

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco  
and  
Pacific Coast Petroleum, Inc.  
TC70888  
1000036821**

This Agreement is made this 1st day of November, 2025, in the City and County of San Francisco (“City”), State of California, by and between Pacific Coast Petroleum, Inc, (“Contractor”) and City.

**Recitals**

WHEREAS, the Office of Contract Administration (“Department”) wishes to procure Fuel and Related Products on behalf of City from Contractor; and

WHEREAS, Contractor represents and warrants that it is qualified to deliver the Goods required by City as set forth under this Agreement; and

WHEREAS, Contractor was competitively selected pursuant to an Invitation for Bids (“IFB”) entitled Fuel and Related Products issued through Sourcing Event ID 0000010800; and

WHEREAS, this Contract for Commodities is exempt from the subcontracting participation requirements of Chapter 14B of the San Francisco Administrative Code; and

WHEREAS, the Department has filed Ethics Form 126f2 (Notice of Submission of Proposal) because this Agreement has a value of \$100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

WHEREAS, the Department has filed Ethics Form 126f4 (Notification of Contract Approval) because this Agreement has a value of \$100,000 or more in a fiscal year and will require the approval of the Board of Supervisors; and

WHEREAS, the City’s Board of Supervisors approved this Agreement by [insert resolution number] on [insert date of Board action] in the amount of \$93,000,000 for the period commencing November 1, 2025 and ending October 31, 2030; and

Now, THEREFORE, the parties agree as follows:

**Article 1      Definitions**

The following definitions apply to this Agreement:

1.1      “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and the Office of Contract Administration.

1.3 “City Data” means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 “CMD” means the Contract Monitoring Division of the City.

1.5 “Confidential Information” means confidential City information including, but not limited to, personal identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (“Chapter 12M”). Confidential Information includes, without limitation, City Data.

1.6 “Contractor” means Pacific Coast Petroleum, Inc.

1.7 “Deliverables” means Contractor’s or its subcontractors’ work product or Goods, including any partially-completed work product, Goods and related materials, provided by Contractor to City during the course of Contractor’s performance of the Agreement.

1.8 “Goods” or “Commodities” means the products, materials, equipment or supplies to be provided by Contractor under this Agreement.

1.9 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.10 “Party” and “Parties” means City and Contractor either individually or collectively.

## **Article 2 Term of the Agreement**

2.1 **Term.** The term of this Agreement shall commence on November 1, 2025 and expire on October 31, 2030, unless earlier terminated as otherwise provided herein.

2.2 **Options to Renew.** City has the option to renew the Agreement for a period of up to three (3) additional years. City may exercise this option at City’s sole and absolute discretion by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.” Extensions may be for the whole or partial period provided for above.

## **Article 3 Financial Matters**

### **3.1 Certification of Funds; Budget and Fiscal Provisions.**

**3.1.1 Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.1.2 Maximum Costs.** City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

**3.2 Authorization to Commence Work.** Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a purchase order, task order or notice to proceed. Such authorization may be for a partial or full scope of work.

### **3.3 Compensation.**

**3.3.1 Calculation of Charges and Contract Not to Exceed Amount.** The amount of this Agreement shall not exceed **\$93,000,000 [ninety-three million dollars]**, the breakdown of which appears in Appendix B, "Calculation of Charges." City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Goods covered by this Agreement.

**3.3.2 Payment Limited to Satisfactory Delivery of Goods.** Contractor is not entitled to any payments until City approves the Goods delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory delivery of Goods even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Goods may be rejected by City and in such case must be replaced by Contractor without delay at no cost to City.

**3.3.3 Withhold Payments.** If Contractor fails to provide Goods in accordance with Contractor's obligations under this Agreement, City may withhold any and all payments

due to Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.3.4 Invoice Format.** Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. **All invoices must show the PeopleSoft Purchase Order ID, PeopleSoft Supplier Name and ID, complete description of the Goods delivered (including manufacturer name, manufacturer SKU, and product description), sales/use tax (if applicable), unit cost, unit of measure, quantities, extended cost, and contract payment terms. Where Contractor's pricing is based on a percentage mark-up or discount over manufacturer's list price, invoices must also include the manufacturer list price and Contractor's percentage mark-up or discount over manufacturer's list price. Where Contractor's pricing is based on a percentage mark-up over cost, invoices must also include Contractor's cost and Contractor's percentage mark-up over Contractor's cost.** Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

**3.3.5 Reserved.**

**3.3.6 Getting paid by the City for Goods.**

(a) City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfgov.org).

(b) At the option of City, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

**3.3.7 Reserved.**

**3.3.8 Payment Terms.**

(a) **Payment Due Date:** Unless City notifies the Contractor that a dispute exists, Payment shall be made within 30 calendar days, measured from (1) the delivery of Goods or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

**3.4 Audit and Inspection of Records.** Contractor agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its Goods. Contractor will permit City to audit, examine and make copies of such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

## **Article 4 Goods**

4.1 **Primary, Secondary, and Second Place Primary Contractors.** Contractor was selected to serve as the Primary Contractor for the Goods described herein to ensure adequate levels of uninterrupted access to the Goods. In the isolated event the Primary Contractor fails to provide Goods for any contract item by the required date, the Secondary Contractor will be required to provide said Goods. In the event the City wishes to temporarily or permanently replace the Primary Contractor in an ongoing manner, the Second Place Primary Contractor will be required to provide said Goods until the Primary Contractor demonstrates to the satisfaction of City that they are ready, willing and able to provide said Goods to City. The City reserves the right to request Goods not readily available from the Secondary Contractor or Second Place Primary Contractor from any other source.

