

**AMENDMENT NO. 1 OF AGREEMENT BETWEEN
COUNTY OF MONTEREY and
TORO PETROLEUM CORPORATION, dba TORO CORPORATION**

THIS AMENDMENT NO. 1 to the Standard Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, “County”) and Toro Petroleum Corporation, dba Toro Corporation (hereinafter, “CONTRACTOR”) is hereby entered into between the County and the CONTRACTOR (collectively, the County and CONTRACTOR are referred to as the “Parties”).

WHEREAS, on October 25, 2022, the Board of Supervisors approved Agreement No. A-16073 which CONTRACTOR entered into with County on October 31, 2022, (hereinafter, “Agreement”); with a term of October 18, 2022, through October 17, 2027, and “not to exceed” amount of \$3,000,000;

WHEREAS, it is necessary to increase the Agreement’s not to exceed amount by \$5,000,000, resulting in a total not to exceed amount of \$8,000,000 to allow CONTRACTOR to continue to provide the services required by the County;

WHEREAS, it is necessary to update provisions to the Agreement to allow CONTRACTOR to continue to provide the services required by the County; and

WHEREAS the Parties wish to amend the Agreement to increase the not to exceed amount by \$5,000,000 and update provisions to the Agreement to allow CONTRACTOR to continue to provide services identified in the Agreement.

NOW THEREFORE, the Parties agree to amend the Agreement as follows:

1. Amend the second sentence of Section 2.0, “Payment Provisions,” to read as follows:

The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum “\$8,000,000.

2. Amend Section 9.0, “Insurance Requirements,” to read as follows and hereby incorporate the new language into the Agreement:

9.01 **Evidence of Coverage:** Prior to the commencement of this Agreement, the Contractor shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

The verification of coverage shall be sent to the County’s Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a “Notice to Proceed” with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

- 9.02 **Qualifying Insurers:** All coverages, except surety, shall be issued by companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A-VII, according to the current A.M. Best’s Rating Guide or a company of equal financial stability that is approved by the County’s Purchasing Agent.

- 9.03 **Insurance Coverage Requirements:** Without limiting CONTRACTOR’s duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability.

Commercial General Liability Insurance: including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence, and \$2,000,000 in aggregate.
(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined in blue ink. All proposed modifications are subject to County approval).

Auto Liability Coverage: must include motor vehicles, including scheduled, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval).

Workers’ Compensation Insurance: if CONTRACTOR employes others in the performance of this Agreement, in accordance with California Labor Code Section 3700 and with Employer Liability limit not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
(Note: any proposed modifications to these workers’ compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval).

Professional Liability Insurance: if required for the professional services being provided (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the CONTRACTOR shall upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same

liability limits Any such tail coverage shall continue for at least three years following the expiration of earlier termination of this Agreement.

(Note: Professional liability insurance coverage is required if the contractor is providing a professional service regulated by the state. Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctor, certified public accountants, lawyers, etc. However, other professional Contractors, such as computer or software designers, technology services, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with your risk or contract manager.)

If the contractor maintains a broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the contractor.

9.04 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the county and issued and executed by admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Additional Insured Status:

The County of Monterey, its officers, officials, employees, and volunteers are to be covered as additional insureds on the commercial general liability 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 shall 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 if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, OR CG 20 38; and CG 20 37 if a later edition is used).

Primary Coverage:

For any claims related to this contract, the CONTRACTOR'S insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the

County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Waiver of Subrogation:

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

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

3. Amend the first sentence of the first paragraph of Section B.1 – “COMPENSATION/PAYMENT” of Exhibit A so that it reads as follows:

County shall pay an amount not to exceed \$8,000,000 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

4. Except as provided herein, all other terms and conditions of the Agreement as amended by this Amendment No. 1, including all Exhibits thereto, remain unchanged and in full force.
5. This Amendment No. 1 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
6. The recitals to this Amendment No. 1 are incorporated into the Agreement and this Amendment No. 1.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: _____

