

**MARTINEZ REFINING COMPANY**  
November 24-25, 2022  
Spent Catalyst Release to the  
Martinez Community  
Third-Party Root Cause Analysis Incident Investigation  
Request for Proposal

**BACKGROUND**

The Martinez Refining Company LLC part of the PBF Energy Group hereinafter referred to as the Martinez Refining Company (MRC) released approximately 20-24 tons of particulate matter, referred to as spent catalyst, from their Fluid Catalytic Cracker Unit (CCU) into the Martinez community between November 24-25, 2022. MRC did not notify any emergency responders of the release. Contra Costa Health (CCH) Hazardous Materials staff discovered the release through social media posts and physical evidence of the white powder covering horizontal surfaces on resident's vehicles and trash cans within Martinez. Samples were collected from the community as well as from the refinery and analyzed and confirmed the spent catalyst contained elevated levels of metals, namely alumina, nickel, and vanadium. On December 15, 2022, CCHHMP identified this incident met the criteria for a CWS Level 2 or higher incident and as a result is a Major Chemical Accident or Release (MCAR). No notification or warning was made to the community during the event. A third-party independent root cause analysis incident investigation is being commissioned to better understand the cause of the discharge.

An Oversight Committee was formed with representatives from the following:

- Hazardous Materials Staff (Chair)
- City of Martinez Representative
- City of Benicia Representative
- Five local community members
- MRC representative
- United Steel Worker representative working at MRC

Nicole Heath, Acting Director of Hazardous Materials Programs serves as the Chair of the Oversight Committee.

**SUCCESSFUL CONSULTANT DETERMINATION**

The Oversight Committee has developed a scope of work for this incident investigation review that is included in Attachment 1. The Oversight Committee will select two companies from submitted proposals for a follow-up interview that will be conducted virtually. After the completion of the interview process, the Oversight Committee will select the successful bidder. The determination of the successful bidder will be based on the experience the consultant has in performing this type of evaluation/review, the people who will be working on the project and their experience in performing such an

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evaluation/review, the work plan that is submitted with the proposal, references that are submitted (see below), and the overall cost for the evaluation.

- Representative list of former clients to eliminate conflict of interest for related work performed
- Client names-may be contacted for references
- Facility/facilities where work was performed
  - Client contact information
  - Facility contact information
- Work the consultant has done for Martinez Refining Company or PBF Energy Group during the last three years including where this work was done and what work was performed
- Example copy of a final root cause analysis report (preferably from a large refinery or chemical facility)
- Demonstrated focus on Process Safety from previous work experiences

#### **PROPOSAL INFORMATION**

MRC representatives could be made available for interview if deemed necessary. The proposal that is submitted should include the following information:

- A work plan to address the scope of work
- The company's experience in performing Root Cause Analysis Incident Investigations that includes management systems, and human factors (*please consult the Safety Program Guidance document on [CCHHealth.org](http://CCHHealth.org) for human factors considerations*)
- General breakdown of company client profile (last three years) in percentage of revenue/time
- The people who will be performing the evaluation, their relevant experience, and the person who will be leading the evaluation
- A tentative schedule for the amount of time that will be required and cost for the evaluation, including the following:
  - Cost for performing the Root Cause Analysis Incident Investigation
  - Cost for report preparation
  - Estimated travel expenses
  - Payment plan

#### **WORK PRODUCT**

The deliverables for this project shall include a draft, modified draft and final report for the root cause analysis of the incident. The final evaluation report should be written in a manner that is understandable to the public to allow for meaningful participation. The proposal shall show the costs for on-site work and report preparation. The makeup of the deliverables shall include the following:

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- The draft report for the investigation should include the following:
  - Table of Contents
  - Executive Summary
  - Introduction
    - Objectives
    - Report Format
    - Description of the incident, including on-site and off-site effects
    - Brief description of the process involved
  - Scope and Approach
  - Facts, including a timeline of events
  - Evaluation of causes of the incident
    - Management Systems
    - Human Factors
  - Recommendations for MRC, CCH, others
    - Suggested priority for implementing recommendations
  - Action Plan
    - Includes evaluation of MRC's action plan associated with their own investigation
  - Appendix
    - Scope of Work
    - Investigation Team Makeup
    - Discussion on wet gas scrubbers vs electrostatic precipitators functionality during process startup application in fluid catalytic cracking service
    - Glossary: recognizing that the document will be in the public domain with non-technical people reading it
  
- The final report for the investigation should include the draft report and the following:
  - Conclusions
    - Comments from the Oversight Committee
    - Response to the comments from Oversight Committee
    - Comments from the public
    - Response to public comments
    - Glossary

**REFINERY BACKGROUND INFORMATION**

The Martinez Refining Company has the capacity to refine approximately 157,000 barrels of crude oil per day; has approximately 700 employees, including management, staff, maintenance, and operating personnel; has approximately 200 persons on-site performing contract work; has over 27 process units; and covers approximately 880 acres.

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**ATTACHMENTS**

Attachment 1 includes the Scope of Work for the independent Root Cause Analysis Investigation.

