

**CITY OF COSTA MESA
AGREEMENT FOR UNLEADED FUEL SERVICES
WITH
PINNACLE PETROLEUM, INC.**

THIS AGREEMENT FOR UNLEADED FUEL SERVICES ("Agreement") is made and entered into this 1st day of August, 2021 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"), and PINNACLE PETROLEUM, INC, a California corporation ("Contractor").

WITNESSETH:

A. WHEREAS, City proposes to utilize the services of Contractor as an independent contractor to provide unleaded fuel services, as more fully described herein; and

B. WHEREAS, Section 2-165 of the Costa Mesa Municipal Code permits the City to purchase services through competitively awarded agreements of other local, state, or federal government agencies, a process known as "piggybacking"; and

C. WHEREAS, the County of Orange competitively awarded Contractor a contract for unleaded fuel and related supplies and services, Regional Cooperative Agreement Contract Number RCA-017-210100021, attached hereto as Exhibit "A" and incorporated herein by this reference ("County Contract"); and

D. WHEREAS, the City desires to "piggyback" onto the County Contract, and Contractor consents to the "piggybacking"; and

E. WHEREAS, City and Contractor desire to contract for the unleaded fuel services in accordance with the County Contract, subject to the modifications set forth herein; and

F. WHEREAS, Contractor represents that it has the experience and expertise to properly perform such services and holds all necessary licenses to practice and perform the services; and

G. WHEREAS, no official or employee of City has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. Contractor agrees to perform the services set forth in the County Contract for the City in accordance with the terms of the County Contract, except as otherwise stated herein.
2. Except as otherwise stated herein, the terms and conditions of the County Contract, and any amendments thereto, shall form the basis of this Agreement, with the City having the rights, duties, and obligations of the County of Orange set

forth in the County Contract and any amendments thereto.

3. If any provision of this Agreement conflicts with any provision of the County Contract, then the terms, conditions and provisions of this Agreement shall control.
4. The terms and conditions of the County Contract are modified, amended, or supplemented as follows:
 - a. All references in the County Contract to "County of Orange" shall be amended to read "City of Costa Mesa." All references in the County Contract to "County" shall be amended to read "City." All references in the County Contract to "Board of Supervisors" shall be amended to read "City Council."
 - b. Article CC (Expenditure Limit) of the General Terms and Conditions shall be amended to read as follows as follows: "Expenditure Limit: Contractor's annual compensation shall not exceed Four Hundred Thousand Dollars (\$400,000.00). Contractor shall notify the City in writing when the expenditures against the Contract reach 75 percent of the annual compensation limit on the Contract. The City will not be responsible for any expenditure overruns and will not pay for work exceeding the annual compensation limit on the Contract unless a change order to cover those costs has been issued."
 - c. Article 2 (Contract Term) of the Additional Terms and Conditions shall be amended to read as follows: "The term of this Contract shall commence on August 1, 2021 and continue through June 30, 2026, unless otherwise terminated by City. This Contract is non-renewable."
 - d. Article 28 (Notices) of the Additional Terms and Conditions shall be amended to provide the following contact information for City:

City: City of Costa Mesa
Public Services Department
77 Fair Drive
Costa Mesa, CA 92626
Attn: Mike Tucker
Phone (714) 327-7473

cc: City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Purchasing

- e. Section 5 (Spillage Requirement) of the Scope of Work shall be amended to add a subsection 5.4 as follows:

5.4. In order to prevent leakage or spillage, Contractor shall only transfer fuel to underground storage tanks by the gravity drop method. Contractor shall not transfer fuel to underground storage tanks by the pressurized fill method.

- 5. Contractor shall provide to City certificates of insurance showing the insurance coverages and required endorsements described in Article O (Insurance Provisions) of the General Terms and Conditions of the County Contract, naming the City of Costa Mesa as an additional insured, prior to performing any services under this Agreement.
- 6. Contractor agrees to indemnify and hold harmless the County of Orange from all claims, demands, actions or causes of action of every kind resulting directly or indirectly, arising out of, or in any way connected with the City's use of the County Contract.
- 7. Contractor shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "B" and incorporated herein by reference. Contractor's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.
- 8. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

Lori Ann Farrell Harrison
City Manager

Date: _____

CONTRACTOR

Signature

Date: _____

Name and Title

ATTEST:

Brenda Green
City Clerk

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

Date: _____

APPROVED AS TO INSURANCE:

Ruth Wang
Risk Management

Date: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.