4.2 **Term Agreement – Indefinite Quantities.** This is a term, indefinite quantities Agreement to supply the Goods identified in this Agreement. Unless otherwise specified herein, Goods will be required in quantities and at times as ordered during the period of the Agreement. Estimated Goods are approximate only. City, in its sole discretion, may purchase any greater or lesser quantity. Purchasing may also make purchases from other suppliers when Purchasing determines, in its sole discretion, that the City has an immediate need for the Goods or that it is not practical to purchase against this Agreement. City will not honor minimum order charges under this Agreement.

4.3 **Qualified Personnel.** Contractor represents and warrants that it is qualified to deliver the Goods required by City, and that all Goods will be delivered by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with the City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule.

4.4 **Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed to be an independent contractor and is wholly responsible for the manner in which it delivers the Goods required by this Agreement.

### **4.5 Goods.**

4.5.1 **Awarded Goods.** If during the term of the Agreement, a contract item is determined to be unacceptable for a particular use, and such is documented by a City Department and as determined by Purchasing, Contractor agrees that the item will be canceled and removed from the Agreement without penalty to City. City's sole obligation to Contractor is payment for deliveries made prior to the cancellation date. City shall give Contractor ten (10) calendar days' notice prior to any cancellation. City will purchase the required replacement item from any

source and in the manner as determined by Purchasing. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, Contractor shall search the marketplace and find an acceptable equal substitute in the time required for delivery and at the Agreement price. Contractor must notify Purchasing in writing, which can include email, certified mail, or other trackable mail, of any changes in the description of article, brand, product code or packaging. Any changes made without the approval of City will constitute a Default under this Agreement.

**4.5.2 Place of Manufacture.** No article furnished hereunder shall have been made in prison or by convict labor, except Goods purchased for use by City's detention facilities. City may require Contractor to provide within seven (7) business days from the date they are requested to do so, information and documentation requested by Purchaser, including but not limited to: sources of supply, distribution, dealership or agency agreements and authorizations from manufacturer(s) they claim to represent, lines of credit with financial institutions for manufacturer(s) they claim to represent, lines of credit with financial institutions and suppliers, numbers of employees, trade references and any other information to determine Contractor's fitness to supply the Agreement requirements.

**4.5.3 Electrical Products.** Goods must comply with all applicable laws, ordinances and other legal requirements, including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code.

**4.5.4 Condition of Goods.** Goods offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein. Contractor shall establish quality control measures, as applicable to department's operations, and promptly provide documented reports to City of any product defects or premature failures.

**4.5.5 Inspection.** All Goods supplied shall be subject to inspection and acceptance or rejection by Purchasing or any department official responsible for inspection. Non-conforming or rejected Goods may be subject to reasonable storage fees.

**4.5.6 F.O.B.** Goods shall be shipped Freight on Board, to any destination named in a Purchase Order issued by City against this Agreement. *The cost of shipment must be incorporated into the offered unit costs.*

**4.5.7 Failure to Deliver.** If Contractor fails to deliver Goods of the quality, in the manner or within the time called for by this Agreement, such Goods may be bought from any source by Purchasing. If City is required to pay a price that exceeds the price agreed upon by this Agreement, the excess price will be charged to and collected from Contractor (or sureties on its bond, if bond has been required); or, City may terminate the Agreement for default; or, City may return deliveries already made and receive a refund.

**4.5.8 Safety Data Sheets.** Where required by law or by City, Contractor will include Safety Data Sheets (SDSs) with delivery for applicable items. Failure to include the SDSs for such items will constitute a material breach of contract and may result in refusal to accept delivery.

**4.5.9 Warranty for Goods.** Contractor warrants to City that the manufacturer's warranty and service will be passed on to City at the time of delivery

4.6 **Assignment.** This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.7 **Reserved.**

4.8 **Reserved.**

4.9 **Reserved.**

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give City Priority 1 service with regard to the Goods procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver the Goods using all modes of transportation available. In addition, Contractor shall charge fair and competitive prices for the Goods ordered during an emergency and not covered under the Agreement.

4.11 **Annual Usage Reports by Contractor.**

4.11.1 Annually no later than February 15 and upon request, Contractor shall prepare and submit to City an electronic report in Microsoft Excel or CSV format identifying the Goods rendered under this Agreement ("Usage Report").

4.11.2 The Usage Report must detail all Goods supplied by Contractor as of the Agreement start date through December of the calendar year directly preceding the date of the report.

4.11.3 The Usage Report shall include, at a minimum, the following data:

- (1) Name of City department issuing the Purchase Order
- (2) Purchase Order ID
- (3) Invoice Number and Date
- (4) Itemized list of all Goods delivered, that includes at a minimum:  
manufacturer name, manufacturer SKU, detailed product description,  
manufacturer's list price, contractor's % discount off of  
manufacturer's list price, contractor's cost and contractor's % mark up  
over cost, unit cost, quantity, unit of measure, and extended cost.

Sample Usage Report (Goods)													
Ordering City Department	Purchase Order ID	Invoice Number	Invoice Date	Delivery Date	Manufacturer	Manufacturer SKU	Product Description	Manufacturer List Price	% Mark Up or Discount off of Manufacturer List Price	Unit Cost	Qty	Unit of Measure	Extended Cost

4.11.4 Upon request, Contractor must also furnish a separate Usage Report for Goods delivered to City that are not part of this Agreement.



