

**AGREEMENT WITH PINNACLE PETROLEUM, INC.
FOR GASOLINE FUEL PROCUREMENT AND DELIVERY SERVICES
FOR
PUBLIC WORKS ANNUAL FUEL PROCUREMENT**

This Agreement, made and entered into this day of _____, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and **PINNACLE PETROLEUM, INC.**, a corporation ("CONTRACTOR"), whose address is _____.

RECITALS:

- A. CITY desires certain fuel procurement and delivery services hereinafter described.
- B. CITY desires to engage CONTRACTOR to provide these fuel procurement and delivery services by reason of its qualifications and experience for performing such services and CONTRACTOR has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, IT IS AGREED as follows:

SECTION 1 - SCOPE OF SERVICES

The scope of services to be performed by CONTRACTOR under this Agreement is as described in Exhibit A to this Agreement, which is attached and incorporated by reference.

SECTION 2 - DUTIES OF CONTRACTOR

CONTRACTOR shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONTRACTOR under this Agreement. CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONTRACTOR represents that it is qualified to furnish the services described under this Agreement.

CONTRACTOR shall be responsible for employing or engaging all persons necessary to perform the services of CONTRACTOR.

CONTRACTOR agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

SECTION 3 - DUTIES OF CITY

CITY shall provide pertinent information regarding its requirements for the project.

CITY shall examine documents submitted by CONTRACTOR and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONTRACTOR'S work.

SECTION 4 - TERM

The services to be performed under this Agreement shall commence on July 1, 2020 and be completed on or about June 30, 2021. The CITY and CONTRACTOR, by mutual agreement, may extend the contract one (1) year at a time from expiration of the initial contract term not to exceed four (4) one-year extensions.

SECTION 5 - PAYMENT

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONTRACTOR a fee in an amount of \$_____, pursuant to rates stated in Exhibit B, attached and incorporated by reference.

SECTION 6 - TERMINATION

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement upon receipt of said written notice.

SECTION 7 - OWNERSHIP OF DOCUMENTS

All documents prepared by CONTRACTOR in the performance of this Agreement are and shall be the property of CITY, whether the project for which they are made is executed or not.

SECTION 8 - CONFIDENTIALITY

All reports and documents prepared by CONTRACTOR in connection with the performance of this Agreement are confidential until released by CITY to the public. CONTRACTOR shall not make any such documents or information available to any individual or organization not employed by CONTRACTOR or CITY without the written consent of CITY before any such release.

SECTION 9 - INTEREST OF CONTRACTOR

CONTRACTOR covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

SECTION 10 - CONTRACTOR'S STATUS

It is expressly agreed that in the performance of the services required under this Agreement, CONTRACTOR shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONTRACTOR an agent or employee of CITY while providing services under this Agreement.

SECTION 11 - INDEMNITY

CONTRACTOR agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONTRACTOR's performance of this Agreement, including, but not limited to, any and all claims arising out of a fuel spill, except for those claims arising out of CITY's sole negligence or willful misconduct. CONTRACTOR agrees to defend City, its elected and appointed officials, employees, and agents against any such claims.

SECTION 12 - INSURANCE

Contractor shall procure and maintain for the duration of the contract the insurance specified in Exhibit C to this Agreement.

SECTION 13 - NONASSIGNABILITY

Both parties hereto recognize that this Agreement is for the personal services of CONTRACTOR and cannot be transferred, assigned, or subcontracted by CONTRACTOR without the prior written consent of CITY.

SECTION 14 - RELIANCE UPON SKILL OF CONTRACTOR

It is mutually understood and agreed by and between the parties hereto that CONTRACTOR is skilled in the performance of the work agreed to be done under this Agreement and that CITY relies upon the skill of CONTRACTOR to do and perform the work in the most skillful manner, and CONTRACTOR agrees to thus perform the work. The acceptance of CONTRACTOR's work by CITY does not operate as a release of CONTRACTOR from said obligation.

SECTION 15 - WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

SECTION 16 - COSTS AND ATTORNEY FEES

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this provision that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

SECTION 17 - NON-DISCRIMINATION

CONTRACTOR warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONTRACTOR nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

SECTION 18 - MEDIATION

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

SECTION 19 - LITIGATION

CONTRACTOR shall testify at CITY's request if litigation is brought against CITY in connection with CONTRACTOR's services under this Agreement. Unless the action is brought by CONTRACTOR, or is based upon CONTRACTOR's wrongdoing, CITY shall compensate CONTRACTOR for preparation for testimony, testimony, and travel at CONTRACTOR's standard hourly rates at the time of actual testimony.

SECTION 20 - NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY:

David Fink
City of San Mateo
330 W. 20th Ave
San Mateo, CA 94403

To CONTRACTOR:

Pinnacle Petroleum, Inc.
Attn: _____
<address>
<City, State, Zip>

**SECTION 21 - AGREEMENT CONTAINS ALL
UNDERSTANDINGS; AMENDMENT**

This document represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONTRACTOR.

SECTION 22 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

IN WITNESS WHEREOF, CITY OF SAN MATEO and PINNACLE PETROLEUM, INC. have executed this Agreement the day and year first above written.

CITY OF SAN MATEO

CONTRACTOR

Brad B. Underwood
Public Works Director

<Insert Name>
Its Authorized Agent
<Insert Title>

If a Corporation, can be either 1) President or 2) Vice President plus an additional corporate officer (i.e., Secretary, Treasurer) who shall sign below.