Attachment 2 includes the Contra Costa County's contract General Conditions. Information related to third-party evaluations can be found within Section 450-8.016(c) of the Contra Costa County [Industrial Safety Ordinance](#). Additional information and guidance related to Contra Costa County safety program are located on the county [website](#).

**AGENCY MANAGEMENT**

The project manager for the third-party root cause analysis investigation is Nicole Heath or designee, Michael Dossey, Sam Calvert, and David LeCount will also be staff involved with the project. All members work for Contra Costa Health Hazardous Materials Program. The successful bidder will be issued a contract with Contra Costa Health. The Contra Costa County Board of Supervisors will approve the contract. An electronic copy and fifteen hard copies of draft, modified draft and final reports will be needed.

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ATTACHMENT 1  
SCOPE OF WORK

Independent Root Cause Analysis Incident Investigation of the  
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**STATEMENT OF SCOPE**

**OBJECTIVE**

The objective of this project is to conduct an independent Root Cause Analysis (RCA) Incident Investigation of the November 24-25, 2022 Martinez Refining Company (MRC) Spent Catalyst Release incident. The purpose of the RCA investigation and report is to adequately address any gaps in the safety program and management practices at MRC.

**BACKGROUND**

MRC released approximately 20-24 tons of particulate matter, referred to as spent catalyst, from their Fluid Catalytic Cracker Unit (CCU) into the Martinez community between November 24-25, 2022. MRC did not notify any emergency responders or the community of the release. On December 15, 2022, CCHHMP identified this incident met the criteria for a CWS Level 2 or higher incident and as a result is a Major Chemical Accident or Release (MCAR). Level 2 incidents typically involve immediate public health advisory messages issued to the affected community advising those with respiratory sensitivities to use caution if outdoors.

In response, a third-party independent RCA investigation of this incident is being commissioned by Contra Costa Health (CCH) under the direction of the Board of Supervisors' Industrial Safety Ordinance/Community Warning System Ad Hoc Committee. The third-party independent Root Cause Analysis Investigation will provide transparency of the investigation to the agency and the community and recommendations to address the underlying causes of this incident.

**REQUIREMENTS**

The successful candidate should be experienced in performing RCA investigations in refinery or chemical facilities – including their operations. The successful candidate must have a broad understanding of management systems and human factors considerations for refinery operations. The successful candidate shall use an RCA method that is recommended by the Center for Chemical Process Safety (CCPS) or one reviewed by CCH for substantial equivalency.

**SCOPE OF WORK**

- A. The successful candidate will be conducting an independent third-party root cause analysis incident investigation associated with the catalyst release. The Martinez Refining Company (MRC) will cooperate and provide access to the accident site and directly related facilities such as control rooms, physical evidence and where practicable the inspection of equipment. MRC will also provide pertinent documentation and allow independent interviews of select employees. Any MRC employees interviewed are subject to all rights of MRC and employees to be represented by legal counsel and/or management and union representatives during such interviews.

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- B. The successful candidate will conduct a root cause analysis incident investigation and develop a report that includes an incident timeline, summary of causes (including root and contributing causes), list of recommendations, and an action plan. The successful candidate will develop an action plan to address the findings and recommendations in the report. The action plan will be communicated to MRC for implementation upon completion of the final report. The successful candidate will also review the recommendations developed by MRC from their own investigation and incorporate that in the action plan. The action plan will include the actions that will be taken, the schedule to complete these actions, and milestones to demonstrate progress on the action plan.
- C. The successful candidate will develop a draft, modified draft and final reports. See Work Product section under the Request for Proposal (RFP) for report content.
- D. The successful candidate will use appropriate protective equipment/clothing when inspecting equipment or accessing areas within MRC that is typical of a petroleum refinery and as required by MRC.
- E. The successful candidate must enter into a contract with Contra Costa County.
- F. An Oversight Committee has been developed that will oversee the investigative process.
  - 1. The Oversight Committee will review the RFPs submitted and select the successful contractor company to conduct the investigation. This process will include virtual interviews of the top candidates.
  - 2. The successful candidate will conduct the root cause analysis incident investigation and develop a draft of the final report and provide the report to the Oversight Committee along with a presentation. See RFP for report content. It is anticipated that this presentation will be one virtual meeting. The Oversight Committee will have the opportunity during this meeting to ask questions and give suggestions on the draft report.
  - 3. CCH Hazardous Materials Programs staff will review the draft report and relay any comments that they may have to the Oversight Committee. CCH Hazardous Materials Programs staff will also relay any comments to the contractor and MRC regarding the action plan. The contractor will work with the Hazardous Materials Programs staff and MRC as necessary to see if any changes should be made in the action plan based on the comments.
  - 4. The draft of the final report of the root cause analysis incident investigation will be modified to address comments from the Oversight Committee and resubmitted to the Oversight Committee.
- G. When the modified draft of the final report of the root cause analysis incident investigation has been accepted by the Oversight Committee, a 45-day public comment period will take place.