CITY OF COSTA MESA,
A municipal corporation



Lori Ann Farrell Harrison
City Manager

Date: 8/3/21


CONTRACTOR



Signature
Liz McKinley, President
Name and Title

Date: 7/26/2021

ATTEST:



Brenda Green
City Clerk

APPROVED AS TO FORM:



Kimberly Hall Barlow
City Attorney

Date: 8/12/2021

APPROVED AS TO INSURANCE:



Ruth Wang
Risk Management

Date: 8/4/21

DEPARTMENTAL APPROVAL:

Raja Sethuraman - MT

Raja Sethuraman
Public Services Director

Date: 8-5-21

APPROVED AS TO PURCHASING:

Carol Molina

Carol Molina
Finance Director

Date: August 4, 2021

EXHIBIT A

REGIONAL COOPERATIVE AGREEMENT

CONTRACT NUMBER RCA-017-210100021



**REGIONAL COOPERATIVE AGREEMENT
CONTRACT RCA-017-21010021
BETWEEN
THE COUNTY OF ORANGE
AND
PINNACLE PETROLEUM INC
FOR
UNLEADED FUEL AND RELATED SUPPLIES AND SERVICES**

This Contract RCA-017-21010021, hereinafter referred to as “Contract”, is made and entered into upon execution of all necessary signatures between the County of Orange, hereinafter “County” and Pinnacle Petroleum Inc. with a place of business at 16651 Gemini Lane, Huntington Beach, CA 92647, hereinafter referred to as “Contractor”, which are sometimes individually referred to as “Party” or collectively referred to as “Parties”;

RECITALS

WHEREAS Contractor responded to Invitation for Bid: IFB-C028830-JM, for unleaded fuel, and related supplies and services, and represented that its proposed products and services shall meet or exceed the requirements and specifications as specified in Attachment A, Scope of Work, and

WHEREAS Contractor agrees to provide unleaded fuels and related supplies and services as further set forth in Attachment A, Scope of Work, attached hereto and incorporated herein; and

WHEREAS Contractor agrees to accept the compensation as further set forth in Attachment B, Payment and Compensation, attached hereto as and incorporated herein.

NOW THEREFORE the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been rendered, inspected, and tested to the satisfaction of County, and 2) payment shall be made after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this

provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. **Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. **Insurance Provisions:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any SIR in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's

performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and

- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Pollution Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the **County of Orange its elected and appointed officials, officers, agents and employees** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, agents and employees* or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) calendar days of any policy cancellation and ten (10) calendar days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interest clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 Policy).

If Contractor's Pollution Liability policy is a claims-made policy, Contractor shall agree to maintain coverage for two (2) years following completion of contract.

Insurance certificates should be emailed to CEOPOInsurance@ocgov.com.

If email is not possible, then Insurance certificates should specifically be forwarded to:

County of Orange
c/o: CEO/County Procurement Office
Attn: Insurance
1300 S. Grand Ave.,
Ste. A, 2nd Floor Santa
Ana, CA 92705-4434

Any insurance documents not addressed as shown above will be "Return to Sender".

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) calendar days of notification by CEO/Purchasing or the Agency/Department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) calendar days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

- P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other

instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their County.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight (F.O.B. Destination):** Intentional omitted.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. **Employee Eligibility Verification:** Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification Provisions:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.
- BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services

hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

- CC. **Expenditure Limit:** Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure goods/services from Contractor as further detailed in the Scope of Services, identified and incorporated herein by this reference as Attachment A.
2. **Contract Term:** The term of this Contract shall commence on July 1, 2021 and continue for a term of five (5) years from that date to June 30, 2026, unless otherwise terminated by County. This Contract is non-renewable.
3. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
4. **Americans with Disabilities Act (ADA):** Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities
5. **Authorization Warranty:** The Contractor represents and warrants that the person executing this Contract on behalf of and for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority
6. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a) Terminate the Contract immediately, pursuant to Section K herein;
 - b) Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
7. **Conditions Affecting Work:** Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

8. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
9. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
10. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s Project Manager, which consent shall not be unreasonably withheld.

The Contractor’s Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County’s Project Manager shall have the right to require the removal and replacement of the Contractor’s Project Manager from providing services to the County under this Contract. The County’s Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County’s Project Manager. The County’s Project Manager shall review and approve the appointment of the replacement for the Contractor’s Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor’s Project Manager from providing further services under the Contract.

11. **Contractor Personnel-Reference Check:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor’s employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the Agency/Department issuing this Contract.
12. **Contractor Personnel- Uniforms/Badges/Identification:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract.

All Contractor’s employees shall be required to wear uniforms, badges or other means of identification which are to be furnished by the contractor and must be worn at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven days of notification of award of Contract, of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven days prior to any changes in this procedure.

13. **Contractor’s Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned Deputy Purchasing DPA.

14. **Cooperative Contract:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

15. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
16. **Debarment:** Contractor shall certify that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where Contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, Contractor must include an explanation with the bid/proposal. Debarment pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department of agency may result in the bid/proposal being deemed non-responsible.
17. **Default:** In case of default by Contractor, the County of Orange may procure the services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.
18. **Disputes – Contract:**
- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
 - 1) Contractor shall submit to the Agency/Department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - 2) Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the

demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

- b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the provision of services under this Contract. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

19. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - a) The dangers of drug abuse in the workplace;
 - b) The organization's policy of maintaining a drug-free workplace;
 - c) Any available counseling, rehabilitation and employee assistance programs; and
 - d) Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
 - a) Will receive a copy of the company's drug-free policy statement; and
 - b) Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.
4. Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County Contracts if the County determines that any of the following has occurred:
5. Contractor has made false certification, or
6. Contractor violates the certification by failing to carry out the requirements as noted above.

20. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster,

emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

21. **Equal Employment Opportunity:** Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

22. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

23. **Hazardous Conditions:** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall provide flagmen and furnish, erect and maintain control devices as are necessary to prevent accidents or damage or injury to the public at Contractor's expense and without cost to the County. The Contractor shall comply with County directives regarding potential hazards.

Emergency lights and traffic cones must also be readily available at all times and must be used in any hazardous condition. Emergency traffic cones must be placed in front of and behind vehicles to warn oncoming traffic.

Signs, lights, flags, and other warning and safety devices shall conform to the requirements set forth in Chapter 5 of the current traffic manual, Traffic Control for Construction and Maintenance Work Zones, published by the state of California Department of Transportation

24. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each

party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.

25. **Lobbying:** On the best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
26. **News/Information Release:** Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project manager.
27. **Nondiscrimination – Statement of Compliance:** The Contractor's signature affixed hereon and dated shall constitute a certification under penalty of perjury under the laws of the state of California that the Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Section 8103.
28. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Pinnacle Petroleum, Inc.
Attn: Kristen Tavares
16651 Gemini Lane
Huntington Beach, CA 92647

For County: County of Orange, County Procurement Office
Attn: Yarida Guzman, Deputy Purchasing Agent
1300 S. Grand Avenue
Building A-2nd Floor
Santa Ana, CA 92705

29. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

30. **Orders:** The Contractor shall receive written or verbal requests from individual County agencies/ departments on an as-needed basis for items on this Contract, subject to the terms, conditions, and pricing listed herein.
31. **Order Confirmation by Contractor:** The Contractor shall be responsible for confirming specifications, quantities, and pricing with the contracting Agency/Department contact person prior to order entry/delivery.
32. **Order Dates:** Orders may be placed during the term of the Contract even if delivery may not be made until after the term of the Contract. Order dates take precedence over delivery dates. The Contractor must clearly identify the order date on all invoices to County.
33. **Parking for Delivery Services:** The County of Orange will not provide free parking for delivery services.
34. **Payment Authorization – Partial:** Partial payments are authorized for partial shipments with signature approval from the receiving Agency/Department.
35. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the exhibits and attachments.
36. **Price Increase/Decrease:** No price increases will be permitted during the first year of the contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
37. **Project Manager, County:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the Contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice from the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.
38. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this contract. The County's project manager and the Contractor's project manager will meet on reasonable notice to discuss the Contractor's performance and progress under this contract. If requested, the Contractor's project manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
39. **State Funds – Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract, the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange, or a private

auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.

40. **Sub-Contracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

In the event that the Contractor is authorized by the County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor and shall incorporate by reference the terms of this Contract. The County shall look to the Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

41. **Termination Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.

42. **Transportation Charges:** Prices quoted shall include transportation charges governed by the minimum rate tariff established by the Public Utilities Commission (PUC) of the state of California. Should the prices be affected by any action of the PUC, the County of Orange will, with 30-day notice and submission of proper evidence thereof by the Contractor, make the necessary price adjustment during the term of this Contract.

43. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at rates/prices listed in the Contract, regardless of quantity requested.

44. **Usage Reports:** The Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user Agency/Department. The usage report shall be in a format specified by the user Agency/Department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.

45. **Waivers - Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

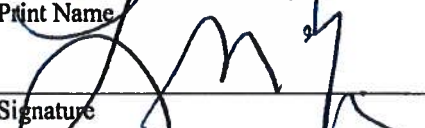
- SIGNATURE PAGE TO FOLLOW -


CONTRACT SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.


PINNACLE PETROLEUM, INC.

*Pursuant to California Corporation Code Section 313, if the Contracting Party is a Corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President, and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the Alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

<u>Liz McKinley</u>	<u>President</u>
Print Name	Title
	<u>6/23/2021</u>
Signature	Date

<u>Liz McKinley</u>	<u>Secretary</u>
Print Name	Title
	<u>6/23/2021</u>
Signature	Date

County of Orange, a political subdivision of the State of California

<u>Jeff Miller</u>	<u>Deputy Purchasing Agent</u>
Print Name	Title
	<u>6/28/2021</u>
Signature	Date

ATTACHMENT A SCOPE OF WORK

1. GENERAL INFORMATION

The County of Orange is comprised of 21 Agencies and over 17,500 employees located throughout the County. The County's core businesses are public safety, public works, construction management, public health, environmental protection, regional planning, public assistance, social services and aviation.

Contractor is to provide **Unleaded Fuel and Related Supplies and Services** to County owned tanks located throughout the County of Orange various facilities on an as needed basis and usage is not guaranteed. Service locations may be added or deleted, and service hours modified at any given time. Contractor is required to provide this service upon request by any County Agency/Department and participating government entity.

