

# MOBILE FUELING SERVICE AGREEMENT

This Agreement for the Mobile Fueling Service (“**Agreement**”) is dated \_\_\_\_\_, 2023 (“**Execution Date**”) and is between COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY, a county sanitation district organized and existing under the provision of the County Sanitation District Act, Health and Safety Code Section 4700 et seq. (the “**District**”) and Booster Fuels, Inc., a Delaware corporation (“**Vendor**”). The District and the Vendor are referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties.**”

The District and Vendor desire to provide for Vendor's mobile fueling service at various Districts’ facilities.

The Parties therefore agree as follows:

## 1. **DEFINITIONS**

- 1.1 **CARB** means California Air Resources Board
- 1.2 **Chief Engineer** means the District's Chief Engineer and General Manager, or his or her authorized representative.
- 1.3 **CHP** means California Highway Patrol
- 1.4 **Facilities** means any facility operated by the District
- 1.5 **OPIS** means Oil Price Information Service, which is price-reporting agency for wholesale fuels used for commercial contracts
- 1.6 **Unleaded Gasoline** means a vehicle fuel with a minimum 87 octane rating that complies with current California Code of Regulations, Title 13, Division 3. Air Resources Board, Chapter 5. Standards for Motor Vehicle Fuels.
- 1.7 **Work** is the delivery and dispensing of Unleaded Gasoline into District’s vehicles

## 2. **DURATION**

The duration of the Agreement will commence on the Execution Date and continue until February 28, 2025 (“**Initial Duration**”). This Agreement may be extended for two consecutive 24-month terms (each an “**Extended Duration**”), if agreed in writing by the District and Vendor. If an extension to the Agreement is executed in writing by the District and the Vendor, then the Vendor will continue to furnish services according to the conditions set forth in the Agreement throughout the Extended Duration.

## 3. **VENDOR’S SCOPE OF WORK**

**3.1 Responsibility.** Throughout the duration of this Agreement, the Vendor must perform the Work in accordance with all applicable federal, state, and local laws and regulations. The Vendor warrants that the services performed under the Agreement will be completed in a manner consistent with the standards practiced among those firms within the Vendor's industry, doing the same or similar work under the same or similar circumstances. The Vendor shall be responsible for the quality of services and

reports furnished by the Vendor. The Vendor must, at no additional cost to the District, correct or revise any errors, omissions, or other deficiencies in the reports, calculations, and other services it provides pursuant to this Agreement.

**3.2 Delivery Locations and Access.** The Vendor shall deliver and dispense Unleaded Gasoline into District’s vehicles at the following Facilities. Prior to commencing the Work at the Facilities, the District will provide Vendor access to each facility to conduct an onsite inspection. Additional Facilities can be added if mutually agreed upon by both Parties. The monthly gallons stated per facility is an estimate and not a volume guarantee.

<b>Facility Name</b>	<b>Facility Address</b>	<b>Approximate No. of Vehicles</b>	<b>Estimated Monthly Gallons</b>
Calabasas Landfill (CALF)	5300 Lost Hills Road Agoura, CA 91301	15	800
Carson Sewer Maintenance Yard (CS)	131 W Sepulveda Blvd. Carson, CA 90745	9	1,250
Joint Administration Office (JAO)	1955 Workman Mill Rd, Whittier, CA 90601	38	1,100
Los Coyotes Water Reclamation Plant (LCWRP)	16515 Piuma Avenue Cerritos, CA 90703	28	1,200
Palos Verdes Landfill (PVLf)	25680 Hawthorne Boulevard Rolling Hills Estates, CA 90274	7	175
Puente Hills Landfill (PHLF)	2800 S. Workman Mill Rd, Whittier, CA 90601	74	3,600
San Jose Creek West Water Reclamation Plant (SJCWRP)	1965 S. Workman Mill Rd, Whittier, CA 90601	27	900
Scholl Canyon Landfill (SCLF)	7721 N. Figueroa Street Los Angeles, CA 90041	12	650
Spadra Landfill (SPLF)	4125 W. Valley Blvd. Walnut, CA 91789	6	175
<b>Total</b>		<b>192</b>	<b>9,850</b>

**3.3 Tagging of Vehicles.** Vendor shall install decals with a scannable barcode on each District’s vehicle that will be included in the refueling program. The barcode will be used to verify participation in fueling program, provide key vehicle information for billing purposes, and assign gallons dispensed to each vehicle.