**TORO PETROLEUM CORPORATION,
dba Toro Petroleum Corporation**

Contracts/Purchasing Officer

Contractor's Business Name

Date: _____

Signed by:
By: Jon Bohlman
223078032720469
(Signature of Chair, President or Vice President)

**Approved as to Form
Office of the County Counsel
Susan K. Blicht, County Counsel**

Its: John Bohlman, President
(Print Name and Title)

Signed by:
By: Michael Whilden
0F98C5BE9B6F476... Michael J. Whilden
Deputy County Counsel

Date: 9/17/2024 | 10:21 AM PDT

Date: 9/20/2024 | 2:57 PM PDT

Signed by:
By: Mark Elliott
D70EB4715B3D46A
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Its: Mark Elliott, CFO
(Print Name and Title)

Approved as to Fiscal Provisions

DocuSigned by:
By: Patricia Ruiz
E79EF64E57454F6... Auditor/Controller

Date: 9/19/2024 | 10:00 AM PDT

Date: _____

**Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Management
Susan K. Blicht, County Counsel**

By: _____

Name: _____

Title: _____

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

COUNTY OF MONTEREY STANDARD AGREEMENT

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter “County”) and:

Toro Petroleum Corporation, dba Toro Petroleum Corp.

_____ (hereinafter “CONTRACTOR”).

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide: Fuel product (unleaded gasoline, super unleaded, ultra-low sulfur non-dyed diesel and red dye diesel), delivery and services for the County of Monterey, Fleet Management as specified in Request for Proposal (RFP) #10681.

2.0 PAYMENT PROVISIONS:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of: **\$3,000,000.00**

3.0 TERM OF AGREEMENT:

3.01 The term of this Agreement is from October 18, 2022 to October 17, 2027, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS:

The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

Exhibit B Other: N/A

5.0 PERFORMANCE STANDARDS:

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS:

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION:

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. “Good cause” includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

7.03 The County’s payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County’s purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION:

CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys’ fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR’s performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. “CONTRACTOR’s performance” includes CONTRACTOR’s action or inaction and the action or inaction of CONTRACTOR’s officers, employees, agents and subcontractors.

9.0 INSURANCE REQUIREMENTS:

9.01 **Evidence of Coverage:** Prior to commencement of this Agreement, the Contractor shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County’s Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a “Notice to Proceed” with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 **Qualifying Insurers:** All coverage’s, except surety, shall be issued by companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A- VII, according to the current Best’s Key Rating Guide or a company of equal financial stability that is approved by the County’s Purchasing Manager.

9.03 **Insurance Coverage Requirements:** Without limiting CONTRACTOR’s duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance: including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Requestor must check the appropriate Automobile Insurance Threshold:

Requestor must check the appropriate box.

Agreement Under \$100,000 Business Automobile Liability Insurance: covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Agreement Over \$100,000 Business Automobile Liability Insurance: covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers’ Compensation Insurance: if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer’s Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers’ compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance: if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail

coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 **Other Requirements:**

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, **and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance.** The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of

Toro Petroleum Corporation, dba Toro
Petroleum Corp.
10/18/2022- 10/17/2027
NTE 3,000,000.00

this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY:

- 10.1 **Confidentiality:** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR’s obligations under this Agreement.
- 10.2 **County Records:** When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.3 **Maintenance of Records:** CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.4 **Access to and Audit of Records:** The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.5 **Royalties and Inventions:** County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION:

- 11.1 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sexual orientation, or any other characteristic set forth in California Government code § 12940(a), either in CONTRACTOR’s employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and

treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS:

If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 COMPLIANCE WITH APPLICABLE LAWS:

13.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state, and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT as well as any privacy laws including, if applicable, HIPAA. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices require by law in the performance of the Services.

13.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.

13.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations, and guidelines that are in force at the time such documentation is prepared.