2. FUEL SPECIFICATIONS:

- 2.1. Fuel provided must meet Air Resources Board (ARB), "The California Reformulated Gasoline Regulations" Title 13, California Code of Regulations Sections 2250-2273.5 latest version / sub articles, and all-inclusive amendments.
- 2.2. Fuel provided must meet Reid Vapor Pressure (RVP) Requirements as required under California's Phase 2 Reformulated Gasoline (CaRFG2) & Phase 3 Reformulated Gasoline (CaRFG2).
- 2.3. Fuel provided must comply with the requirements of American Society of Testing and Materials (ASTM) D4815 standard or latest version as verified by an independent lab of the County's choosing.
- 2.4. Regular Unleaded Gasoline shall have Minimum Octane Rating of 87 which shall be determined by using the R+M/2 method.
- 2.5. Unleaded-Plus Gasoline shall have Minimum Octane Rating of 89 which shall be determined by using the R+M/2 method.
- 2.6. Unleaded Premium Gasoline shall have Minimum Octane Rating of 91 which shall be determined by using the R+M/2 method.
- 2.7. Only products of new manufacture or distillation will be accepted. No refined or reclaimed products will be accepted. All fuel/gasoline shall have a minimum shelf life of one (1) year.
- 2.8. All products furnished shall conform to all Federal, State, Local, American Society of Testing & Materials (ASTM), Department of Transportation (DOT) and Air Resources Board (ARB) regulations for the handling and supply of unleaded fuel/gasoline.

3. CONTRACTOR RESPONSIBILITIES

- 3.1. Contractor shall possess all Federal, State and Local permits, licenses and approvals necessary to provide goods/services required in the Scope of Work. Any associated fees shall be the responsibility of the Contractor.
- 3.2. Contractor shall provide all transitional interfacing and continual uninterrupted services at Contract date.
- 3.3. Contractor shall provide Safety Data Sheet (SDS) at time of fuel delivery as required by law.
- 3.4. Contractor shall be held liable for any damage or criminal/civil citations which may occur as a result of any spills and/or accidents.

- 3.5. Contractor's delivered product pricing shall be inclusive of all freight/unloading/handling and delivery charges.
- 3.6. Contractor shall perform all deliveries and to act in a safe and professional manner, adhering to all applicable Federal, State, Local, American Society of Testing & Materials (ASTM), Department of Transportation (DOT), Air Resource Board (ARB) and any other new law, regulations for the handling and supply of unleaded fuel/gasoline.
- 3.7. Contractor must commit to delivery as requested, at time stated on accepted and confirmed orders.
- 3.8. Contractor shall own or have available a fleet of trucks adequate to handle County delivery needs that shall meet or exceed all industry standards. All vehicles utilized to service County needs must be minimally equipped with a radio dispatch system or mobile telephone access and have the capability to provide a printed metered ticket at time of delivery. Awarded vendor shall be fully responsible to meet all County needs/requirements, including insurance requirements.
- 3.9. Contractor's delivery vehicles/trucks must comply with the California Air Resources Board approved/certified Phase II Vapor Recovery Equipment Requirements and any other applicable regulations. Proof of compliance shall be provided to the County upon request.
- 3.10. Contractor's drivers/delivery crew shall be HAZMAT trained and certified in safety measures to prevent accidents endangering County personnel and property.
- 3.11. Contractor shall be responsible for obtaining fuel readings and managing load inventory as requested by County to meet or exceed all State and local applicable laws and regulations.
- 3.12. All fuel delivered to the County shall be temperature corrected to 60 degrees Fahrenheit and or as at the adequate and required temperature set by Federal, State, Local, American Society of Testing & Materials (ASTM), Department of Transportation (DOT), Air Resources Board (ARB) and/or any other mandated laws, regulations and ordinances.
- 3.13. Contractor shall perform full delivery of fuel within two (2) business days after receipt of Agency/Department's order. Contractor shall provide a delivery metered ticket for each delivery of fuel; and the metered ticket must be signed and dated and provided to the ordering agency at delivery.
- 3.14. Contractor shall itemize all applicable Federal and California fuel surcharges, Federal and State Excise Tax, California State Sales Tax and/or any other applicable tax and fees as separate line items when invoicing.

4. ORDERING PROCESS AND EMERGENCY DELIVERY

4.1. Ordering Process

- 4.1.1. Contractor shall not request minimum orders or pattern of use; orders shall be placed as needed and at the convenience of the using Agency/Department. Usage quantities are approximate and shall not be interpreted as quantities ordered.
- 4.1.2. Contractor shall maintain, at Contractor's expense, a telephone answering system, which, at a minimum, provides eight (8) hours per day, five (5) days per week live coverage from the hours of 8:00 a.m. to 5:00 p.m. and an e-mail address to place all requests/orders, as well as a contact name and number for 24-hour access phone number for emergency situations.
- 4.1.3. Contractor shall deliver all fuel orders in full and within two (2) calendar days after confirmation of receipt of Agency/Department's order (e.g. Any orders submitted on Fridays shall be scheduled for Tuesday delivery, unless other arrangements are

made by each Agency and Contractor's acceptance). Each Agency/Department may have different delivery schedules due to facility hours of operation, but all non-emergency deliveries shall be done within regular business hours. Partial order deliveries may be accepted at the discretion and approval of each Agency/Department and shall be billed accordingly.