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1. During the 45-day public comment period the successful candidate will present their modified draft of the final report of the root cause analysis incident investigation to the general public. It is anticipated that this will be one virtual meeting. The public meeting will be an opportunity for the successful candidate to listen to the public's concerns and consider making changes in the report. The successful candidate shall respond to all written comments and comments that are raised in the public meeting.
  2. The modified draft of the final report of the root cause analysis incident investigation will be modified again by the successful candidate to include responses to public comments. The successful candidate will provide these responses to the Oversight Committee for review and comment and then will prepare a final report.
- H. The successful candidate will present the final report of the root cause analysis incident investigation to the Contra Costa County Board of Supervisors, and separately, to the Martinez City Council. It is anticipated these two meetings will be in-person. See RFP for report content.
- I. The successful candidate may be granted access to or may receive business sensitive and/or confidential information from MRC and may need to enter into a confidentiality agreement or non-disclosure agreement with MRC. Any such material collected as part of this contract must be treated as business sensitive and/or confidential information. No business sensitive or confidential information will be included in any draft, modified draft or final report prepared by the successful candidate, nor shared in any manner with the public, CCH or the Oversight Committee.

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ATTACHMENT 2

CONTRA COSTA COUNTY  
CONTRACT GENERAL CONDITIONS

**GENERAL CONDITIONS**  
**(Purchase of Services - Long Form)**

1. **Compliance with Law.** Contractor is subject to and must comply with all applicable federal, state, and local laws and regulations with respect to its performance under this Contract, including but not limited to, licensing, employment, and purchasing practices; and wages, hours, and conditions of employment, including nondiscrimination.
2. **Inspection.** Contractor's performance, place of business, and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the County, the State of California, and the United States Government.
3. **Records.** Contractor must keep and make available for inspection and copying by authorized representatives of the County, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the County.
  - a. **Retention of Records.** Contractor must retain all documents pertaining to this Contract for five years from the date of submission of Contractor's final payment demand or final Cost Report; for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for this Contract's funding period. Upon request, Contractor must make these records available to authorized representatives of the County, the State of California, and the United States Government.
  - b. **Access to Books and Records of Contractor, Subcontractor.** Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor must, upon written request and until the expiration of five years after the furnishing of services pursuant to this Contract, make available to the County, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Contract and books, documents, and records of Contractor necessary to certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Contract through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract must contain a clause to the effect that upon written request and until the expiration of five years after the furnishing of services pursuant to such subcontract, the subcontractor must make available to the County, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of the subcontractor necessary to verify the nature and extent of all costs and charges thereunder.

This provision is in addition to any and all other terms regarding the maintenance or retention of records under this Contract and is binding on the heirs, successors, assigns and representatives of Contractor.

4. **Reporting Requirements.** Pursuant to Government Code Section 7550, Contractor must include in all documents and written reports completed and submitted to County in accordance with this Contract, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section applies only if the Payment Limit of this Contract exceeds \$5,000.

**GENERAL CONDITIONS**  
**(Purchase of Services - Long Form)**

5. **Termination and Cancellation.**

- a. **Written Notice.** This Contract may be terminated by either party, in its sole discretion, upon thirty-day advance written notice thereof to the other, and may be cancelled immediately by written mutual consent.
- b. **Failure to Perform.** County, upon written notice to Contractor, may immediately terminate this Contract should Contractor fail to perform properly any of its obligations hereunder. In the event of such termination, County may proceed with the work in any reasonable manner it chooses. The cost to County of completing Contractor's performance will be deducted from any sum due Contractor under this Contract, without prejudice to County's rights to recover damages.
- c. **Cessation of Funding.** Notwithstanding any contrary language in Paragraphs 5 and 11, in the event that federal, state, or other non-County funding for this Contract ceases, this Contract is terminated without notice.

6. **Entire Agreement.** This Contract contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties hereto.

7. **Further Specifications for Operating Procedures.** Detailed specifications of operating procedures and budgets required by this Contract, including but not limited to, monitoring, evaluating, auditing, billing, or regulatory changes, may be clarified in a written letter signed by Contractor and the department head, or designee, of the county department on whose behalf this Contract is made. No written clarification prepared pursuant to this Section will operate as an amendment to, or be considered to be a part of, this Contract.

8. **Modifications and Amendments.**

- a. **General Amendments.** In the event that the total Payment Limit of this Contract is less than \$200,000 and this Contract was executed by the County's Purchasing Agent, this Contract may be modified or amended by a written document executed by Contractor and the County's Purchasing Agent or the Contra Costa County Board of Supervisors, subject to any required state or federal approval. In the event that the total Payment Limit of this Contract exceeds \$200,000 or this Contract was initially approved by the Board of Supervisors, this Contract may be modified or amended only by a written document executed by Contractor and the Contra Costa County Board of Supervisors or, after Board approval, by its designee, subject to any required state or federal approval.
- b. **Minor Amendments.** The Payment Provisions and the Service Plan may be amended by a written administrative amendment executed by Contractor and the County Administrator (or designee), subject to any required state or federal approval, provided that such administrative amendment may not increase the Payment Limit of this Contract or reduce the services Contractor is obligated to provide pursuant to this Contract.

9. **Disputes.** Disagreements between County and Contractor concerning the meaning, requirements, or performance of this Contract shall be subject to final written determination by the head of the county department for which this Contract is made, or his designee, or in accordance with the applicable procedures (if any) required by the state or federal government.

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Contractor

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County Dept.