4.11.5 Contractor shall email the Usage Reports to [OCAVendor.Reports@sfgov.org](mailto:OCAVendor.Reports@sfgov.org).

4.11.6 Any report files larger than 10MB must be submitted in electronic format on USB drive and mailed to the address shown below with the term Agreement number and “Annual Supplier Reporting” clearly marked on the envelope/packaging. Contractor shall mail the reports to:

OCA Supplier Reporting  
Re: Term Contract No. TC70888  
City and County of San Francisco  
Office of Contract Administration – Purchasing  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4685

4.11.7 City reserves the right to terminate this Agreement if information requested from and submitted by Contractor fails to satisfy City and/or Contractor is unable to provide the information and/or documentation within the period requested.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

5.1.1 **Required Coverages.** Without in any way limiting Contractor’s liability pursuant to the “Indemnification” section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Explosion, Collapse and Underground (XCU) coverage, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers’ Compensation Liability Insurance, in statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) Reserved.

(e) Reserved.

(f) Reserved.

(g) Pollution Liability Insurance applicable to Contractor’s activities and responsibilities under this Agreement with limits not less than \$10,000,000 each occurrence combined single limit, including coverage for on-site third-party claims for bodily injury and property damage. This coverage shall be endorsed to include Non-Owned Disposal Site coverage.

### **5.1.2 Additional Insured**



(a) The Commercial General Liability Insurance policy must include as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must include as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees.

(c) The Commercial Automobile Liability Insurance policy include (i) Auto Pollution Additional Insured Endorsement naming as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

**5.1.3 Waiver of Subrogation.** The Workers' Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of City for all work performed by Contractor, and its employees, agents and subcontractors.

#### **5.1.4 Primary Insurance**

(a) The Commercial General Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) The Pollution Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

#### **5.1.5 Other Insurance Requirements**

(a) Thirty (30) days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to City address set forth in Section 11.1 entitled, "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, be maintained for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before delivering any Goods, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as required, with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide the Goods, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, and its officers, agents and employees and the Contractor as additional insureds and waive subrogation in favor of City, where required.

## **5.2 Indemnification.**

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants, experts, and related costs, and City's costs of investigating any claims against City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any Claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Goods.

5.2.4 Under no circumstances will City indemnify or hold harmless Contractor.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE GOODS DELIVERED IN CONNECTION WITH THIS AGREEMENT.

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

**7.1 Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Goods delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

**7.2 Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

**7.3 Withholding.** Contractor agrees that it is obligated to pay all amounts due to City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to City under the San Francisco Business and Tax Regulations Code. Any

payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination ("Notice of Termination"). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective ("Termination Date").

8.1.2 Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to affect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

- (a) Completing delivery of all Goods that City requires Contractor to complete prior to the Termination Date.
- (b) Halting the delivery of all Goods on and after the Termination Date unless such Goods were ordered prior to the Termination Date.
- (c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Goods, equipment or other items.
- (d) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts cancelled. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the cancellation of such orders and subcontracts.
- (e) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the cancelled orders and subcontracts.
- (f) Taking such action as may be necessary, or as City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the Termination Date, Contractor shall submit to City an invoice which shall set forth the cost of all Goods ordered prior to City's Termination Date that Contractor has fully delivered. City's payment obligation pursuant to this Subsection 8.1.3 shall be subject to Section 3.3.2 of this Agreement. If City is required to pay regularly scheduled monthly fees under this Agreement, in no event will the amount due for the month in which termination occurred be greater than the pro-rated scheduled monthly fee for that month. Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the Termination Date.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Goods covered by Contractor's final invoice and (ii) any claim which City may have against Contractor in connection with this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

## **8.2 Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.6	Assignment	11.10	Compliance with Laws
Article 5	Insurance and Indemnity	Article 13	Data and Security
Article 7	Payment of Taxes		

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**8.2.2 Default Remedies.** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with City.

**8.2.3** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

**8.2.4** Any notice of default must be sent in accordance with Article 11.

**8.3 Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

**8.4.1** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Goods	8.2.2	Default Remedies
3.3.7(a)	Reserved	9.1	Reserved
3.4	Audit and Inspection of Records	9.2	Reserved
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security

**8.4.2** Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver

in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

## **Article 9      Rights In Deliverables**

9.1      **Reserved.**

9.2      **Reserved.**

## **Article 10      Additional Requirements Incorporated by Reference**

10.1      **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (“Mandatory City Requirements”) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/).

10.2      **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City’s Charter; Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*); or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*); and further agrees promptly to notify City if it becomes aware of any such fact during the term of this Agreement.

10.3      **Prohibition on Use of Public Funds for Political Activity.** In delivering the Goods, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4      **Consideration of Salary History.** Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or “Pay Parity Act.” Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee’s salary history without that employee’s authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

10.5      **Nondiscrimination Requirements.**



**10.5.1 Nondiscrimination in Contracts.** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

**10.6 Local Business Enterprise and Nondiscrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B. Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

**10.7 Reserved.**

**10.8 Reserved.**

**10.9 First Source Hiring Program.** Contractor must comply with all of the applicable provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement; and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the

later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten (10%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Reserved.**

**10.13 Reserved.**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions.**

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

10.14.2 The requirements of Article 142 shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Nonprofit Contractor Requirements.**

10.15.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City's request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

**10.15.2 Reserved.**

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

**10.17 Distribution of Beverage and Water**

**10.17.1 Reserved.**

**10.17.2 Reserved.**

**10.18 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**10.18.1 Reserved.**

**10.19 Reserved.**

**10.20 Reserved.**

**10.21 Reserved.**

**10.22 Use of City Opinion.** Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor's performance under this Agreement without prior written permission of Purchasing.

