE OF WORK**

The Contractor shall provide services under this Agreement as follows:

To provide all the labor, materials, equipment, and incidentals to furnish and install an above ground fuel dispensing and storage system at the Public Works Operation Division located at 1716 Morgan Road, Modesto CA 95358.

All work and services provided under this Agreement shall be performed in accordance with the Request for Proposal #04-10-BLS (the "RFP") and with the Contractor's proposal and response to the RFP, both of which, by this reference, are made part hereof.

In addition, the "Addendum to Agreement" (Public Works of Improvement, version 4.5.01) pages 1 through 4, which is attached, is hereby integrated and incorporated into this Agreement by mutual agreement of all parties.

### **B. COMPENSATION**

Contractor shall be compensated, and paid in arrears, on a lump sum basis for work performed and services provided under this Agreement. Contractor shall submit an invoice in duplicate upon completion of the work and the County shall pay the Contractor within 45 days after approval of the invoice by authorized County representative.

The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$112,841.67, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement.

### **C. TERM OF AGREEMENT**

The initial term of this contract shall be 120 calendar days from date of Notice to Proceed.

ADDENDUM TO AGREEMENT FOR INDEPENDENT CONTRACTOR SERVICES  
(Public Works of Improvement)

Notwithstanding Section 18 of the Agreement for Independent Contractor Services by and between the County of Stanislaus ("County") and Donlee Pump Company ("Contractor") (the "Agreement"), the parties hereby specifically agree to the following additional terms and conditions, which shall be and hereby are integrated and incorporated into the Agreement:

22. Performance Bond

Pursuant to Public Contract Code Section 20129, prior to commencing the work, the Contractor shall execute and file a performance bond issued by a California admitted surety and approved as to form by the County in the amount of one hundred percent (100%) of the contract price for the faithful performance of the contract.

23. Payment Bond

Pursuant to Civil Code Section 3247, prior to commencing the work, the Contractor shall execute and file a payment bond issued by a California admitted surety and approved as to form by the County in the amount of one hundred percent (100%) of the contract price for the faithful payment and satisfaction of all lawful claims of all persons for labor and materials furnished in the prosecution of the contract work. The payment bond shall conform in all respects to the requirements of Civil Code Section 3248.

24. Non-exoneration of Bonds

Any alteration or alterations made in this contract, or any part hereof, shall not operate to release any surety from liability of any bond given pursuant to the provisions of this Agreement and the consent of such surety to such alteration or alterations is hereby given, the surety expressly waiving hereby the provisions of Section 2819 of the Civil Code.

25. Labor Code Compliance

25.1 Prevailing Wage Pursuant to Labor Code Section 1771, the work under this Agreement is subject to the provision of Article 2 (commencing with section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code, and the Contractor shall pay all workers the general prevailing rate per diem wages applicable to the work to be done for straight time, overtime, Saturday, Sunday and holiday work. These wage rates, which are set forth by the Director of the Department of Industrial Relations, are now on file with the Department of Public Works and are a part of this Agreement. The Contractor shall post a copy of these prevailing wage rates on the job site.

25.2 Payroll Records Pursuant to and in accordance with the provisions Labor Code Section 1776, the Contractor shall keep accurate payroll records of employees performing work under this Agreement and shall make available for inspection a certified copy such payroll records.

25.3 8 Hour Day Pursuant to and in accordance with the provisions of Labor Code Section 1810, 1811 and 1815, the time of service of any laborer, workman, or mechanic employed upon any of the work under this Agreement is limited and restricted to eight (8) hours during any one calendar day, and 40 hours during any one calendar week, except that work performed by employees of contractors in excess of eight (8) hours per day and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

25.4 Apprentices The Contractor shall comply with all applicable provisions of the Labor Code, including without limitations Section 1777.5 and 1777.6, related to employment of apprentices by the Contractor and all subcontractors, and Contractor shall be subject to all applicable penalties for non-compliance.