14.0 INDEPENDENT CONTRACTOR:

In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is always acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

15.0 NOTICES:

Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR’S contract administrators at the addresses listed below:

Debra R. Wilson, PhD CONTRACTS AND PURCHASING OFFICER	Toro Petroleum Corporation, dba Toro Petroleum Corp. Jon Bohlman, President
1488 Schilling Place, Salinas, CA 93901	308 West Market St., Salinas, CA 93901
(831) 755-4995 Phone:	(831) 206-2481 Phone:

16.0 MISCELLANEOUS PROVISIONS.

- 16.01 **Conflict of Interest:** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 16.02 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 16.03 **Waiver:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 16.04 **Contractor:** The term “CONTRACTOR” as used in this Agreement includes CONTRACTOR’s officers, agents, and employees acting on CONTRACTOR’s behalf in the performance of this Agreement.
- 16.05 **Disputes:** CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 16.06 **Assignment and Subcontracting:** The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

- 16.07 **Successors and Assigns:** This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 16.08 **Headings:** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 16.09 **Time is of the Essence:** Time is of the essence in each and all of the provisions of this Agreement.
- 16.10 **Governing Law:** This Agreement shall be governed by and interpreted under the laws of the State of California; venue shall be Monterey County.
- 16.11 **Non-exclusive Agreement:** This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 16.12 **Construction of Agreement:** The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 16.13 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 16.14 **Authority:** Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 16.15 **Integration:** This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 16.16 **Interpretation of Conflicting Provisions:** In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

17.0 **CONSENT TO USE OF ELECTRONIC SIGNATURES.**

- 17.1 The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C. Section 7001 et seq.; California Government Code Section 16.5; and, California Civil Code Section 1633.1 et. seq. Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and any and all Exhibits to this

Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF).

17.2 Counterparts.

The parties to this Agreement understand and agree that this Agreement can be executed in two (2) or more counterparts and transmitted electronically via facsimile transmission or by delivery of a scanned counterpart in portable document format (PDF) via email transmittal.

17.3 Form: Delivery by E-Mail or Facsimile.

Executed counterparts of this Agreement may be delivered by facsimile transmission or by delivery of a scanned counterpart in portable document format (PDF) by e-mail transmittal, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart or counterparts had been delivered to the other party in person.

***** THIS SECTION INTENTIONALLY LEFT BLANK *****

18.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: Debra R. Wilson
Date: 10/31/2022 | 1:56 PM PDT
By: Department Head (if applicable)
Date:

Toro Petroleum Corporation, dba Toro Petroleum Corp.
Contractor/Business Name *
By: Jon Bohlman
Date: 10/3/2022 | 5:02 PM PDT

Approved as to Form
Office of the County Counsel
Leslie J. Girard, County Counsel
By: Michael J. Whilden
Date: 10/7/2022 | 2:44 PM PDT

By: Mark Elliott
Date: 10/5/2022 | 11:53 AM PDT

Approved as to Fiscal Provisions
By: Jennifer Forsyth
Date: 10/7/2022 | 4:31 PM PDT

Approved as to Liability Provisions
Office of the County Counsel-Risk Manager
Leslie J. Girard, County Counsel-Risk Manager
By: Risk Management
Date:

County Board of Supervisors' Agreement No. approved on

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

1 Approval by County Counsel is required
2 Approval by Auditor-Controller is required
3 Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

Toro Petroleum Corporation, dba Toro Petroleum Corp.
Agreement ID: 10/18/2022- 10/17/2027
NTE 3,000,000.00