**Article 11 General Provisions**

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City:	Director of Purchasing City and County of San Francisco Office of Contract Administration Purchasing Division City Hall, Room 430 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4685 Email: <a href="mailto:OCA@sfgov.org">OCA@sfgov.org</a> Phone: (415) 554-6743 Fax: (415) 554-6717
To Contractor:	Kourosh (Dan) Emani CEO Pacific Coast Petroleum, Inc. 27403 Industrial Blvd., Hayward, CA 94545 <a href="mailto:dan@pacificcoastpetroleum.com">dan@pacificcoastpetroleum.com</a> (510) 782-5463

Any notice of default must be sent by certified mail or other trackable written communication. Either Party may change the address to which notice is to be sent by giving written notice thereof

to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through an agent such as Contractor, must be accessible to people with disabilities. Contractor shall provide the Goods specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in providing Goods, benefits or activities under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**11.3 Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's delivery of Goods, and City's payment are subject to the California Public Records Act, (California Government Code §7920 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the delivery of Goods under this Agreement. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This contract, including appendices, sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, “Modification of this Agreement.”

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of City’s Charter, codes, ordinances and duly adopted rules and regulations of City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** The Parties agree that this Agreement, including all appendices, sets forth the Parties’ complete agreement. If the Appendices to this Agreement include any standard printed terms from Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between City’s terms and Contractor’s printed terms attached, City’s terms in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor’s proposal, and Contractor’s printed terms, respectively. Any hyperlinked terms included in Contractor’s terms shall have no legal effect.

**11.14 Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (“Legal Requests”) related to any City Data under this Agreement, and in no event later than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City’s instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where the City Data is stored.

## **Article 12 Department Specific Terms**

### **Article 13 Data and Security**

#### **13.1 Nondisclosure of Private, Proprietary or Confidential Information.**

**13.1.1 Protection of Private Information.** If this Agreement requires City to disclose “Private Information” to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in delivering the Goods. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

**13.1.2 City Data; Confidential Information.** In the delivery of the Goods, Contractor may have access to, or collect on City’s behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City’s behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

**13.2 Reserved.**

**13.3 Reserved.**

**13.4 Management of City Data.**

**13.4.1 Use of City Data.** Contractor agrees to hold City Data received from, or created for, or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor’s staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor’s own purposes or later use. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

**13.4.2 Disposition of City Data.** Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City’s behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractor’s environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the

purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

**13.4.3 Protected Health Information.** Where applicable, Contractor, all subcontractors, all agents and employees of Contractor and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information, if any, disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local privacy laws shall be a material breach of the Agreement. In the event that City pays a regulatory fine, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of protected health information given to Contractor or its subcontractors or agents by City, Contractor shall indemnify City for the amount of such fine or penalties or damages, including costs of notification. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement.

**13.5 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City.

**13.6 Loss or Unauthorized Access to City’s Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any “Leak”) within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

## **Article 14 MacBride And Signature**

**14.1 MacBride Principles-Northern Ireland.** The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

Recommended by:

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**Mark Farley**  
**Procurement Manager**  
**Office of Contract Administration**

Approved as to Form:

David Chiu  
City Attorney

By: \_\_\_\_\_  
**Gus Guibert**  
Deputy City Attorney

Approved:  
Sailaja Kurella  
Director of the Office of Contract Administration,  
and Purchaser

By: \_\_\_\_\_  
Lorna Walker

**Appendices**

- A: Scope of Goods
- B: Calculation of Charges
- C: Regulatory and Compliance Requirements

**CONTRACTOR**

**Pacific Coast Petroleum**

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**Kourosh Emami**  
**CEO**  
**27403 Industrial Blvd.**  
**Hayward, CA 94545**

City Supplier Number: **0000013672**

## **Appendix A Scope of Goods**

- I.** Contractor shall provide fuel, and fuel-related products to City and County of San Francisco storage sites for such commodities. Commodities can be expected to be requested 7 days of the week, including holidays. Items within the scope of this contract shall include: **Aggregate 1: Gasoline (Unleaded 87 Octane and Unleaded 91 Octane) – City of SF Sites**
- II.** All fuel and fuel-related products will be ordered on an as-needed basis.
- III.** Pricing basis used for daily deliveries of fuel shall be according to Oil Price Information Service (OPIS) indexes indicated below. The delivery price of fuel (not including applicable taxes and fees) shall be computed by using the delivery date's 10:00 A.M. Eastern Time contract rack average pricing as published in appropriate OPIS indexes plus Contractor's bid submission dollars and cents mark-up or mark-down (up to 4 decimal places) on OPIS index values (as converted to dollars and cents). The mark-up or mark-down, when combined with applicable Oil Price Information Service (OPIS) index value, shall include all costs required to perform the work of delivery, including overhead, profits, services, insurance, transport, delivery charges, and any and all other applicable costs except separately itemized taxes and fees. Applicable federal, state, or local taxes are to be direct pass thru costs to City. No additional markup fees or costs shall be acceptable.