25.5 Penalties The Contractor shall comply with Labor Code Section 1775. In accordance with Labor Code Sections 1775 and 1813, the Contractor shall forfeit, as a penalty to the County of Stanislaus \$25.00 for (a) each calendar day or portion thereof for each workman paid less than the stipulated prevailing rates for such work or craft in which such workman is employed for any work done under the contract by him or by any subcontractor under him; and (b) each calendar day or week during which any laborer workman or mechanic is required or permitted to labor more than eight hours in any one calendar day or 40 hours in any one calendar week in violation of the provisions of Article 3 (commencing with Section 1810) of Chapter 1, Part 7, Division 2 of the Labor Code. In addition to said penalties, the difference between such stipulated prevailing wage rates and the amount paid to each workman for each calendar day or portion thereof for which each workman was paid less than the stipulated prevailing wage rate shall be paid to each workman by the Contractor.

26. Substitution of Securities for Withheld Payments

Pursuant to and in accordance with the provisions of Public Contract Code Section 22300, the Contractor may elect to substitute securities for retention monies withheld by the County or to request payment of retention monies earned to an escrow agent.

27. Trenching and Excavation

27.1 Subsurface Conditions Pursuant to Public Contract Code Section 7104, the following provisions shall apply provided the work under this Agreement involves digging trenches or other excavations that extend deeper than four (40 feet below the surface:

(a) The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

(1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

(b) The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.

(c) In the event that a dispute arises between the public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

27.2 Excavation Shoring. Pursuant to Labor Code section 6707, if the work under this Agreement involves digging trenches or other excavations that extend deeper than five (5) feet below the surface the Contractor shall provide at its sole cost and expense adequate sheeting, shoring and bracing, or equivalent method, for the protection of life or limb, which shall conform to applicable safety orders.

## 28. Utility Relocation.

Pursuant to Government Code section 4215, the Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work. The Contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay is caused by the failure of the County or the utility owner to provide for removal or relocation of such utility facilities.



29. Assignment of Anti-Trust Actions and Unfair Business Practice Claims.

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first hereinabove written.

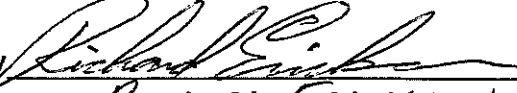
COUNTY OF STANISLAUS

By 

Asst. Purchasing Agent

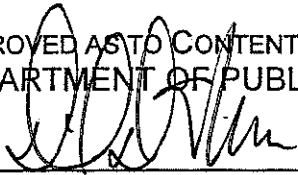
"County"

DONLEE PUMP COMPANY

By   
Name RICHARD ERICKSON  
Title PRESIDENT

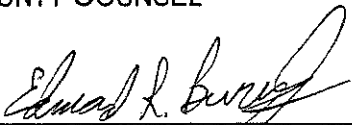
"Contractor"

APPROVED AS TO CONTENT:  
DEPARTMENT OF PUBLIC WORKS

By 

David Nordell  
Assistant Director

APPROVED AS TO FORM:  
MICHAEL H. KRAUSNICK  
COUNTY COUNSEL

By 

Edward R. Burroughs  
Deputy County Counsel

**ABOVEGROUND FUEL STORAGE  
AND  
DISPENSING SYSTEM**

**RFP #04-10-BLS  
MAY 12, 2004**

**RFP-PRICING SCHEDULE**

The pricing of Aboveground Fuel Storage and Dispensing System at 1716 Morgan Road, Modesto, CA in the response to the Request for Proposal 04-10-BLS.

**BASE RFP**

\$ 112,841.<sup>67</sup>

**ALTERNATE NO.1**

Delete all AC paving. Paving shall be Done by the County

\$ -2,000.<sup>00</sup>

**ALTERNATE NO. 2**

Delete concrete pad for fuel tank. Concrete pad shall be done by the County. *INCLUDING FUEL ISLAND CONCRETE*

\$ -6,500.<sup>00</sup>

**ALTERNATE NO. 3**

Delete fuel management system. Fuel Management system will be added at a Future date.

\$ -8,731.<sup>00</sup>

By:



Title:

*PRESIDENT*

RICHARD ERICKSON

Printed Name of Signature

DO NOT DETACH THIS SHEET - SUBMIT ENTIRE RFP-PRICING AS YOUR COST.