EXHIBIT A

**To Agreement by and between
County of Monterey, hereinafter referred to as “County”**

AND

**Toro Petroleum Corporation, dba Toro Petroleum Corp hereinafter referred to as
“CONTRACTOR”**

Scope of Services / Payment Provisions

A. SCOPE OF SERVICES

- A.1** CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
- 1.1 Fuel shall be delivered to the County no longer than 24 hours from the placement of the order, including Emergency Deliveries as described in Section A.1.10 below.
 - 1.2 CONTRACTOR shall provide the following fuels to County as requested: Unleaded, Super unleaded, Ultra-low sulfur non-dyed diesel (15ppm), Red Dye Diesel.
 - 1.3 CONTRACTOR shall deliver fuel by filling each fuel tank site to the tank’s maximum known capacity, unless notified by the County otherwise on a case-by-case basis.
 - 1.4 County does not guarantee full truck and trailer load orders.
 - 1.5 County may mix the products for delivery to one or more locations.
 - 1.6 CONTRACTOR shall provide Wet Hose Refueling services as requested by County for vehicles including but not limited to refuse trucks, front-end loaders, side loaders, rollers, tractors, and other specialized equipment.
 - 1.7 County may add new fueling sites throughout the duration of this Agreement.
 - 1.8 CONTRACTOR shall provide County authorized personnel with quarterly fuel reports to reflect actual County deliveries, usage, demand, etc.
 - 1.9 CONTRACTOR shall provide attending County employee with a delivery receipt, which shall include, at a minimum, the following required fields:
 - 1.9.1 County Blanket Purchase Order Number
 - 1.9.2 Bill of Lading Number
 - 1.9.3 Product Description
 - 1.9.4 Gallons delivered

- 1.9.5 Originating source of fuel by refinery
- 1.9.6 Cost per gallon

- 1.10 EMERGENCY PRODUCT DELIVERY. CONTRACTOR shall provide priority delivery to County, and in the event of unforeseen fuel shortages CONTRACTOR agrees that the County will be guaranteed a first delivery priority of fuel to maintain all County emergency services vehicles (Sheriff, Fire Protection, and Public Works vehicles), in unrestricted operational status.

- 1.11 FUEL QUALITY. Fuel products shall meet all applicable ASTM and ASTM D439 standards for quality.
 - 1.11.1 All fuels will be a “Branded” product of the refinery’s first “Best” quality, will contain all additives as advertised in the refinery’s product specifications sheet, and will meet or exceed the County’s minimum specifications as described in this Agreement. All delivered products shall be consistent with the manufacturer and product bid through the effective period of the contract.

- 1.12 SPILLS OR DAMAGES. CONTRACTOR shall comply with all local, state and federal laws and shall take all reasonable precautions to prevent any hazardous materials from entering sewerage or storm drainage systems.
 - 1.12.1 CONTRACTOR shall perform adequate cleaning and containment of spills.
 - 1.12.2 CONTRACTOR shall be solely and fully responsible for the immediate reporting of known hazardous material releases to the County.
 - 1.12.3 CONTRACTOR shall be liable for all damages to facilities, including tank, fuel lines, pumps, dispensers, fuel station island, vehicles, fuel in storage, and storm water drains leading to waterways, which may occur as the result of contaminated fuel or fuel not in compliance with specifications.

- 1.13 CONTRACTOR shall ensure all fuel tank fill sump caps are padlocked immediately after completion of fuel deliveries. CONTRACTORS shall immediately notify the COUNTY should they discover the padlocks vandalized.

- 1.14 CONTRACTOR shall be liable for any and all damages to facilities such as the fuel station island, dispensers, bollards, and curbs which may occur as the result of a collision damage by the CONTRACTOR and/or fire at the fuel site.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

County shall pay an amount not to exceed \$1,000,000 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope

of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

CONTRACTOR shall utilize the Oil Price Information Service (OPIS) “Gross Unbranded Low Rack with CAR Cost”, West Bay Area Benchmark Index as posted by OPIS at 10:00 a.m. EST Monday of each week. In the event that Gross Unbranded Low Rack with CAR cost prices are unavailable for a specific fuel, CONTRACTOR shall use the Gross Branded Low Rack with Car Cost prices for that specific fuel.