**3.4 Delivery Times.** The District and Vendor will work together to develop and optimize a delivery schedule for each facility based on the vehicle fuel requirements, opportune times when the vehicles are parked, opening hours of the facilities, and District ability to provide afterhours access to facilities. Vendor will guarantee the Work is completed as per the mutually agreed upon schedule.

**3.5 Equipment.** The Unleaded Gasoline will be supplied with a tanker truck with dispensing pump and calibrated meter. Trucks shall be equipped with vapor recovery systems as specified in the SCAQMD annual permit to operate a mobile gasoline fuel dispensing vehicle. Trucks shall be equipped with spill prevention kits.

**3.6 Information Portal.** Throughout the duration of this Agreement, the Vendor will maintain an online cloud-based information portal for customer use. The District will be provided access for a minimum of 10 unique users with access to District fuel transaction records in real-time. The information portal shall have the ability to categorize vehicles into groups and assign users to groups. The information portal shall have dashboard and report generation capabilities with an ability to export reports in both PDF and excel format.

**3.7 Delivery Reports.** Throughout the duration of this Agreement, the Vendor will provide email notifications after Work is performed at each facility. The notification shall include links to detailed information of each vehicle fueling event in the information portal.

**3.8 Compliance with Site Safety and Health Rules.** The Vendor must strictly adhere to all applicable safety rules in its performance of the Agreement. When driving or present on District's Facilities, Vendor, its employees, and its Subcontractors must strictly adhere to all traffic safety signs and directions and use the required personal protective equipment ("PPE").

No later than 10 working days prior to the commencement of Work, the Vendor must submit to the District for approval an Injury and Illness Prevention Program ("IIPP"), a Hazard Communication Program, and a Fire Response Plan. District's written acceptance of all safety submittals is required as a condition precedent to Vendor's commencement of its Work. The Vendor must report to the District all accidents and incidents on District property including spills of any kind.

The Vendor must ensure all drivers possess all required valid documents when driving on District Facilities.

**3.9 Vendor's Responsibility as a Motor Carrier.** Vendor must maintain adequate records and comply with all requirements under the State of California's Basic Inspection of Terminals ("BIT") Program and maintain a good standing motor carrier record based on the California Performance Safety Score ("CPSS").

#### **4. DISTRICT'S RESPONSIBILITIES**

**4.1 Access.** To enable Vendor to perform Work, the District will provide Vendor with timely and necessary access to specified Facilities and District's vehicles. The District will ensure that specified Facilities and District's vehicle will be in a condition that is safe for Vendor's personnel and equipment to perform the Work. The District will make commercially reasonable efforts to park and present all vehicles to be fueled in locations and ways that are most conducive to Vendor being able to efficiently perform the Work and that will not block the path of Vendor's equipment or personnel engaged in performing the Work.

#### **5. PAYMENT FOR SERVICES**

**5.1 Cost per Gallon.** The District will pay the Vendor a price per gallon for Unleaded Gasoline dispensed into District's vehicles. Pricing per gallon shall be based on the daily OPIS Gross CARFG Ethanol (10%) Prices Without CAR Cost, Unl, Rack Avg, plus applicable state and environmental

taxes, plus a \$0.50 per gallon mark up. The District are exempt from Federal Excise Tax (FET) and a FET exemption certificate can be issued.

**5.2 Service Fee.** In addition, to the cost per gallon rate, the District will pay the Vendor a \$5.00 per vehicle service fee each time a vehicle is fueled. The service fee will not be applied to transactions of less than three (3) gallons per vehicle.