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10. **Choice of Law and Personal Jurisdiction.**

- a. This Contract is made in Contra Costa County and is governed by, and must be construed in accordance with, the laws of the State of California.
- b. Any action relating to this Contract must be instituted and prosecuted in the courts of Contra Costa County, State of California.

11. **Conformance with Federal and State Regulations and Laws.** Should federal or state regulations or laws touching upon the subject of this Contract be adopted or revised during the term hereof, this Contract will be deemed amended to assure conformance with such federal or state requirements.

12. **No Waiver by County.** Subject to Paragraph 9. (Disputes) of these General Conditions, inspections or approvals, or statements by any officer, agent or employee of County indicating Contractor's performance or any part thereof complies with the requirements of this Contract, or acceptance of the whole or any part of said performance, or payments therefor, or any combination of these acts, do not relieve Contractor's obligation to fulfill this Contract as prescribed; nor is the County thereby prevented from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.

13. **Subcontract and Assignment.** This Contract binds the heirs, successors, assigns and representatives of Contractor. Prior written consent of the County Administrator or his designee, subject to any required state or federal approval, is required before the Contractor may enter into subcontracts for any work contemplated under this Contract, or before the Contractor may assign this Contract or monies due or to become due, by operation of law or otherwise.

14. **Independent Contractor Status.** The parties intend that Contractor, in performing the services specified herein, is acting as an independent contractor and that Contractor will control the work and the manner in which it is performed. This Contract is not to be construed to create the relationship between the parties, or between County and any Contractor employee, of agent, servant, employee, partnership, joint venture, or association. Neither Contractor, nor any of its employees, is a County employee. This Contract does not give Contractor, or any of its employees, any right to participate in any pension plan, workers' compensation plan, insurance, bonus, or similar benefits County provides to its employees. In the event that County exercises its right to terminate this Contract, Contractor expressly agrees that it will have no recourse or right of appeal under any rules, regulations, ordinances, or laws applicable to employees.

15. **Conflicts of Interest.** Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Contract, no person having any such interests will be employed by Contractor. If requested to do so by County, Contractor will complete a "Statement of Economic Interest" form and file it with County and will require any other person doing work under this Contract to complete a "Statement of Economic Interest" form and file it with County. Contractor covenants that Contractor, its employees and officials, are not now employed by County and have not been so employed by County within twelve months immediately preceding this Contract; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government Code section 1090. In

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Contractor

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County Dept.

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addition to any indemnity provided by Contractor in this Contract, Contractor will indemnify, defend, and hold the County harmless from any and all claims, investigations, liabilities, or damages resulting from or related to any and all alleged conflicts of interest. Contractor warrants that it has not provided, attempted to provide, or offered to provide any money, gift, gratuity, thing of value, or compensation of any kind to obtain this Contract.

16. **Confidentiality**. To the extent allowed under the California Public Records Act, Contractor agrees to comply and to require its officers, partners, associates, agents and employees to comply with all applicable state or federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract, their records, or services provided them, and assures that no person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor agrees to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
17. **Nondiscriminatory Services**. Contractor agrees that all goods and services under this Contract will be available to all qualified persons regardless of age, gender, race, religion, color, national origin, ethnic background, disability, or sexual orientation, and that none will be used, in whole or in part, for religious worship.
18. **Indemnification**. Contractor will defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, demands, losses, costs, expenses, and liabilities for any damages, fines, sickness, death, or injury to person(s) or property, including any and all administrative fines, penalties or costs imposed as a result of an administrative or quasi-judicial proceeding, arising directly or indirectly from or connected with the services provided hereunder that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control. If requested by County, Contractor will defend any such suits at its sole cost and expense. If County elects to provide its own defense, Contractor will reimburse County for any expenditures, including reasonable attorney's fees and costs. Contractor's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of the County, its officers and employees. This provision will survive the expiration or termination of this Contract.
19. **Insurance**. During the entire term of this Contract and any extension or modification thereof, Contractor shall keep in effect insurance policies meeting the following insurance requirements unless otherwise expressed in the Special Conditions:
- a. **Commercial General Liability Insurance**. For all contracts where the total payment limit of the contract is \$500,000 or less, Contractor will provide commercial general liability insurance, including coverage for business losses and for owned and non-owned automobiles, with a minimum combined single limit coverage of \$500,000 for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence. Such insurance must be endorsed to include County and its officers and employees as additional insureds as to all services performed by Contractor under this Contract. Said policies must constitute primary insurance as to County, the state and federal governments, and their officers, agents, and employees, so that other insurance policies held by

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them or their self-insurance program(s) will not be required to contribute to any loss covered under Contractor's insurance policy or policies. Contractor must provide County with a copy of the endorsement making the County an additional insured on all commercial general liability policies as required herein no later than the effective date of this Contract. For all contracts where the total payment limit is greater than \$500,000, the aforementioned insurance coverage to be provided by Contractor must have a minimum combined single limit coverage of \$1,000,000.