The City and County of San Francisco, as a local government entity, is exempt from Federal Excise Taxes on gasoline and diesel fuel purchased for its exclusive use in accordance with Internal Revenue Code Section 4221(a)(4) and IRS Publication 510. As such, Contractors selling fuel to The City and County of San Francisco shall be gasoline wholesale distributors for the City's purchase of gasoline and shall be registered ultimate vendors according to Internal Revenue Service guidelines for the purchase of diesel. The City and County of San Francisco shall not be charged federal excise taxes of 0.184 per gallon for gasoline or 0.244 per gallon for clear diesel fuels. The City and County of San Francisco will complete all necessary certificates to be maintained on file with Contractor to maintain tax exempt status for the duration of the Contract.

Referenced OPIS Indexes are as follows:

### **A. Gasoline Reference Indexes**

For City of SF Sites the OPIS Index used will be:

**OPIS GROSS CARFG ETHANOL (10%) PRICES WITH CAR COST (Unl for 87 Octane and Pre for 91 Octane) – San Francisco**

#### **IV. Compliance with Federal, State and Local Laws, Regulations and Standards:**

Contractor shall comply with Federal, State and Local laws, regulations and standards that pertain to transport and delivery of fuel and fuel-related products.

#### **V. Specifications**

##### **Gasoline Specifications**

- a. All fuel deliveries under this contract shall be temperature adjusted to 60 degrees Fahrenheit.
- b. Regular unleaded and Premium unleaded shall meet all the requirements of the latest ASTM for gasoline. Regular unleaded Gasoline must have a minimum of 87 Octane content. Premium unleaded must have a minimum of 91 Octane content. All applicable Federal or State requirements shall apply during the term of this contract including 1996 CARB Phase III regulations of reformulated gasoline or latest, Sections 2250 through 2276 of Title 13.
- c. For all Material Safety Data Sheets (MSDS) submitted on proposed products, Contractor shall immediately furnish updates as soon as they become available.
- d. Contractor shall comply with the Low Carbon Fuel Standard (LCFS), which is designed to decrease the carbon intensity of California's transportation fuel pool and provide an increasing range of low-carbon and renewable alternatives.
- e. All products supplied by Contractor may be subject to periodic test by independent laboratories at City's option to determine whether products being supplied meet specifications. In the event products supplied fail to meet specifications, Contractor may be required to remove and replace them at their own expense or make other adjustments as deemed appropriate by City.

## **Appendix B Calculation of Charges**

### **1. Price List**

#### **City of SF Sites**

<b>Fuel Type</b>	<b>Delivery Volumes (gal.)</b>	<b>OPIS Differential Pricing</b>
Gasoline – Unleaded 87	<= 500	\$0.20
Gasoline – Unleaded 87	501 - 1,000	\$0.15
Gasoline – Unleaded 87	1,001 - 3,000	\$0.09
Gasoline – Unleaded 87	3,001 - 5,000	\$0.05
Gasoline – Unleaded 87	5,001 - 7,000	\$0.05
Gasoline – Unleaded 87	> 7,000	\$0.04
Gasoline – Premium 91	<= 1,000	\$0.15
Gasoline – Premium 91	1,001 - 3,000	\$0.09
Gasoline – Premium 91	3,001 - 5,000	\$0.05
Gasoline – Premium 91	> 5,000	\$0.05

Gasoline prices shall be adjusted automatically on a daily basis according to Appendix A, III. for appropriate fuel product as published by OPIS.

### **2. Price Adjustments.**

#### **Gasoline**

Contractor's bid price mark-up or mark-down on contract average daily rack prices as listed in Oil Price Information Service (OPIS) indexes for gasoline and diesel fuels are to be firm for the term of the Agreement, from start date through the end of the term, including extensions.

## **Appendix C**

### **Regulatory and Compliance Requirements**

#### **1. Additional Goods**

If, in the satisfaction of governmental interests it is necessary to purchase additional Goods from Contractor, additional Goods may be added to this Agreement by mutual agreement of the Parties in accordance with Chapter 21 of the San Francisco Administrative Code, including, but not limited to, additional fuel types, fuel mixes or additives, or compliance items related to changes in state or federal fuel standards.

#### **2. Regulatory and Green Purchasing Requirements**

Contractor shall comply with the Low Carbon Fuel Standard (LCFS), which is designed to decrease the carbon intensity of California's transportation fuel pool and provide an increasing range of low-carbon and renewable alternatives.

<https://ww2.arb.ca.gov/our-work/programs/low-carbon-fuel-standard>

#### **3. Delivery (General)**

Contractor must comply with the following delivery requirements.

- A. **Notice of Delivery:** Prior to all deliveries, Contractor shall provide scheduled delivery dates to the ordering department. Any deliveries made without prior scheduling will be rejected by the department with no additional costs incurred.
- B. **Hours of Delivery:** All deliveries shall be made and accepted according to each listed department's posted acceptable delivery schedules at specific address locations listed in this Appendix C.
- C. **Substitutions:** No substitutions will be allowed unless approved in advance in writing by City.
- D. **Delivery Timelines:** Product delivery shall be made within 48 hours for fuel deliveries and within 3 business days for all other products following Contractor's receipt of order. When products are not delivered within the term and time frame specified, City reserves the right to purchase products from another supplier to minimize equipment downtime and the Contractor will be required to pay any cost differentials.
- E. **Emergency Deliveries and Emergency Plan:** Emergency deliveries shall be delivered by best means possible. Should the emergency delivery cause City to incur additional costs not contemplated by this Agreement, Contractor shall obtain City's prior approval. Contractor shall notify City of the estimated time of delivery. In the event of demand spikes, regional or industry wide fuel shortages, Governor-proclaimed and/or local states of emergency, and catastrophes, Contractor shall exercise commercially reasonable efforts to make delivery of Fuel Products to Purchasers in a priority manner.
  - 1. During times of Governor-proclaimed and/or local states of emergency and/or catastrophic events, Contractor shall keep delivery sources staffed with employees on call 24 hours a day 7 days a week.