**5.3 The Vendor's Invoice.** The Vendor will invoice the District monthly. In addition to the invoice, the Vendor will provide applicable OPIS reports for each fuel delivery date and a detailed transaction report to support the invoice. The detailed transaction report shall be provided electronically in Excel format with the template for data and any proposed changes approved by the District. The detailed transaction report must, at a minimum, include the following column headers and pertaining information:

- a. Date of Service
- b. Facility Name
- c. Facility Address
- d. Purchase Order Number
- e. Fuel Type
- f. District Vehicle ID Number
- g. License Plate Number
- h. VIN
- i. Gallons Dispensed
- j. Price per Gallon
- k. Total Fuel Cost
- l. Service Fee (if Applicable)
- m. Total Cost including Service Fee
- n. State Excise Tax per Gallon
- o. Total State Excise Tax
- p. State & Use Tax (SUT) Rate (%)
- q. Total SUT
- r. Mark Up per Gallon
- s. OPIS Price per Gallon

**5.4 Time for Payment by Districts.** The District will pay all undisputed invoiced amounts within 30 days after receiving a monthly invoice from the Vendor, subject to Section 5.5. If payment is not made within 30 days, the Vendor may charge the Districts interest on the unpaid balance. The agreed annual percentage rate of charge (APR) is 18 percent.

**5.5 Disputed Invoices.** If the District disputes the amount of any invoice, the District will provide written notice to the Vendor of the dispute and the specific grounds for the dispute no later than 20 days after receiving the invoice. In the written notice of dispute, the District will provide the required information with sufficient specificity to allow the Vendor to investigate the District's claim. If a dispute occurs, the District will process the invoice for payment of the amount of the undisputed portion of the invoice. The Parties shall make a good faith effort to settle any dispute or claim arising under this Agreement.

**5.6 Vendor's Maintenance of Records.** The Vendor must maintain all records relating to the Work and this Agreement, including financial records, in their original form. These records must be maintained by Vendor for a period of no less than three years following (1) the last payment made by the District to the Vendor under this Agreement or (2) the expiration of the Duration of this Agreement,

whichever is later. The Vendor must timely provide any additional reports requested by the District with respect to this Agreement or the Work.

**5.7 District Audits.** The District's authorized personnel or representatives may examine and audit any or all of the Vendor's records relating to this Agreement or the Work at any time during the retention period set forth in Section 5.6. In addition, the District may audit the Vendor's Work to verify the Vendor's compliance with this Agreement. The District will provide 48 hours' notice for any audit to allow the Vendor to prepare the need documentation.

## **6. TERMINATION**

**6.1 Termination for Convenience.** Either party may terminate this Agreement for convenience by providing written notice to the other party. Such termination will be effective 120 days after providing the notice.

**6.2 Termination for Cause.** The non-breaching party must notify the breaching party in writing if such party is in breach of any of its obligations under this Agreement. In the event that the breaching party does not commence to cure such breach with reasonable promptness following its receipt of written notice of the breach, does not diligently prosecute that cure to completion or does not complete the cure within 7 days following its receipt of the notice, the non-breaching party will have the right, but not the obligation, to terminate the Agreement. The termination will be effective ten calendar days after the non-breaching party's notice to the breaching party provided pursuant to Section 13. Without limiting the responsibilities of Vendor with respect to other matters, any of the following occurrences will constitute a material breach of this Agreement, entitling the District to immediately terminate the Agreement:

- a) Repeated or excessive failure to deliver fuel in a timely manner pursuant to the agreed schedule between the parties and in accordance with the provisions stated or referenced in this Agreement;
- b) Failure to maintain the SCAQMD annual operating permit;
- c) Failure to comply with the Vendor's safety program or with the District's safety requirements;
- d) Interference with the operations of any District facility, including but not limited to physical obstruction, failure to follow operational or safety procedures, disruption due to a lack of timeliness in meeting fuel delivery requests, or damage to District's property or Facilities;
- e) Any assignment, subletting, or transfer of the Vendor's obligations under or interest in the Agreement, either in whole or in part, without prior written approval by the District;
- f) Failure to provide the notice for termination or non-renewal of the Agreement.

## **7. INDEMNITY**

The Vendor must defend, indemnify, and hold free and harmless the District, the other County Sanitation Districts of Los Angeles County, their officers, directors, agents and employees from and against any and all claims, demands, actions, loss or liability arising out of negligent errors, omissions or acts of the Vendor in performing the Vendor's obligations under this Agreement. This indemnity extends to the payment of all costs of litigation including reasonable attorneys' fees and court costs with respect to any cause of action referred to above.

