

**PROFESSIONAL SERVICES AGREEMENT
(Fuel Supply and Delivery Services)**

THIS AGREEMENT is made this _____ day of _____, 2024, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **AAA Oil, Inc. dba California Fuels and Lubricants**, herein after referred to as "CONTRACTOR".

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove City Council authorization, dated _____.
2. CITY desires to utilize the services of CONTRACTOR to: Provide and Deliver fuel to the City of Garden Grove for vehicles and equipment to the following locations:
 - a. Municipal Service Center located at 13802 Newhope Street, Garden Grove, CA 92843
 - b. Garden Grove Police Department located at 11301 Acacia Parkway, Garden Grove, CA 92843
3. The services and prices provided by Contractor to City are in accordance with the services, equipment and the prices provided by Contractor in its successful public bid to the City of Santa Ana. Contractor agrees to honor the same pricing schedule that was originally submitted to the City of Santa Ana for the services outlined in this Agreement, which was adopted by the City of Santa Ana City Council on December 20, 2022 and currently expires on December 19, 2025. A copy of the City of Santa Ana's agreement and RFP No. 22-110, is attached as Attachment A and incorporated herein by reference.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination**. The initial term of the agreement shall be from full execution through June 30, 2024, with an option to extend said agreement an additional three (3) fiscal years, for a total performance period of four (4) fiscal years. Option years shall be exercised one (1) fiscal year at a time, at the sole option of the CITY. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONTRACTOR for work performed to date in accordance with the City of Los Angeles Agreement which is attached as Attachment A and is hereby incorporated by reference. Contractor is required to present evidence to support performed work.

2. **Services to be Provided.** The services to be performed and equipment to be provided by CONTRACTOR shall consist of Provide and Deliver fuel to the City of Garden Grove for vehicles and equipment in accordance with the services set forth in the City of Santa Ana contract and RFP No. 22-110, which is attached hereto as Attachment A and incorporated herein by reference.
3. **Compensation.** CONTRACTOR shall be compensated as follows:
 - 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) amount of One Million Dollars (\$1,000,000.00), per fiscal year, payable in arrears and in accordance with proposal in Attachment "A". Pricing is to be based on the Oil Price Information Service (OPIS) Gasoline & Diesel Rack Average Daily AM prices benchmark plus the discount/adder adjustments listed in the schedule included in Attachment "A" based on the "per gallon" amount of fuel ordered and delivered.
 - 3.2 **Payment.** For fuel delivered under this Agreement, payment shall be made per invoice for fuel delivered.
 - 3.3 **Records of Expenses.** Reserved.
 - 3.4 **Termination.** CITY and CONTRACTOR shall have the right to terminate this agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.
4. **Insurance requirements.**
 - 4.1 **COMMENCEMENT OF WORK.** CONTRACTOR shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance. The insurers shall waive their rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.
 - 4.2 **WORKERS COMPENSATION INSURANCE.** During the duration of this Agreement, CONTRACTOR and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable. The insurer shall waive its rights of subrogation against the CITY, its officers, officials, agents, employees, and volunteers.

4.3 INSURANCE AMOUNTS. CONTRACTOR shall maintain the following insurance for the duration of this Agreement:

- (a) Commercial general liability in the amount of \$5,000,000 per occurrence; coverage to include XCU (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY. Endorsements for primary and non-contributory.
- (b) Automobile liability in the amount of \$5,000,000 combined single limit; Policy must be endorsed to delete pollution exclusion. (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (c) Automobile pollution in an amount of \$5,000,000 per occurrence; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (d) Excess liability, following form, coverage shall be provided for any underlying policy that does not meet the insurance requirements set forth herein (claims made and modified occurrence policies are not acceptable). Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-Class VII or better, as approved by the CITY.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to city's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the CONTRACTOR. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

MCS 90 Endorsement for the policy under section 4.3 (c) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds. CONTRACTOR shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (d) shall designate CITY, its officers, officials, employees, agents, and volunteers as additional insureds under the excess liability policy. CONTRACTOR shall provide to CITY proof of insurance stating the excess liability policy follows form, additional insured endorsement forms, and the schedule of underlying policies with policy numbers that conform to CITY's requirements, as approved by the CITY. Information for the excess policy only needs to be provided if the underlying policies do not meet the policy limits set forth herein.

For any claims related to this Agreement, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers shall be in excess of the CONTRACTOR's insurance and shall not contribute with it.

If CONTRACTOR maintains higher insurance limits than the minimums shown above, CONTRACTOR shall provide coverage for the higher insurance limits otherwise maintained by the CONTRACTOR.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable to CONTRACTOR in the event of any default or breach by CITY, or for any amount which may become due to CONTRACTOR.
6. **Non-Discrimination.** CONTRACTOR covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONTRACTOR shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONTRACTOR shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

9. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
- a. (Address of Contractor)
AAA Oil, Inc. dba California Fuels and Lubricants
 Attention: Efrain Davalos
 11621 Westminster Avenue
 Garden Grove, CA 92843
 - b. (Address of CITY) (with a copy to):
 City of Garden Grove Garden Grove City Attorney
 11222 Acacia Parkway 11222 Acacia Parkway
 Garden Grove, CA 92840 Garden Grove, CA 92840
10. **CONTRACTOR'S PROPOSAL.** Contractor shall be bound by all the terms, conditions and specifications set forth in the Port of Los Angeles Agreement attached as Attachment A hereto. In the event of any inconsistency between the terms of the Port of Los Angeles Agreement and the Agreement, the Agreement shall govern.
11. **Licenses, Permits, and Fees.** At its sole expense, CONTRACTOR shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.
12. **Familiarity with Work.** By executing this Agreement, CONTRACTOR warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Contractor discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONTRACTOR'S risk, until written instructions are received from CITY.
13. **Time of Essence.** Time is of the essence in the performance of this Agreement.
14. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONTRACTOR, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONTRACTOR shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONTRACTOR is permitted to subcontract any part of this Agreement, CONTRACTOR shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONTRACTOR.

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

"CONTRACTOR"
AAA Oil, Inc. dba California Fuels and Lubricants

By: _____

Name: _____

Title: _____

Date: _____

Tax ID No. _____

Contractor's License: _____

Expiration Date: _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

Garden Grove City Attorney

Date