- 4.1.4. If a partial order is delivered and accepted, Contractor shall bill only for the fuel delivered and Contractor shall be responsible to schedule the order balance within 24 hours or next business day. If next business day falls on a weekend or Holiday, Contractor shall be responsible to make a delivery, if required by County, over the weekend or holiday at no extra cost to County.
- 4.1.5. County may place an order for more than 8,500 gallons to accommodate 10,000 Gallon tanks or larger. This order may require more than one (1) truck load and shall be coordinated with the ordering Agency/Department and billed accordingly.
- 4.1.6. Contractor shall provide a delivery metered ticket for each fuel delivery, listing fuel order amount in gallons, location of facility and a brief description of product delivered. A delivery manual ticket will be accepted only when metered ticket is not available.
- 4.1.7. Contractor shall perform all work in accordance with accepted industry practice.
- 4.1.8. **Standing Time:** Contractor shall be responsible for all the time it takes Contractor to offload/transfer fuel from Contractor's fuel trucks to County tanks at the various locations. The County will not be charged any additional fees for standing time.

4.2. **Emergency Deliveries:**

- 4.2.1. County may place emergency orders, which is defined as outside of the regular delivery hours of 8:00 a.m. and 5:00 p.m. (PST), weekends and County observed holidays.
- 4.2.2. Emergency Service requests must be requested/classified as an "Emergency" by County Site Coordinator and must be approved in writing prior to providing the service. This rate will be in addition to hourly rate as set forth in Attachment C-Fees and Compensation. A copy of the written authorization may be required for payment of invoice.
- 4.2.3. Emergency deliveries shall be orders that required delivery within one (1) business day from order confirmation.
- 4.2.4. Contractor shall be entitled to an emergency delivery flat fee and a separate "Emergency Delivery" invoice must accompany the regular fuel invoice for payment of the fee. Emergency delivery fees shall be billed at the rate set forth in Attachment B, Payment and Compensation.
- 4.2.5. The Intent of this Contract is for daily operations; however, in an Emergency Event or Declared Disaster by the County/State or Federal entity, Contractor shall service the County during such an emergency under the same terms and conditions that apply during regular standard non-emergency/disaster conditions. An emergency fee shall be billed at the rate set forth in Attachment B-Fees and Compensation. This Contract may be subject to unusual usage.

Emergency Events or Declared Disasters may be rare occurrences. Please refer to provision 21 for further information.

5. SPILLAGE REQUIREMENT:

- 5.1. County requires “zero leakage” standard for fuel transfer operations.
- 5.2. Contractor shall provide necessary equipment and proper training of delivery personnel to prevent spillage or minimize the chance of spillage during connection and disconnection of hoses and during the transfer of fuel to County tanks. Contractor will ensure that all equipment, tools and procedures used are in compliance with all applicable regulations governing such operations and specifications of this Contract.
- 5.3. In the event of leakage or spillage, Contractor shall be responsible to perform immediate containment, clean up, disposal and restoration activities as necessary in accordance with applicable State of California laws and regulations and subject to the County’s satisfaction, at no extra cost to County. **All materials associated with such clean up shall be removed by the Contractor, at no additional cost to County.**

6. REPAIRS ON COUNTY OWNED TANKS:

- 6.1. County owned tanks may require repair services occasionally. Contractor shall service County owned tanks only at County’s request at the rates set forth in Attachment B. All repairs must be authorized and approved in writing by County staff.
- 6.2. Contractor shall perform all repairs during normal business hours Monday thru Friday, unless other arrangements are made and approved by County staff. Repairs after hours, weekends and holidays, are not authorized unless a written authorization is received from County staff at the rates set forth in Attachment B.
- 6.3. Contractor repair services shall meet or exceed all Federal, State, Local, American Society of Testing & Materials (ASTM), Department of Transportation (DOT), Air Resources Board (ARB) and/or any other California regulations/standards.
- 6.4. Contractor hourly rate shall include all costs for labor, tools, equipment, transportation, overhead, profit, travel time, (excluding materials) and all other costs related to providing the services described in the scope of work; Hourly service rates shall be prorated and billed to the nearest hour, no minimum.
- 6.5. Contractor shall provide a quote for any repair services to equipment, as per the rate set forth in Attachment B. The quote process shall be as follows:
 - 6.5.1. Quotes for repair services must be provided to each County Project Manager and shall be specific to the repairs requested. Quote request must be provided within two (2) business days.
 - 6.5.2. Invoices shall be submitted for reimbursement, plus material mark-up.
 - 6.5.3. Agencies/Departments are not required to post quotes on BidSync or other online bidding systems.
 - 6.5.4. Agencies/Departments shall request quotes via e-mail and Contractor shall provide a breakdown of time and materials for each project as per the rates set forth in Attachment B.
 - 6.5.5. Quotes shall be coordinated and approved by each individual department. No further approval from CPO is required. All Agencies/Departments shall follow County Procurement Guidelines.