- b. **Workers' Compensation.** Contractor must provide workers' compensation insurance coverage for its employees.
- c. **Certificate of Insurance.** The Contractor must provide County with (a) certificate(s) of insurance evidencing liability and worker's compensation insurance as required herein no later than the effective date of this Contract. If Contractor should renew the insurance policy(ies) or acquire either a new insurance policy(ies) or amend the coverage afforded through an endorsement to the policy at any time during the term of this Contract, then Contractor must provide (a) current certificate(s) of insurance.
- d. **Additional Insurance Provisions.** No later than five days after Contractor's receipt of: (i) a notice of cancellation, a notice of an intention to cancel, or a notice of a lapse in any of Contractor's insurance coverage required by this Contract; or (ii) a notice of a material change to Contractor's insurance coverage required by this Contract, Contractor will provide Department a copy of such notice of cancellation, notice of intention to cancel, notice of lapse of coverage, or notice of material change. Contractor's failure to provide Department the notice as required by the preceding sentence is a default under this Contract
20. **Notices.** All notices provided for by this Contract must be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to County must be addressed to the head of the county department for which this Contract is made. Notices to Contractor must be addressed to the Contractor's address designated herein. The effective date of notice is the date of deposit in the mails or of other delivery, except that the effective date of notice to County is the date of receipt by the head of the county department for which this Contract is made.
21. **Primacy of General Conditions.** In the event of a conflict between the General Conditions and the Special Conditions, the General Conditions govern unless the Special Conditions or Service Plan expressly provide otherwise.
22. **Nonrenewal.** Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased by County under a new contract following expiration or termination of this Contract, and Contractor waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Contractor.
23. **Possessory Interest.** If this Contract results in Contractor having possession of, claim or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue & Taxation Code Section 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest. Contractor agrees that this provision complies with the notice requirements of Revenue & Taxation Code Section 107.6, and waives all rights to further notice or to damages under that or any comparable statute.

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24. **No Third-Party Beneficiaries.** Nothing in this Contract may be construed to create, and the parties do not intend to create, any rights in third parties.
25. **Copyrights, Rights in Data, and Works Made for Hire.** Contractor will not publish or transfer any materials produced or resulting from activities supported by this Contract without the express written consent of the County Administrator. All reports, original drawings, graphics, plans, studies and other data and documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Contract are "works made for hire" (as defined in the Copyright Act, 17 U.S.C. Section 101 et seq., as amended) for County, and Contractor unconditionally and irrevocably transfers and assigns to Agency all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. Unless required by law, Contractor shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without County's prior express written consent. If any of the works made for hire is subject to copyright protection, County reserves the right to copyright such works and Contractor agrees not to copyright such works. If any works made for hire are copyrighted, County reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.
26. **Endorsements.** In its capacity as a contractor with Contra Costa County, Contractor will not publicly endorse or oppose the use of any particular brand name or commercial product without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not participate or appear in any commercially produced advertisements designed to promote a particular brand name or commercial product, even if Contractor is not publicly endorsing a product, as long as the Contractor's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Contra Costa County. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.
27. **Required Audit.**
- a. If Contractor expends \$750,000 or more in federal grant funds in any fiscal year from any source, Contractor must provide to County, at Contractor's expense, an audit conforming to the requirements set forth in the most current version of Code of Federal Regulations, Title 2, Part 200, Subpart F.
  - b. If Contractor expends less than \$750,000 in federal grant funds in any fiscal year from any source, but the grant imposes specific audit requirements, Contractor must provide County with an audit conforming to those requirements.
  - c. If Contractor expends less than \$750,000 in federal grant funds in any fiscal year from any source, Contractor is exempt from federal audit requirements for that year except as required by Code of Federal Regulations, Title 2, Part 200, Subpart F. Contractor shall make its records available for, and an audit may be required by, appropriate officials of the federal awarding agency, the General Accounting Office, the pass-through entity and/or the County. If an audit is required, Contractor must provide County with the audit.

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- d. With respect to the audits specified in sections (a), (b) and (c) above, Contractor is solely responsible for arranging for the conduct of the audit, and for its cost. County may withhold the estimated cost of the audit or 10 percent of the contract amount, whichever is greater, or the final payment, from Contractor until County receives the audit from Contractor.
28. **Authorization.** Contractor, or the representative(s) signing this Contract on behalf of Contractor, represents and warrants that it has full power and authority to enter into this Contract and to perform the obligations set forth herein.
29. **No Implied Waiver.** The waiver by County of any breach of any term or provision of this Contract will not be deemed to be a waiver of such term or provision or of any subsequent breach of the same or any other term or provision contained herein.

## **MARTINEZ REFINING COMPANY**

November 24-25, 2022

Spent Catalyst Release to the

Martinez Community

Community Risk Assessment

Request for Proposal

### **BACKGROUND**

The Martinez Refining Company LLC part of the PBF Energy Group hereinafter referred to as the Martinez Refining Company (MRC) released approximately 20-24 tons of particulate matter, referred to as spent catalyst, from their Fluid Catalytic Cracker Unit (CCU) into the Martinez community between November 24-25, 2022. MRC did not notify any emergency responders of the release. Contra Costa Health (CCH) Hazardous Materials staff discovered the release through social media posts and physical evidence of the white powder covering horizontal surfaces on resident's vehicles and trash cans within Martinez. Samples were collected from the community as well as from the refinery and analyzed and confirmed the spent catalyst contained elevated levels of metals, namely alumina, nickel, and vanadium. On December 15, 2022, CCHHMP identified this incident met the criteria for a Community Warning System (CWS) Level 2 or higher incident and as a result is a Major Chemical Accident or Release (MCAR). No notification or warning was made to the community during the event. A third-party independent risk assessment is being commissioned to better understand the environmental and health effects associated with the incident

An Oversight Committee was formed with representatives from the following:

- Hazardous Materials Staff (Chair)
- City of Martinez Representative
- City of Benicia Representative
- Five local community members
- MRC representative
- United Steel Worker representative working at MRC

Nicole Heath, Acting Director of Hazardous Materials Programs, serves as the Chair of the Oversight Committee.