APPROVED AS TO FORM

ADDITIONAL CORPORATE OFFICER
(if necessary per the above)

Gabrielle Whelen
Assistant City Attorney

Name
Title

Attachments:

Exhibit A: Scope of Services
Exhibit B: Payment Rates
Exhibit C: Insurance Requirements

EXHIBIT A SCOPE OF

SERVICES

TERMS OF AGREEMENT: The term of this Agreement will be for one year beginning July 1, 2020. The City of San Mateo and proposer, by mutual agreement, may extend the contract one (1) year at a time from expiration of the initial contract term not to exceed four (4) – 1year extensions.

ESTIMATED QUANTITY: The annual need for unleaded gasoline is approximately 100,000 gallons. The figure given is an estimate for the bidding purposes only and no minimum or maximum of the product is guaranteed.

QUALITY: Unleaded gasoline delivered shall be 87 octane. Proposer shall be liable for any and all damages to facilities (including tank, fuel lines, pumps, and dispensers), vehicles, and fuel in storage, which may occur as the result of contaminated fuel or fuel not in compliance with specification.

DELIVERY LOCATIONS, TANK CAPACITIES, AND DELIVERY QUANTITIES: The City of San Mateo Public Works Department has two tanks accepting unleaded gasoline. The location of the delivery and tank capacities are listed below.

Unleaded Gasoline Delivery: 1 Location, 2 under-ground tanks

Address 1: Public Works Corporation Yard
1949 Pacific Boulevard
San Mateo, CA 94403

Tank Capacities: Two (2) 10,000 gallons under-ground storage tanks.

Delivery Frequency: On call as needed, estimated once per month .

Estimated Monthly Need: 8,600 gallons of 87 octane unleaded gasoline.

Estimated Annual Need: 100,000 gallons of 87 octane unleaded gasoline.

DELIVERY TIME: Fuel shall be delivered to the above listed location and all deliveries shall be supported by a delivery receipt. The delivery of 87 octane unleaded gasoline will be coordinated with the Administrative Technician for the City of San Mateo Public Works Department. The delivery of 87 octane unleaded gasoline will be on an on-call, as-needed basis, requested by the City of San Mateo. The City of San Mateo reserves the right to place additional orders for fuel delivery at any time.

EMERGENCIES: At all times, proposer will strive to meet emergency fuel requirements of the City of San Mateo. During City of San Mateo, county, state or federal declared emergencies, City of San Mateo fuel requirements shall be the proposer's top priority and be made as soon as possible. In rare circumstances, delivery may be requested for the same business day, and proposer will make best possible effort to make the delivery immediately. Fuel shipments of any quantity shall be available seven days a week, including holidays and weekends. If a separate charge applies to same-day delivery fees, the proposer must state so in the attached Unit Price Quotation Form.

FUEL SPILLS: Proposer shall be responsible for any damage, claims, or violations of law caused by any fuel spill during the delivery process. Drivers are to report any spill and the proposer shall pay City of San Mateo for any costs incurred in the cleanup of any spill.

FUTURE FUEL SPECIFICATION CHANGES: During the term of this Agreement, the City of San Mateo may require a change in the specification of 87 octane unleaded gasoline to comply with any federal, state, or local laws governing fuel properties. If such changes are necessary, the City of San Mateo will notify the proposer in writing of the requested change. The proposer shall provide the City of San Mateo with the added cost per gallon of fuel to the price bid for the original Agreement. If City of San Mateo and proposer cannot reach an agreement on the added cost for the requested change, the Agreement may be terminated by either party. Until termination, the reasonable determination of the City of San Mateo as to the cost of the new fuel shall prevail.

EXHIBIT B

PUBLIC WORKS DEPARTMENT CITY OF SAN MATEO

UNIT PRICE QUOTATION FORM UNLEADED GASOLINE PROCUREMENT AND DELIVERY SERVICES

COMPANY NAME _____

DATE _____

COMPANY ADDRESS _____

Before filling out the table below, please be sure to thoroughly understand which costs must be factored into the quoted differential prices, as described in specification #7 of the RFQ. Please contact Cathy Huffington, (650) 522-7366 or chuffington@cityofsanmateo.org for any questions or concerns.

Procurement and Delivery of 87 octane unleaded gasoline,		
Item No.	Description	Quoted Differential Price (from OPIS daily rack average)
1	Procurement & delivery of 87 octane unleaded gasoline to Corporation Yard (1949 Pacific Blvd., San Mateo, CA 94403).	
2	Rushed, same-day procurement & delivery of 87 octane unleaded gasoline to Corporation Yard (1949 Pacific Blvd., San Mateo, CA 94403), <u>if different from Quoted Differential Price listed for Item #1</u>	

COMPANY REPRESENTATIVE

SIGNATURE _____

DATE _____

NAME _____

PHONE _____

TITLE _____

EMAIL _____

EXHIBIT C

INSURANCE REQUIREMENTS

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$2,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Pollution Liability:** applicable to any work being performed pursuant to this Agreement, with a limit of no less than **\$2,000,000** per claim or occurrence and **\$2,000,000** aggregate per policy period of one year.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

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

Additional Insured Status

The City of San Mateo, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Automobile Liability

The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Contractor pursuant to the contract. This coverage may also be provided on the Pollution Liability policy.

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

Waiver of Subrogation

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.