7. COUNTY RESPONSIBILITIES:

- 7.1. County agencies/departments shall provide Contractor a Facilities Fuel Log that will include, but not limited to, the following information:

- 7.1.1. Agency/ Department Name
- 7.1.2. Agency /Department Location
- 7.1.3. Agency Contact's Name & Number
- 7.1.4. Number of fuel tanks; capacity/sizes; unit of measure & fuel site/delivery location, delivery date, amount delivered, and amount left in tank.
- 7.2. County Agency/Departments are required to track all deliveries on the Facilities Fuel Log and maintain logs throughout the term of the Contract.
- 7.3. County shall appoint a County Project Manager for each department project to serve as the point of contact.
- 7.4. County Project Manager shall ensure Contractor has necessary access to service locations and facilities.
- 7.5. County Agencies/Departments shall be responsible to create their own subordinates against this RCA and for amending their subordinate Contracts as facilities may be added or deleted and service hours may be increased or decreased at a given location at any time during the term of the Contract.
- 7.6. Regarding delivery, each Subordinate Contract against this RCA will list each Agency's project manager, delivery and billing addresses directly with the Contractor.
- 7.7. County agencies/departments shall be responsible to keep a fuel record log that always tracks fuel tanks.
- 7.8. The County reserves the right to obtain competitive bids on any material or service and to utilize the data provided under this Contract relative to necessary materials and services.
- 7.9. County shall be responsible to upgrade their respective Agency/Departments tanks with a meter reader sensor to be able to sign up for the automatic refill service program.

8. SECURITY REQUIREMENTS

The County operates several secured facilities: most notable are several Probation, Sheriff and Airport operated sites. Contractors and their employees who perform services in these facilities will be required to strict operation policies and may be required to pass a background check prior to their employment due to security requirements for certain facilities covered under this Contract. During performance of the work, especially at detention facilities, workers shall closely monitor all tools, equipment and other materials at all times. Workers shall have no contact verbal or physical, with any inmate of these facilities. These policies have been designed with the primary purpose of ensuring a safe and secure environment for all involved.

- A. The Contractor will provide a list of all personnel/employees who will be directly performing tasks associated with the Contract. Contractor's personnel/employees providing service in a secured detention facility, a Probation facility or a Sheriff's facility, will be expected to pass two (2) separate background checks performed by the Orange County Sheriff's Department and the Orange County Probation Department. No changes shall be authorized to the approved list without a request in writing submitted by the Contractor and approved by the County Site Coordinator. At no time will unauthorized Contractor employees perform any task associated with this Contract. If this occurs, the Contractor will be notified that they have not complied with the terms of this Contract and are subject to Contract termination. The list of all Personnel/Employees working on County projects shall be submitted prior to award of this Contract.
- B. Contractor shall prepare and submit a Security Clearance form to the County Site Coordinator for all persons who will be working on or who will need access to secured facilities.

- C. Security Clearance forms shall be submitted at least five (5) working days prior to the start of work or prior to the use of any person subsequent to the start of work.
- D. Said Security Clearance forms shall be thoroughly and accurately complete. Omissions or false statements, regardless of the nature or magnitude, may be grounds for denying clearance.
- E. No person shall be employed on this work who has not received prior clearance from the Probation Department, Sheriff's Department or John Wayne Airport.
- F. The County, John Wayne Airport, the Probation Department and the Sheriff's Department are not under any obligation to give a reason clearance is denied.
- G. The Contractor shall be responsible to sign in with the County Site Coordinator or designee, as required. Upon arrival at any secure facility (e.g., JWA, Probation) the Contractor shall report to the Central Control Center (Control). Contractor personnel shall have no contact, either verbal or physical, with internees in secured detention facilities.

Specifically:

1. Do not give names or addresses to internees.
2. Do not receive any names or addresses from internees.
3. Do not disclose the identity of any internee to anyone outside the facility.
4. Do not give any materials to internees.
5. Do not receive any materials from internees (including materials to be passed to another individual or internee).

**Failure to comply with these requirements is a criminal act and can result in prosecution.*

- H. Any Contractor personnel/employee(s) engaged in the performance of work under this Contract shall be expected to pass the screening requirements and abide by all of the security requirements set forth by the Federal Aviation Administration (FAA) and the County of Orange.

"The Federal Aviation Administration (FAA) approved security program for John Wayne Airport requires that each person issued a John Wayne Airport security badge is made aware of his/her responsibilities regarding the privilege of access to restricted areas of the airport".

All persons within the restricted air operation areas of the airport are required to display, on their person, a John Wayne Airport security badge, unless they are specifically exempted for reasons or they are under escort by a properly badge individual. Each airport employee or airport tenant employee who has been issued a John Wayne Airport security badge is responsible for challenging any individual who is not properly displaying an airport issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid John Wayne Airport security badge must immediately be referred to the Sheriff's Department Airport Detail Office for proper handling.

The John Wayne Airport security badge is the property of the County of Orange and must be returned upon termination of employment at John Wayne Airport. The loss of a badge shall be reported within twenty-four (24) hours to the Sheriff's Department Airport Dispatch Center (949) 252-5000. A report shall be made before a replacement badge will be issued.

- I. All vehicles parked on-site shall be locked and thoroughly secured at all times.
- J. All equipment and materials shall remain in the Contractor possession at all times and shall never be left unattended. All lost or misplaced equipment or materials shall be reported immediately to the (a) security staff or Control in secured detention facilities or (b) the escort or Control in Sheriff's facilities.