### **SUCCESSFUL CONSULTANT DETERMINATION**

The Oversight Committee has developed a scope of work for this risk assessment review that is included in Attachment 1. The Oversight Committee will select two companies from submitted proposals for a follow-up interview that will be conducted virtually. After the completion of the interview process, the Oversight Committee will select the successful bidder. The determination of the successful bidder will be based on the experience the consultant has in performing this type of evaluation/review, the people who will be working on the project and their experience in performing such an evaluation/review, the

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work plan that is submitted with the proposal, references that are submitted (see below), and the overall cost for the evaluation.

- Representative list of former clients to eliminate conflict of interest for related work performed
- Client names-may be contacted for references
- Facility/facilities where work was performed
  - Client contact information
  - Facility contact information
- Work the consultant has done for Martinez Refining Company or PBF Energy Group during the last three years including where this work was done and what work was performed
- Example copy of a risk assessment report

**PROPOSAL INFORMATION**

MRC representatives could be made available for interview if deemed necessary. The proposal that is submitted should include the following information:

- A work plan to address the scope of work
- The company's experience in performing Risk Assessments, including an example of prior risk assessments performed.
- General breakdown of company client profile (last three years) in percentage of revenue/time
- The people who will be performing the evaluation, their relevant experience, and the person who will be leading the evaluation
- A tentative schedule for the amount of time that will be required and cost for the evaluation, including the following:
  - Cost for performing the Risk Assessment
  - Cost for report preparation
  - Estimated travel expenses
  - Payment plan

**WORK PRODUCT**

The deliverables for this project shall include a draft, modified draft and final reports. The final evaluation report should be written in a manner that is understandable to the public to allow for meaningful participation. The proposal shall show the costs for on-site work and report preparation. The makeup of the deliverables shall include the following:

- The draft report for the investigation should include the following:
  - Table of Contents
  - Executive Summary
  - Introduction
    - Objectives

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- Report Format
  - Scope and Approach
  - Facts, including a timeline of events and area impacted
  - Determination of potential health effects seen in affected area
  - Determination of potential environmental impacts seen in affected area
  - Recommendations for MRC, CCH, others
    - Suggested priority for implementing recommendations
  - Action Plan
  - Appendix
    - Scope of Work
    - Team Makeup
    - Glossary: recognizing that the document will be in the public domain with non-technical people reading it
- The final report for the investigation should include the draft report and the following:
  - Conclusions
    - Comments from the Oversight Committee
    - Response to the comments from Oversight Committee
    - Comments from the public
    - Response to public comments
    - Glossary

**ATTACHMENTS**

Attachment 1 includes the Scope of Work for the independent Risk Assessment

Attachment 2 includes the Contra Costa County's contract General Conditions. Additional information and guidance related to Contra Costa County safety program are located on the county [website](#).

**AGENCY MANAGEMENT**

The project manager for the third-party risk assessment is Nicole Heath. Michael Dossey, Sam Calvert, and Trisha Johnson will also be staff involved with the project. All members work for Contra Costa Health Hazardous Materials Program. The successful bidder will be issued a contract with Contra Costa Health. The Contra Costa County Board of Supervisors will approve the contract. An electronic copy and fifteen hard copies of draft, modified draft and final reports will be needed.

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ATTACHMENT 1  
SCOPE OF WORK

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**STATEMENT OF SCOPE**

**OBJECTIVE**

The objective of this project is to conduct an independent Risk Assessment of the November 24-25, 2022 Martinez Refining Company (MRC) Spent Catalyst Release incident, The purpose of the Risk Assessment and reports is to adequately identify impacts to the environment and health as a result of the release and develop corrective actions as necessary.

**BACKGROUND**

MRC released approximately 20-24 tons of particulate matter, referred to as spent catalyst, from their Fluid Catalytic Cracker Unit (CCU) into the Martinez community between November 24-25, 2022. MRC did not notify any emergency responders or the community of the release. On December 15, 2022, CCHHMP identified this incident met the criteria for a CWS Level 2 or higher incident and as a result is a Major Chemical Accident or Release (MCAR). Level 2 incidents typically involve immediate public health advisory messages issued to the affected community advising those with respiratory sensitivities to use caution if outdoors.

In response, a third-party independent Risk Assessment is being commissioned by Contra Costa Health (CCH) under the direction of the Board of Supervisors' Industrial Safety Ordinance/Community Warning System Ad Hoc Committee. The third-party independent Risk Assessment will provide transparency to the agency and the community and recommendations to address the impacts caused by this incident.