2. In the event of an emergency, Contractor shall use commercially reasonable efforts to:
  - i. Ensure that ordering departments are supplied with adequate amounts of fuel in preparation for Events
  - ii. Ensure deliveries to ordering departments are Contractor's first priority to the extent commercially reasonable;
  - iii. Establish priorities for deliveries to City based on direct communications with City or interactions with State or Local Departments of Emergency Management, as may be required;
  - iv. Leverage its supply chain, including backup supplies, to insure continuous supply to City during an Event; and
  - v. Provide Fuel Products whenever it is safe to do so. Roads will be determined to be unsafe if they are declared as closed by local, state, or federal government or upon the reasonable business judgment of Contractor.
3. City will be responsible for identifying the threat level for emergency delivery timeline. State or Local Departments of Emergency Management also may identify the threat level, which shall supersede the City's identified threat level. During times of Governor-proclaimed and/or local states of emergency and/or catastrophic events, Contractor shall make deliveries as follows:
  - i. Immediate threat to persons or property or other emergencies including, but not limited to, loss of power affecting City's ability to provide service: Within four (4) hours. Immediate threat means that persons or property are currently subject to harm. For example, people are in need of immediate medical attention and/or property is currently damaged due to an Event.
  - ii. Imminent threat to persons or property: Within ten (10) hours. Imminent threat means that persons or property will be subject to harm within the near future (i.e., within the next ten (10) hours) due to an Event. For example, if the City does not receive fuel within the near future, people will need medical attention after that time or property will be subject to damage after that time.
  - iii. Impending threat to persons or property: Within eighteen (18) hours. Impending threat means that persons or property will be subject to harm within the foreseeable future due to an Event. For example, a tsunami is forecast, within a reasonable amount of accuracy, to impact California or the roads will not be sufficiently cleared, therefore making them hazardous to travel, if fuel is not delivered.
4. Deliveries may be reduced, increased or delayed, depending on the Event and the immediate need of the City to ensure an ample supply of fuel to affected areas. If a delivery is made short, Contractor shall contact the affected delivery location(s) prior to delivery to inform of the short. If the City location(s) provides a reasonable business justification for refusing the short (for example, usage rate

demonstrates the location risks running out of fuel due to the short delivery) then Contractor shall deliver the fuel in the quantity ordered.

5. During times of demand spikes, regional or industry-wide fuel shortages, urgent need, Governor-proclaimed and/or local states of emergency, catastrophes, and in the event of fuel supply shortages at the terminal established as the primary point of supply for any particular City location, Contractor shall notify the affected locations of the shortage and the expected date of return to normal operations.
  6. In the event of an emergency, Contractor, for the duration of the emergency, may charge its standard emergency fee (which is charged to all other purchasers). Such fee shall be included on the invoice as a separate line item in addition to the standard delivery fee. If no standard emergency fee exists, then a reasonable emergency premium is to be added to the invoice (as a separate line item) in addition to normal contract service fees; Provided, however, that any such emergency fee must be invoiced to all of Contractor's customers.
  7. In the event of an emergency, Contractor will guarantee fulfillment of an emergency Keep-Full delivery within a maximum of six (6) hours of a verbal, electronic, written or otherwise submitted order. Emergency orders are to be top priority and Contractor must be equipped and prepared to successfully fulfill an emergency delivery 7 days a week, 24 hours a day. Contractor shall furnish emergency order contact information and always be poised to receive and respond to an emergency order. Contractor must provide the emergency plan upon purchaser's request.
- F. **Back Orders:** Contractor shall notify the ordering department immediately if it is unable to deliver the items and/or quantity ordered. Contractor must notify and obtain approval from the ordering department prior to delivery of any back-ordered items. Department may reject back-ordered items at no additional costs incurred to City. In the event that back-ordered items are delayed in excess of five (5) working days, City reserves the right to reject partial shipment or cancel the item(s) ordered from the Agreement, at no additional cost incurred to City.
- G. **Negligence:** Contractor assumes all liability and responsibilities for the handling and transportation of fuels or fuel products until it has been placed in the storage tank. Contractor shall be responsible for any and all damage to buildings and/or properties caused by delivery trucks, operating personnel and damages or services necessitated by the failure to deliver fuels/lubricants/oils or the delivery of faulty product and equipment. Any repair or clean up services shall be made at Contractor's expense and to the satisfaction of the City. If Contractor fails to comply with these requirements within a reasonable time, City may deem it expedient to repair damages and perform the necessary services at the expense of Contractor. Should the fuels/lubricants/oils be unloaded into the incorrect tank (i.e. diesel fuel into a gasoline storage tank), Contractor is responsible for the immediate removal, cleaning, replacement of all products, any resulting damages, fines, or penalties, and the loss of revenue.
- H. **Spills During Delivery:** Contractor is solely responsible for any and all spills, leaks or releases, which occur as a result of, or are contributed to by, the actions of its agents, employees, or subcontractors. Contractor shall take all measures as required by law to



prevent fuel/lubricant/oil spills (which includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into or onto any land, water, or sewer basin). In the event of a fuel/lubricant/oil spill, leak, or release, Contractor shall be responsible for the required notifications, containment, clean up, and disposal of the spilled materials and agrees to take the following actions:

1. If warranted, evacuate and warn those persons that may be affected by the spill.
2. Immediately contact the appropriate Emergency Response Agencies as required.
3. Notify the appropriate City representative of the spill within two (2) hours.
4. At Contractor's expense, clean up the spill in a manner that complies with federal, state, and local laws, regulations, rules, and standards.
5. At Contractor's expense, repair or replace all damaged City property, facilities, and equipment including any fines suffered as a result of Contractor's spill.
6. For spills that occur other than on City's owned or leased property; provide all notifications and reports as specified by federal, state, and local laws, regulations, rules, standards, and permits.
7. At Contractor's expense, attend additional spill prevention training.
8. At Contractor's expense, acquire additional spill prevention equipment.