The District must defend, indemnify and hold free and harmless the Vendor, its officers, directors, agents and employees from and against any and all claims, demands, actions, loss or liability arising out of

negligent errors, omissions or acts of the District in performing the District's obligations. This indemnity extends to the payment of all costs of litigation including reasonable attorneys' fees and court costs with respect to any cause of action referred to above.

The Vendor's and the District's indemnity obligations will survive the expiration or earlier termination of this Agreement.

**Waiver of Consequential Damages.** Neither party will be liable to the other party under any circumstances for any loss of profits or indirect, incidental, consequential or special damages.

**Limitations.** Excluding any amounts paid by insurance under Section 8, Vendor's aggregate liability will not exceed the amounts paid to the Vendor, whether by payment card or directly by the District, under this Agreement during the 30 days immediately preceding the first of the events giving rise to liability.

## **8. INSURANCE**

The Vendor shall secure and maintain during the duration of this Agreement, at its sole expense, such insurance as will protect it and the District in such a manner and at such amounts as set forth below. The Vendor shall pay the premiums for said insurance coverage.

The Vendor shall furnish to the District certificates of insurance and endorsements verifying the insurance coverage as required by the Agreement. These certificates of insurance and endorsements shall be delivered to the District within seven (7) calendar days after execution of this Agreement. The District reserves the right to require complete and accurate copies of all insurance policies required under this Agreement.

The insurance policies certified for compliance with this Agreement shall include the following provisions or have them incorporated by endorsements:

Coverage provided by the Vendor policies shall be primary coverage without right of contribution of any other insurance carrier or on behalf of the District. The District shall receive thirty (30) calendar days prior written notice of a policy cancellation or reduction in coverage.

The Vendor shall provide insurance coverage through insurers that meet the following terms: Insurers shall have at least an "A" policyholders rating and an "X" financial rating in accordance with the current Best's Key Rating Guide.

The insurance provided under this Agreement shall include policies providing coverage to include each of the requirements set forth below in amounts that meet or exceed the minimums set forth herein.

**8.1 Workers' Compensation.** The Vendor shall maintain Workers' Compensation Insurance as required by law in the State of California and Employer's Liability Insurance (including disease coverage) in an amount not less than \$1,000,000 per occurrence. This insurance shall also waive all right to subrogation against the District, its employees, representatives, and agents.

**8.2 General Liability.** The Vendor shall maintain general liability insurance including provisions for contractual liability, independent consultants, and broad form property damage coverage. This insurance shall have an endorsement naming the "**COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY**" as an additional insured and a standard cross liability clause or endorsement. The limit of insurance shall not be less than \$3,000,000 per occurrence combined single limit for bodily injury and property damage.

**8.3 Automobile Liability.** The Vendor shall maintain automobile liability insurance with coverage for any vehicle including those owned, leased, rented, or borrowed. This insurance shall have an endorsement naming the “**COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY**” as an additional insured and with a standard cross liability clause or endorsement. The limit of insurance shall not be less than \$1,000,000 per occurrence combined single limit.

In addition, the Vendor must provide an MCS-90 endorsement with minimum liability limit of \$5,000,000 per occurrence.

## **9. INDEPENDENT CONTRACTOR**

Each party is and will perform this Agreement as an independent contractor and will have and maintain complete control over all of its employees, agents, and their conduct. Neither of the parties, nor anyone employed by them will represent, act, purport to act or be deemed to be the agent, representative, or employee of the other party.

## **10. REGULATORY COMPLIANCE**

The Vendor, at no additional cost to the District, must obtain and renew all necessary permits and licenses required for the performance of the Work included in this Agreement. The Vendor shall comply with all operating permits as well as all applicable Federal, State and local regulations pertaining to the transportation, dispensing, and vapor recovery of fuel.

The Vendor must comply with all applicable CARB, EPA, and local air district regulations, both current and future, for on-road medium- and heavy-duty vehicles. The Vendor is responsible to determine which permits, entitlements, and approvals are necessary for its equipment, and which rules and regulations are applicable to its operations.

The Vendor is responsible for compliance with all applicable regulations of the U.S. Department of Transportation (DOT), the California Highway Patrol, the California Department of Transportation, and any agencies having jurisdiction over the Work, including but not limited to highway weight limitations, hours of service regulations, driver documentation, and reporting requirements.