CONTRACTOR shall use the following pricing sheet for all fuel delivery pricing:

NORTH MONTEREY COUNTY					
FUEL TANK LOCATIONS	TANK CAPACITY	FUEL TYPE	MFG. BY	VENDORS MARKUP PER GALLON	FREIGHT CHARGES PER GALLON
Laguna Seca Recreation Area <i>(AST Ranger's Office)</i> 1021 Hwy 68, Salinas, CA 93908	1,000	Unleaded	Phillips 66	0.01	0.12875
	500	Diesel	Phillips 66	0.01	0.14925
Laguna Seca Recreation Area <i>(UST Raceway)</i>	4,000	Premium Unleaded	Phillips 66	0.01	0.12875
Laguna Seca Recreation Area <i>(AST)</i> 1021 Hwy 68, Salinas, CA 93908	1,000	Red Dye Diesel	Phillips 66	0.01	0.14925
Monterey Courthouse 1200 Aguajito Road Monterey, CA	1,000	Unleaded (AST)	Phillips 66	0.01	0.1420
	500	(UST) Diesel	Phillips 66	0.01	0.1650
Royal Oaks Park 537 Maher Road, Watsonville, CA 95076	750	Unleaded	Phillips 66	0.01	0.12275
	250	Diesel	Phillips 66	0.01	0.1420
Laurel Yard 855 E. Laurel Drive Salinas, CA 93905	15,000	Unleaded	Phillips 66	0.01	0.0515
	5,000	Diesel	Phillips 66	0.01	0.0597
San Miguel Yard 1171 San Miguel Canyon Rd., Salinas, CA	1,000	Unleaded	Phillips 66	0.01	0.13525
	1,000	Diesel	Phillips 66	0.01	0.15675
Public Safety Bldg. - Sheriff's Office <i>(UST Emergency Generator)</i> 1414 Natividad Road, Salinas, CA 93906	10,000	Diesel	Phillips 66	0.01	0.0597
Toro Park 501 Monterey-Salinas Hwy, Salinas, CA 93908	750	Unleaded	Phillips 66	0.01	0.13525
	250	Diesel	Phillips 66	0.01	0.15675

SOUTH MONTEREY COUNTY					
FUEL TANK LOCATIONS	TANK CAPACITY	FUEL TYPE	MFG. BY	VENDORS MARKUP PER GALLON	FREIGHT CHARGES PER GALLON
Greenfield Yard 41801 Elm Ave., Greenfield, CA 93927	1,000	Unleaded	Phillips 66	0.01	0.17575
	1,000	Diesel	Phillips 66	0.01	0.2035
Lake San Antonio North Shore 2091 New Pleyto Rd., Bradley, CA 93426	1,500	Unleaded	Phillips 66	0.01	0.23575
	1,500	Diesel	Phillips 66	0.01	0.27375
Lake San Antonio South Shore (<i>UST</i>) 2610 San Antonio Road, Bradley, CA 93426	4,000	Unleaded	Phillips 66	0.01	0.24875
	2,000	Diesel	Phillips 66	0.01	0.28875
San Ardo Yard 62544 Main Street, San Ardo CA 93450	1,000	Unleaded	Phillips 66	0.01	0.2230
	1,000	Diesel	Phillips 66	0.01	0.2590
San Lorenzo Park 1160 Broadway King City, CA 93930	5,000	Unleaded	Phillips 66	0.01	0.1950
	500	Red Dye Diesel	Phillips 66	0.01	0.22575

B.2 CONTRACTORS BILLING PROCEDURES

CONTRACTORS must submit an invoice within one (1) hour of a completed fuel delivery.

For bulk fuel delivery, payment shall be made for quantities actually delivered and accepted, whether greater or less than ordered amounts. Invoices shall detail the date and time of delivery, location of delivery, type of fuel, number of gallons delivered, unit price or cost per gallon, freight charges, and all taxes and fees.

Contractor shall submit, with each invoice, a copy of the first applicable AM OPIS West Bay Area price sheet for the week of delivery.

County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.