Should Contractor fail or refuse to take the appropriate and timely containment, clean up, and disposal actions, the City may do so and the contractor shall reimburse the City for all expenses incurred including fines or penalties levied by appropriate agencies of federal, state, or local governments. If there are no moneys due, the remediation costs shall be the responsibility of Contractor.

- I. **Release of Hazardous Materials:** Contractor shall bear full and exclusive responsibility for any release by Contractor of hazardous or nonhazardous chemicals or substances during the course of performance of the contract. Contractor shall immediately report any such release to the City employee accepting the delivery. Contractor shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against the City and its officers, agents and employees as a result of such release.

#### 4. Delivery (Specific)

Contractor must comply with the following delivery requirements for gasoline deliveries

- A. When making fuel deliveries under this Contract, the Contractor shall use equipment which complies with all applicable Federal, State and local government regulations.
- B. Each delivery of gasoline must be accompanied by a Delivery Receipt or similar document verifying the amount of fuel delivered. Delivery Receipts or similar documents are to be left on site at delivery and electronically sent via email to specific City department personnel (e-mails to be provided separately) within 24 hours of delivery.

For purposes of this Contract, "split load" shall be defined as any delivery that contains any combination of fuel types being delivered to multiple tanks at a single location during a single delivery. Split loads or partial shipments to the City where there are multiple tanks within a single delivery site are not acceptable unless prior written approval from

the City is received. For deliveries to multiple fuel sites, any split load fees are to be divided evenly among the ordering sites.

## City Gasoline Sites

Dept.	Site/Tank Name	Site Street Address	City	Tank Size (gal.)	Above / Below Ground	Regular or Premium	Minimum % Full Level	Typical Fuel Delivery Amt. (gal.)	Average Yearly Use (gal.)	Hours of Oper.	Deliv. Hours	Accommodate small (4K gal.) or large (8.5K gal.) truck?
Central Shops	DPW Yard, Tank #1	2323 Cesar Chavez St.	San Francisco	10,300	Below	Regular	80%	1,872	270,000	6a-4p	12a-5a	Either
Central Shops	DPW Yard, Tank #3	2323 Cesar Chavez St.	San Francisco	8,500	Below	Regular	80%	1,545	230,000	6a-4p	12a-5a	Either
Central Shops	HOJ, Tank #1	950 Bryant St.	San Francisco	10,300	Below	Premium	80%	1,165	22,000	7a-4p	12a-6a	Either
Central Shops	HOJ, Tank #2	950 Bryant St.	San Francisco	17,500	Below	Regular	80%	3,387	475,000	7a-4p	12a-6a	Either
Central Shops	GGP, Tank #1	100 Martin Luther King Dr.	San Francisco	9,000	Below	Regular	80%	1,256	145,000	7a-4p	12a-6a	Small Truck Only
Central Shops	GGP, Tank #2	100 Martin Luther King Dr.	San Francisco	9,000	Below	Regular	80%	1,256	145,000	7a-4p	12a-6a	Small Truck Only
SFO	GTU - SFO Fuel Isl.	797 Northfield Rd.	San Francisco	12,000	Above	Premium	50%	5,000	100,000	7a-3:30p	8a	Either
SFO	GTU - SFO Fuel Isl.	797 Northfield Rd.	San Francisco	6,000	Above	Premium	50%	3,000	6,500	7a-3:30p	8a	Either

PUC - Water & Treatment	Millbrae	1000 El Camino Real	Millbrae	10,000	Below	Regular	50%	5,000	65,000	7a-5:00p	7a-3:30p	Either
PUC - Water & Treatment	CDD	1990 Newcomb Ave	San Francisco	7,500	Below	Regular	25%	3,000	75,000	7a-3:30p	8a-2p	Either
PUC - Water & Treatment	Sunol	505 Paloma Way	Sunol	4,000	Above	Regular	50%	2,000	50,000	7a-3:30p	7a-1:30p	Either
MTA	Woods #1	1094 Indiana St.	San Francisco	10,000	Below	Regular	50%	5,000	92,000	24 Hours	8a-12p	Either
SFFD	Station 4	449 Mission Rock St.	San Francisco	1,000	Below	Regular	50%	250	1,500	24 Hours	9a-5p	Either
SFFD	Station 5	1301 Turk St.	San Francisco	4,000	Below	Premium	50%	1,300	2,000	24 Hours	9a-5p	Either
SFFD	Station 7	2300 Folsom St.	San Francisco	1,000	Below	Regular	50%	550	550	24 Hours	9a-5p	Either
SFFD	Station 8	36 Bluxome St.	San Francisco	1,000	Below	Regular	50%	700	1,400	24 Hours	9a-5p	Either
SFFD	Station 9	2245 Jerrold Ave	San Francisco	3,000	Below	Regular	50%	800		24 Hours	9a-5p	Either
SFFD	Station 13	530 Sansome St.	San Francisco	1,000	Below	Regular	50%	350		24 Hours	9a-5p	Either
SFFD	Station 18	1935 32nd Ave.	San Francisco	1,000	Below	Regular	50%	350	1,400	24 Hours	9a-5p	Either
SFFD	Station 49	2241 Jerrold Ave.	San Francisco	3,000	Below	Regular	50%	1,100	7,000	24 Hours	9a-5p	Either
SFFD	1415 Evans	1415 Evans Ave.	San Francisco	2,000	Above	Regular	50%	1,100		24 Hours	9a-5p	Either