**REQUIREMENTS**

The successful candidate should be experienced in performing both human health and ecological risk assessments related to releases of contaminants from refineries or chemical facilities. The successful candidate must have a broad understanding of toxicology and environmental assessment.

**SCOPE OF WORK**

- A. The successful candidate will conduct an initial evaluation including a soil evaluation and perform a risk assessment in accordance with National Research Council Guidelines. This evaluation will provide a quick analysis of the potential environmental impacts and identify any immediate steps required to reduce these impacts. The risk assessment will be a comprehensive analysis of the environmental impacts of the spent catalyst release and health impacts and develop a report that includes an incident timeline, map of impacted area, magnitude of the exposure on human health and the environment, summary of the data used to determine impacts, mitigation and action plan and proposed timeline of completion.

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- B. The successful candidate will develop a draft, modified draft and final reports. See Request for Proposal (RFP) for report content.
- C. The successful candidate must enter into a contract with Contra Costa County.
- D. An Oversight Committee has been developed that will oversee the process.
  - 1. The Oversight Committee will review the Request for Proposals (RFPs) submitted and select the successful contractor company to conduct the assessment. This process will include virtual interviews of the top candidates.
  - 2. Upon completion of the draft report for the initial evaluation and the risk assessment, the successful candidate will provide the report to the Oversight Committee along with a presentation. See RFP for report content. It is anticipated that this presentation will be one virtual meeting for each report. The Oversight Committee will have the opportunity during this meeting to ask questions and give suggestions on the draft report.
  - 3. CCH Hazardous Materials Programs staff will review the draft report and relay any comments that they may have to the Oversight Committee. CCH Hazardous Materials Programs staff will also relay any comments to the contractor and MRC regarding the action plan. The contractor will work with the Hazardous Materials Programs staff and MRC as necessary to see if any changes should be made in the action plan based on the comments.
  - 4. The draft of the final report of the risk assessment will be modified to address comments from the Oversight Committee and resubmitted to the Oversight Committee.
- E. When the modified draft of the final report of the risk assessment has been accepted by the Oversight Committee, a 45-day public comment period will take place.
  - 1. During the 45-day public comment period the successful candidate will present their modified draft of the final report of the risk assessment to the general public. It is anticipated that this will be one virtual meeting. The public meeting will be an opportunity for the successful candidate to listen to the public's concerns and consider making changes in the report. The successful candidate shall respond to all written comments and comments that are raised in the public meeting.
  - 2. The modified draft of the final report of the risk assessment will be modified again by the successful candidate to include responses to public comments. The successful candidate will provide these responses to the Oversight Committee for review and comment and then will prepare a final report.
- F. The successful candidate will present the final report of the risk assessment to the Contra Costa County Board of Supervisors, and separately, to the Martinez City

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Council and any other potentially impacted City Council. It is anticipated these meetings will be in-person. See RFP for report content.

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ATTACHMENT 2

CONTRA COSTA COUNTY  
CONTRACT GENERAL CONDITIONS

**GENERAL CONDITIONS**  
**(Purchase of Services - Long Form)**

1. **Compliance with Law.** Contractor is subject to and must comply with all applicable federal, state, and local laws and regulations with respect to its performance under this Contract, including but not limited to, licensing, employment, and purchasing practices; and wages, hours, and conditions of employment, including nondiscrimination.
2. **Inspection.** Contractor's performance, place of business, and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the County, the State of California, and the United States Government.
3. **Records.** Contractor must keep and make available for inspection and copying by authorized representatives of the County, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the County.
  - a. **Retention of Records.** Contractor must retain all documents pertaining to this Contract for five years from the date of submission of Contractor's final payment demand or final Cost Report; for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for this Contract's funding period. Upon request, Contractor must make these records available to authorized representatives of the County, the State of California, and the United States Government.
  - b. **Access to Books and Records of Contractor, Subcontractor.** Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor must, upon written request and until the expiration of five years after the furnishing of services pursuant to this Contract, make available to the County, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Contract and books, documents, and records of Contractor necessary to certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Contract through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract must contain a clause to the effect that upon written request and until the expiration of five years after the furnishing of services pursuant to such subcontract, the subcontractor must make available to the County, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of the subcontractor necessary to verify the nature and extent of all costs and charges thereunder.

This provision is in addition to any and all other terms regarding the maintenance or retention of records under this Contract and is binding on the heirs, successors, assigns and representatives of Contractor.

4. **Reporting Requirements.** Pursuant to Government Code Section 7550, Contractor must include in all documents and written reports completed and submitted to County in accordance with this Contract, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This section applies only if the Payment Limit of this Contract exceeds \$5,000.

**GENERAL CONDITIONS**  
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5. **Termination and Cancellation.**

- a. **Written Notice.** This Contract may be terminated by either party, in its sole discretion, upon thirty-day advance written notice thereof to the other, and may be cancelled immediately by written mutual consent.
- b. **Failure to Perform.** County, upon written notice to Contractor, may immediately terminate this Contract should Contractor fail to perform properly any of its obligations hereunder. In the event of such termination, County may proceed with the work in any reasonable manner it chooses. The cost to County of completing Contractor's performance will be deducted from any sum due Contractor under this Contract, without prejudice to County's rights to recover damages.
- c. **Cessation of Funding.** Notwithstanding any contrary language in Paragraphs 5 and 11, in the event that federal, state, or other non-County funding for this Contract ceases, this Contract is terminated without notice.