- K. Personnel shall not smoke or use profanity or other inappropriate language while on-site.
- L. Personnel shall not enter the facility while under the influence of alcohol, drugs or other intoxicants and shall not have such materials in their possession.
- M. Personnel shall plan their activities to minimize the number of times they must enter and exit a facility, i.e., transport all equipment and materials needed for the day at the start of work and restrict all breaks to the absolute minimum.
- N. Contractor employee(s) shall be well-disposed to the public and County staff utilizing the facilities but shall be responsive only to the requests of the County Site Coordinator unless otherwise directed and shall direct all inquiries or requests to the County Site Coordinator.

**ATTACHMENT B
COMPENSATION AND FEES**

- I. COMPENSATION:** Price is based on the price published in OPIS (Oil Price Information Services) for unbranded fuel under PADD 5 (Petroleum Administration for Defense District) Los Angeles Regional Rack Price Report for the type/grade of fuel requested as provided in this Contract. The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.
- II. FEES:** Prices shall “not” include Federal and California fuel surcharges, Federal and State excise Tax and California State Sales Tax or any tax imposed by any regulatory agency. However, all other fees/charges shall be inclusive in the “Adjustment +/- Differential”
- III. Fuel Prices and Other Fees:** The prices under “adjustment +/- differential” shall be inclusive of all freight/unloading/handling and delivery charges to all County locations or participating government entity locations, excluding all applicable Federal, State, Local and/or other applicable taxes.

The adjustment +/- differential (difference between the price and the daily OPIS price Los Angeles Rack Price without CAR cost reported by OPIS for Unbranded Fuel) shall remain firm for the entire term of the Contract.

Item	Delivery Size Up to 1,999 Gallons	UNLEADED REGULAR GASOLINE MINIMUM OCTANE RATING 87	UNLEADED PLUS GASOLINE MINIMUM OCTANE RATING 89	UNLEADED PREMIUM GASOLINE MINIMUM OCTANE RATING 91
1	Adjustment +/- differential	0.0625	0.0089	-0.0638

Item	Delivery Size 2,000-3,999 Gallons	UNLEADED REGULAR GASOLINE MINIMUM OCTANE RATING 87	UNLEADED PLUS GASOLINE MINIMUM OCTANE RATING 89	UNLEADED PREMIUM GASOLINE MINIMUM OCTANE RATING 91
2	Adjustment +/- differential	-0.1507	-0.0342	-0.1145

Item	Delivery Size 4,000-8,500 Gallons	UNLEADED REGULAR GASOLINE MINIMUM OCTANE RATING 87	UNLEADED PLUS GASOLINE MINIMUM OCTANE RATING 89	UNLEADED PREMIUM GASOLINE MINIMUM OCTANE RATING 91
3	Adjustment +/- differential	-0.1078	-0.0496	-0.1299

Item	Delivery Size 8,501+ Gallons	UNLEADED REGULAR GASOLINE MINIMUM OCTANE RATING 87	UNLEADED PLUS GASOLINE MINIMUM OCTANE RATING 89	UNLEADED PREMIUM GASOLINE MINIMUM OCTANE RATING 91
4	Adjustment +/- differential	-0.1165	-0.0723	-0.1525

ITEM NO	ADDITIONAL FEES/CHARGES	PRICE
5	Urgent Delivery Fee – Fixed fee per Delivery	\$ 150.00
6	Emergency Declared Event Fee – Fixed fee per Delivery	\$ 350.00
7	Hourly Service Repair - Regular Business Hours 8:00AM to 5:00PM - PT	\$ 125.00
8	Hourly Service Repair - After Hours 5:01PM to 7:59AM - PT	\$ 225.00
9	Hourly Service Repair - After Hours 5:01PM to 7:59AM - PT	\$ 225.00
10	Hourly Service Repair - Weekends	\$ 250.00

* Service rates herein shall include all costs for labor, tools, equipment, transportation, overhead, profit, travel time, and all other costs related to providing the services described in the scope of work. Hourly service rates shall be prorated and billed to the nearest ¼ hour; no minimum requirement is allowed.

IV. ADDITIONAL MATERIALS/PARTS /PRODUCTS

Additional Materials/Parts/Products (i.e. valves, gages, etc.) cost will be reimbursed on the basis of actual invoice cost to the Contractor plus the percentage mark-up. A copy of the actual material purchase invoice for all items shall be included as an attachment with each invoice submitted to County.

Item No	Item Description	Percentage (%)
11	Materials/Parts/Products - <i>Percentage Mark Up</i>	5%

V. OPIS REPORT INSTRUCTIONS:

Contractor shall submit a legible copy of the price published in OPIS (Oil Price Information Services) - Los Angeles Unbranded Rack Price without CAR Cost report. Please highlight the unbranded rack average price on the OPIS Report.

VI. INVOICE/PAYMENT INSTRUCTIONS:

A. **Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for services rendered. Invoices must be submitted to address indicated on the Subordinate Contract created by the individual Agency/Department. The invoice must have a unique number and must include the following information:

- a) Contractor's name and address
- b) Contractor's remittance address
- c) Contractor's Federal Tax I.D. Number
- d) Name of County Agency/Department serviced
- e) Service address
- f) Contract Number (MA)
- g) Date of services rendered
- h) Service description
- i) Fuel charges
- j) Additional Fee charges
- k) Sales Tax, if applicable
- l) Total

Invoices shall cover services not previously invoiced and submitted coincidentally with Contractor's payroll period. Payments made by the County shall not preclude the right of

County from thereafter disputing any items or services involved or billed under the Subordinate Contracts and shall not be construed as acceptance of any part of the services.