## **11. FORCE MAJEURE**

Neither the Vendor nor the District will be responsible or liable for failure to meet their respective obligations under this Agreement if that failure is due to causes beyond the Vendor's or the District's control. Such causes include, but are not limited to: strikes, fire, flood, civil disorder, acts of God or of the public enemy, acts of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemics, freight embargoes or delays in transportation, and changes in federal, state, or local law. The Vendor and the District must immediately notify the other Party in writing of the occurrence of any condition it believes constitutes a force majeure under this section. If a condition of force majeure exists for 30 days or more, either Party may terminate this Agreement by giving notice in writing in accordance with Section 13. The notice will become effective 24 hours after receipt. No Party, however, will be relieved of any obligation or liability to the extent that any delay related to a force majeure cause arises out of that Party's own acts or negligence.

## **12. ADDITIONAL PROVISIONS**

**12.1 Exclusivity.** The District will not engage similar or identical services from other vendors during the duration of this Agreement.

**12.2 Entire Agreement.** This Agreement represents the entire understanding between District and Vendor as to mobile fueling services. No prior oral or written understanding is of any force or effect with respect to the matters provided in this Agreement.

**12.3 Assignment.** The Vendor may not sell or assign its interest in this Agreement without the prior written approval of the Chief Engineer, in his or her sole and absolute discretion. The provisions of this Agreement will be binding upon the Vendor and any successors or assigns.

**12.4 Litigation Costs.** If either Party initiates any legal or administrative proceeding relating to any issues arising out of this Agreement, the prevailing party will be entitled to recover all reasonable attorneys' fees and legal expenses, in addition to any other relief granted.

**12.5 Governing Law.** The provisions of this Agreement will be interpreted and enforced in accordance with the laws of the State of California. Venue for any action will be in the Superior Court of Los Angeles County.

**12.6 Waiver.** Either Party may waive compliance by the other Party with respect to any provisions of this Agreement. No waiver of any provision may be construed as a waiver of any other provision. No waiver may be construed as an ongoing waiver with respect to subsequent events unless it expressly so provides. Any waiver must be in writing, signed by the waiving Party, and recite the provisions being waived.

**12.7 Remedies.** The remedies and relief set forth in this Agreement are cumulative and not in the alternative and are in addition to any other remedies or relief that may otherwise be available to the Parties, at law or in equity. The Parties may pursue any and all available remedies and relief, either sequentially or in concert, including without limitation, the right to enjoin any violation, or threatened violation, of this Agreement.

**12.8 Action by Chief Engineer.** Except as otherwise provided in this Agreement, the Chief Engineer may take all actions on behalf of the District in connection with any approvals or actions required of or by the District under this Agreement.

### **13. NOTICES**

All notices or other communications to the Vendor will be deemed given when made in writing and delivered, mailed, or emailed to the Program Administrator. All notices or other communications to the District will be deemed given when made in writing and delivered, mailed or emailed to the designated Project Manager.

If to District:  
Edward Gomez  
Fleet & Facilities Equipment Supervisor (Project Manager)  
County Sanitation Districts of Los Angeles County  
1955 Workman Mill Road  
Whittier, CA 90601  
Email: [edwardgomez@lacs.org](mailto:edwardgomez@lacs.org)



If to Vendor:  
Travis Souza (Program Administrator)  
Booster Fuels, Inc.  
1840 Gateway Drive, STE 200  
San Mateo, CA 94404  
Email: [legal@booster.com](mailto:legal@booster.com)

#### **14. SEVERABILITY**

If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstance is, to any extent, held invalid or unenforceable, the remainder of this Agreement will not be affected, and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

[This area intentionally left blank. Signatures on following page.]

The Parties are signing this Agreement as of the Execution Date.

**COUNTY SANITATION DISTRICT NO. 2  
OF LOS ANGELES COUNTY**

By \_\_\_\_\_  
Chairperson, Board of Directors

ATTEST:

By \_\_\_\_\_  
Secretary to the Board

APPROVED AS TO FORM:  
LEWIS, BRISBOIS, BISGAARD & SMITH LLP

By \_\_\_\_\_  
District Counsel

**Booster Fuels, Inc.**

By Joe DeFelice

Name Joe DeFelice

Title Interim Controller

Date 1/26/2023 | 1:45:55 PM PST