# CONTRACT COVER SHEET

FORWARD COVER SHEET, WITH CONTRACT, TO THE PURCHASING DIVISION. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT PURCHASING AT 525-6319.

CONTRACTOR:

*Donke Pump Co*  
*2825 Railroad Ave*

DEPARTMENT: *Public Works*

PREPARED BY: *Diane Flaugh*

PHONE: *5-7534*

DATE: *10/6/04*

CONTRACT DESCRIPTION:

	1-	2-	3-	4-	5-
FUND	<i>5121</i>	<i>5121</i>			
ORG	<i>42100</i>	<i>42104</i>			
ACCT	<i>63280</i>	<i>63280</i>		<i>one car</i>	
GL PROJ	<i>-</i>	<i>-</i>		<i>House #</i>	
LOC	<i>-</i>	<i>-</i>		<i>new trans</i>	
MISC	<i>-</i>	<i>-</i>		<i>contract</i>	
MAX AMOUNT ALLOWED OR ESTIMATED AMOUNT	<i>32841.67</i>	<i>32841.67</i>		<i>1 unit at Bldg</i>	

\*\*\*\*\*IMPORTANT\*\*\*\*\*

RATE OF PAY: *on completion*

PAYMENT TERMS: *N30*

CONTRACT EFFECTIVE DATE: *10/6/04*

EXPIRATION DATE: *N/A 12-31-04*

\*\*\*\*\*

APPROXIMATE FREQUENCY OF PAYMENTS: \_\_\_\_\_

ADOPTED BY THE BOARD:  Y or N  
 CURRENT-YEAR or [ ] RESOLUTION NO.: *2004-778*

ADDITIONAL INFORMATION TO BE PRINTED ON PO: \_\_\_\_\_

NOTES: \_\_\_\_\_

APPROVED BY: *Bls* ENTERED BY: *[Signature]*  
 DATE: *10-12-04* DATE: *10-14-04* PO#: *61424*



**PURCHASING AGENT**  
1010 Tenth Street, Suite #5400, Modesto, CA 95354  
PO Box 3229, Modesto, CA 95353-3229  
Phone: (209) 525-6319  
Fax: (209) 525-7787

# REQUEST FOR PROPOSAL

## RFP NO. 04-10-BLS

CONTRACT SPECIFICATIONS FOR:

### ABOVE GROUND FUEL STORAGE AND DISPENSING SYSTEM

PROPOSALS MUST BE RECEIVED PRIOR TO 2:30 P.M. ON:

**MAY 12, 2004**

DELIVER TO: STANISLAUS COUNTY PURCHASING DIVISION  
1010 TENTH STREET SUITE #5400, MODESTO,  
CA 95354

PRE-PROPOSAL CONFERENCE: APRIL 29, 2004 AT 10:00 A.M.			
MANDATORY:	YES	<input checked="" type="checkbox"/>	NO
LOCATION:	Department of Public Works Operation Division 1716 Morgan Road Modesto, California		

NAME & ADDRESS OF VENDOR SUBMITTING PROPOSAL	
NAME: <u>DONLEE PUMP COMPANY</u>	ADDRESS: <u>2825 RAILROAD AVE.</u> <u>CERES, CA. 95307</u>
PHONE: <u>(209) 537-9396</u>	
FAX: <u>(209) 537-9398</u>	
EMAIL: <u>donlee@donteepump.com</u>	

PROPOSAL TO THE COUNTY OF STANISLAUS  
ABOVE GROUND FUEL STORAGE AND DISPENSING SYSTEM  
RFP NO. 04-10-BLS

PROPOSALS MUST BE RECEIVED BY STANISLAUS COUNTY  
PURCHASING DIVISION  
1010 TENTH STREET, SUITE 5400  
MODESTO, CA 95354  
ON OR PRIOR TO 2:30 P.M.  
MAY 12, 2004