SFFD	BOE Mobile Unit	2501 25th Street	San Francisco	1,000	Above	Regular	50%	700		24 Hours	9a-5p	Either
Public Health	LHH	375 Laguna Honda Blvd.	San Francisco	6,000	Below	Regular				24 Hours	24 Hours	Small Truck Only
Rec and Parks	Lincoln Park	34th Avenue & Clement St.	San Francisco	400	Above	Regular	50%	200		5a-1:30p	M-F	Small Truck Only
Rec and Parks	Harding Park	899 Lake Merced Blvd (& Higuera)	San Francisco	400	Above	Regular	Weekly deliv. regardless	200	4,200	5a-1:30p	M-F	Small Truck Only
Rec and Parks	Sharp Park	2600 Francisco Blvd (Route 1 & Sharp Park Rd)	Pacifica	400	Above	Regular	50%	200	1,200	5a-1:30p	M-F	Small Truck Only
SF Sheriff	CJ3	1 Moreland Drive	San Bruno	1,000	Above	Regular	30%	700	19,000	24 Hours	8a-2:30p	

## 5. Other Requirements.

- A. **Hours of Operation:** Contractor must maintain normal business hours of at least 7:00 A.M. to 5:00 P.M., Monday through Friday throughout the term of the Agreement, and be open at all times during that period. Additionally, Contractor shall supply after-hours contacts in the event of logistics adjustments or other unforeseen circumstances.
- B. **Support:** Contractor shall be responsible for providing technical support and assistance to City through Contractor's own personnel, equipment and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, Contractor shall provide personnel with in-depth technical knowledge of the products Contractor is providing under this Agreement, to answer questions and offer any assistance required by City personnel, during City business hours (7:00 A.M. – 5:00 P.M.).

## **Appendix D**

### **Contractor Performance Metrics**

- A. Performance.** Contractor shall guarantee that it and its staff perform under this contract to the highest level of service. Failure to perform according to this contract will result in a negative performance assessment and the application of a monetary credit in favor of the City each time a negative performance threshold is exceeded, as set forth in Section C below. These negative performance assessments will result from feedback and observations provided by City employees in writing.
- B. Notice.** The City shall notify Contractor in writing when a threshold has been exceeded and when the credit will be applied. Documentation will consist of a brief description of the performance failure incident, the date, and the approximate time of occurrence.
- C. Performance Thresholds and Credits to the City.** The below performance thresholds will be enforced by the City. The City shall deduct an amount equal to the credit to the City when threshold exceeded from any payment due or to become due to the Contractor under this Agreement or any other agreement between the Parties. Credit will be applied no earlier than fourteen (14) days after notice is sent to Contractor.
- D. Non-Material breach.** The remedies of this Appendix D are intended to remedy minor or non-material breaches of the Performance Metrics of this Agreement. This process is independent of the Termination and Default provisions of Article 8, though if failure to perform obligations increases to a level of severity resulting in default or material breach, remedial actions authorized by Article 8 may occur. Credits allocated under this Appendix shall be applied regardless of whether the City provided a notice of default under Article 8 Termination and Default of the Agreement.



<b>Performance Type</b>	<b>Performance Failure</b>	<b>Allowable Negative Performance Threshold during Agreement Term</b>	<b>Credit to the City Upon Contractor Exceeding Allowable Negative Performance Threshold (Credit is due until performance failure has been cured)</b>
Performance - Missed Delivery	Contractor fails to show up to a scheduled delivery appointment unless Contractor submits written proof that such failure is not due to Contractor's conduct.	5	\$50/occurrence
Performance - Late Delivery (After Missed Delivery)	Contractor fails to deliver product within 1 day after missing a scheduled delivery appointment unless Contractor submits written proof that such failure is not due to Contractor's conduct.	8	\$50/day delivery is delayed
Performance - Late Delivery (Same Day)	Contractor fails to deliver product within the designated delivery window of an existing appointment unless Contractor submits written proof that such failure is not due to Contractor's conduct.	8	\$25/occurrence
Performance – Missing Delivery Receipt	Contractor fails to provide a delivery receipt on site or electronically.	10	\$25/occurrence
Invoicing	Contractor fails to accurately bill the City for goods delivered according to contract terms.	10	20% of the corrected invoice value or \$100, whichever is less
Invoicing (Late)	Contractor fails to send an invoice within 7 days of the corresponding delivery date.	10	2% of invoice total, not including taxes
Customer Service	Contractor fails to reply to the City's request for orders, quotes, or other information within 3 business days.	5	\$10/each late day
Performance (Poor Quality Product)	Contractor delivers product that does not adhere to the quality standards set forth in this agreement.	3	\$500 plus all associated costs including, but not limited to, replacement of product or entire product supply, costs to decontaminate tanks, etc.
Performance (Incorrect Product Type)	Contractor delivers incorrect product type to City tank facilities.	3	\$1,000 plus all associated costs including, but not limited to, replacement of tank's entire fuel supply, decontamination of tanks, etc.