- B. **Payment Process:** For purposes of payment processing, invoiced prices are to be the daily unbranded "average" price published in the OPIS PAD District 5 Report for the Los Angeles, California Area +/- Contractor's quoted adjustment/differential. All invoices must show the Contract pricing formula:

OPIS PAD District 5 Los Angeles Regional Rack Price +/- Adjustment/Differential =
Total Price per Gallon.

- C. Contractor is also required to attach a copy of the OPIS Report in each fuel invoice for the County to verify legitimacy of the per gallon price on the fueling date.
- D. Contractor shall send invoices according to respective Department instructions

- VII. **PAYMENT TERMS:** Invoices are to be submitted to the user department to the ship-to address, unless otherwise directed in each respective Subordinate Contract. Vendor shall reference Contract number on invoice. Payment will be made after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. Contractor shall reimburse County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

- VIII. **FIRM DISCOUNT AND PRICING STRUCTURE:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.

- IX. **CONTRACTOR'S EXPENSE:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.

- X. **TAXPAYER ID NUMBER:** Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.

- XI. **ELECTRONIC FUNDS TRANSFER (EFT):** County of Orange offers Contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County via an EFT Authorization Form. To request an EFT form, please contact County of Orange, Auditor-Controller-Compliance Vendor Administration via e-mail at Admin.Vendor@ac.ocgov.com

EXHIBIT B

CITY COUNCIL POLICY 100-5

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	1 of 3

BACKGROUND

Under the Federal Drug-Free Workplace Act of 1988, passed as part of omnibus drug legislation enacted November 18, 1988, contractors and grantees of Federal funds must certify that they will provide drug-free workplaces. At the present time, the City of Costa Mesa, as a sub-grantee of Federal funds under a variety of programs, is required to abide by this Act. The City Council has expressed its support of the national effort to eradicate drug abuse through the creation of a Substance Abuse Committee, institution of a City-wide D.A.R.E. program in all local schools and other activities in support of a drug-free community. This policy is intended to extend that effort to contractors and grantees of the City of Costa Mesa in the elimination of dangerous drugs in the workplace.

PURPOSE

It is the purpose of this Policy to:

1. Clearly state the City of Costa Mesa's commitment to a drug-free society.
2. Set forth guidelines to ensure that public, private, and nonprofit organizations receiving funds from the City of Costa Mesa share the commitment to a drug-free workplace.

POLICY

The City Manager, under direction by the City Council, shall take the necessary steps to see that the following provisions are included in all contracts and agreements entered into by the City of Costa Mesa involving the disbursement of funds.

1. Contractor or Sub-grantee hereby certifies that it will provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's and/or sub-grantee's workplace, specifically the job site or location included in this contract, and specifying the actions that will be taken against the employees for violation of such prohibition;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	2 of 3

- b. Establishing a Drug-Free Awareness Program to inform employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. Contractor's and/or sub-grantee's policy of maintaining a drug-free workplace;
 - 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- c. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph A;
- d. Notifying the employee in the statement required by subparagraph 1 A that, as a condition of employment under the contract, the employee will:
 - 1. Abide by the terms of the statement; and
 - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- e. Notifying the City of Costa Mesa within ten (10) days after receiving notice under subparagraph 1 D 2 from an employee or otherwise receiving the actual notice of such conviction;
- f. Taking one of the following actions within thirty (30) days of receiving notice under subparagraph 1 D 2 with respect to an employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health agency, law enforcement, or other appropriate agency;

SUBJECT	POLICY NUMBER	EFFECTIVE DATE	PAGE
DRUG-FREE WORKPLACE	100-5	8-8-89	3 of 3

- g. Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs 1 A through 1 F, inclusive.
- 2. Contractor and/or sub-grantee shall be deemed to be in violation of this Policy if the City of Costa Mesa determines that:
 - a. Contractor and/or sub-grantee has made a false certification under paragraph 1 above;
 - b. Contractor and/or sub-grantee has violated the certification by failing to carry out the requirements of subparagraphs 1 A through 1 G above;
 - c. Such number of employees of Contractor and/or sub-grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor and/or sub-grantee has failed to make a good faith effort to provide a drug-free workplace.
- 3. Should any contractor and/or sub-grantee be deemed to be in violation of this Policy pursuant to the provisions of 2 A, B, and C, a suspension, termination or debarment proceeding subject to applicable Federal, State, and local laws shall be conducted. Upon issuance of any final decision under this section requiring debarment of a contractor and/or sub-grantee, the contractor and/or sub-grantee shall be ineligible for award of any contract, agreement or grant from the City of Costa Mesa for a period specified in the decision, not to exceed five (5) years. Upon issuance of any final decision recommending against debarment of the contractor and/or sub-grantee, the contractor and/or sub-grantee shall be eligible for compensation as provided by law.