DECLARATION UNDER PENALTY OF PERJURY

\*Name of Proposer DONLEE PUMP COMPANY

\*Type of Business [ ] Individual doing business under own name [X] Corporations  
[ ] Individual doing business using a firm name [ ] Partnership  
[ ] Joint Venture (Please attach Joint Venture Agreement)

To The County of Stanislaus:

The undersigned, as proposer, certifies under the penalty of perjury that the only persons or parties interested in this proposal as principals are those named herein as proposer; that this proposal is made without collusion with any other person, firm, or corporation; that in submitting this proposal the undersigned has examined the "General Conditions and Instructions to proposers" and the specifications; that the undersigned proposes and agrees if this proposal is accepted, the undersigned will execute and fully perform the contract for which proposals are called; that the undersigned will perform all the work and/or furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements as therein set forth; and that the undersigned will take in full payment therefor, the prices set forth in the attached schedule.

RICHARD ERICKSON, PRESIDENT

Type or Printed Name & Title

  
Signature

Address (If different than business address)

\*To be signed by authorized corporate officer or partner or individual submitting the proposal.

EXAMPLE

If proposer is:

Sign:

1. An individual doing business under own name.....Your name only
2. An individual using a firm name.....John Doe, an individual doing business as Blank Company
3. A partnership.....John Doe and Richard Roe, partners doing business as Blank Company, By John Doe, partner
4. A Corporation.....Blank Company, by John Doe, secretary (or other title)

FOR COUNTY USE ONLY

Proposal was opened on above date and at prescribed place.

Proposal bond required: [ ] No [X] Yes Amount: \$ 10% Amount of RFP

Received: [ ] Cashiers or Certified Check drawn on a California bank  
[ ] Surety Bond

Stanislaus County Purchasing Division

# **IMPORTANT** **RFP** **INSTRUCTIONS**

VENDORS ARE REQUIRED TO SUBMIT  
AN ORIGINAL AND SIX (6) ADDITIONAL SIGNED  
COPIES OF THIS PROPOSAL INCLUDING ALL  
REQUIRED ATTACHMENTS SUCH AS  
BROCHURES AND CATALOGS  
ON THE DATE AND AT THE  
TIME AND LOCATION SPECIFIED  
ON THE COVER SHEET.

FAILURE TO DO SO MAY CAUSE  
YOUR PROPOSAL TO BE REJECTED.

## DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares: that he holds the position indicated below as a corporate officer or the owner or a partner in the business entity submitting this proposal; that the undersigned is informed of all the relevant facts surrounding the preparation and submission of this proposal, that the undersigned knows and represents and warrants to the County of Stanislaus that this proposal is prepared and submitted without collusion with any other person, business entity, or corporation with any interest in this proposal.

I declare under penalty of perjury that the foregoing is true and correct.

CONTRACTOR/FIRM: DONLEE PUMP COMPANY

BY: Richard Ericson

TITLE: PRESIDENT

ADDRESS: 2825 RAILROAD AVE.

CERES, CA. 95307

DATE: 5/12/04

**ABOVEGROUND FUEL STORAGE  
AND  
DISPENSING SYSTEM**

**RFP #04-10-BLS  
MAY 12, 2004**

**RFP-PRICING SCHEDULE**

The pricing of Aboveground Fuel Storage and Dispensing System at 1716 Morgan Road, Modesto, CA in the response to the Request for Proposal 04-10-BLS.

**BASE RFP**

\$ 112,841.<sup>67</sup>

**ALTERNATE NO.1**

Delete all AC paving. Paving shall be Done by the County

\$ - 2,000.<sup>00</sup>

**ALTERNATE NO. 2**

Delete concrete pad for fuel tank. Concrete pad shall be done by the County. *INCLUDING FUEL ISLAND CONCRETE*

\$ - 6,500.<sup>00</sup>

**ALTERNATE NO. 3**

Delete fuel management system. Fuel Management system will be added at a Future date.

\$ - 8,731.<sup>00</sup>

By:



Title:

*PRESIDENT*

*RICHARD ERICKSON*

Printed Name of Signature

DO NOT DETACH THIS SHEET - SUBMIT ENTIRE RFP-PRICING AS YOUR COST.