6. **Entire Agreement.** This Contract contains all the terms and conditions agreed upon by the parties. Except as expressly provided herein, no other understanding, oral or otherwise, regarding the subject matter of this Contract will be deemed to exist or to bind any of the parties hereto.

7. **Further Specifications for Operating Procedures.** Detailed specifications of operating procedures and budgets required by this Contract, including but not limited to, monitoring, evaluating, auditing, billing, or regulatory changes, may be clarified in a written letter signed by Contractor and the department head, or designee, of the county department on whose behalf this Contract is made. No written clarification prepared pursuant to this Section will operate as an amendment to, or be considered to be a part of, this Contract.

8. **Modifications and Amendments.**

- a. **General Amendments.** In the event that the total Payment Limit of this Contract is less than \$200,000 and this Contract was executed by the County's Purchasing Agent, this Contract may be modified or amended by a written document executed by Contractor and the County's Purchasing Agent or the Contra Costa County Board of Supervisors, subject to any required state or federal approval. In the event that the total Payment Limit of this Contract exceeds \$200,000 or this Contract was initially approved by the Board of Supervisors, this Contract may be modified or amended only by a written document executed by Contractor and the Contra Costa County Board of Supervisors or, after Board approval, by its designee, subject to any required state or federal approval.
- b. **Minor Amendments.** The Payment Provisions and the Service Plan may be amended by a written administrative amendment executed by Contractor and the County Administrator (or designee), subject to any required state or federal approval, provided that such administrative amendment may not increase the Payment Limit of this Contract or reduce the services Contractor is obligated to provide pursuant to this Contract.

9. **Disputes.** Disagreements between County and Contractor concerning the meaning, requirements, or performance of this Contract shall be subject to final written determination by the head of the county department for which this Contract is made, or his designee, or in accordance with the applicable procedures (if any) required by the state or federal government.

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Contractor

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County Dept.

**GENERAL CONDITIONS**  
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10. **Choice of Law and Personal Jurisdiction.**

- a. This Contract is made in Contra Costa County and is governed by, and must be construed in accordance with, the laws of the State of California.
- b. Any action relating to this Contract must be instituted and prosecuted in the courts of Contra Costa County, State of California.

11. **Conformance with Federal and State Regulations and Laws.** Should federal or state regulations or laws touching upon the subject of this Contract be adopted or revised during the term hereof, this Contract will be deemed amended to assure conformance with such federal or state requirements.

12. **No Waiver by County.** Subject to Paragraph 9. (Disputes) of these General Conditions, inspections or approvals, or statements by any officer, agent or employee of County indicating Contractor's performance or any part thereof complies with the requirements of this Contract, or acceptance of the whole or any part of said performance, or payments therefor, or any combination of these acts, do not relieve Contractor's obligation to fulfill this Contract as prescribed; nor is the County thereby prevented from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.

13. **Subcontract and Assignment.** This Contract binds the heirs, successors, assigns and representatives of Contractor. Prior written consent of the County Administrator or his designee, subject to any required state or federal approval, is required before the Contractor may enter into subcontracts for any work contemplated under this Contract, or before the Contractor may assign this Contract or monies due or to become due, by operation of law or otherwise.

14. **Independent Contractor Status.** The parties intend that Contractor, in performing the services specified herein, is acting as an independent contractor and that Contractor will control the work and the manner in which it is performed. This Contract is not to be construed to create the relationship between the parties, or between County and any Contractor employee, of agent, servant, employee, partnership, joint venture, or association. Neither Contractor, nor any of its employees, is a County employee. This Contract does not give Contractor, or any of its employees, any right to participate in any pension plan, workers' compensation plan, insurance, bonus, or similar benefits County provides to its employees. In the event that County exercises its right to terminate this Contract, Contractor expressly agrees that it will have no recourse or right of appeal under any rules, regulations, ordinances, or laws applicable to employees.

15. **Conflicts of Interest.** Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Contract, no person having any such interests will be employed by Contractor. If requested to do so by County, Contractor will complete a "Statement of Economic Interest" form and file it with County and will require any other person doing work under this Contract to complete a "Statement of Economic Interest" form and file it with County. Contractor covenants that Contractor, its employees and officials, are not now employed by County and have not been so employed by County within twelve months immediately preceding this Contract; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government Code section 1090. In

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addition to any indemnity provided by Contractor in this Contract, Contractor will indemnify, defend, and hold the County harmless from any and all claims, investigations, liabilities, or damages resulting from or related to any and all alleged conflicts of interest. Contractor warrants that it has not provided, attempted to provide, or offered to provide any money, gift, gratuity, thing of value, or compensation of any kind to obtain this Contract.

16. **Confidentiality**. To the extent allowed under the California Public Records Act, Contractor agrees to comply and to require its officers, partners, associates, agents and employees to comply with all applicable state or federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract, their records, or services provided them, and assures that no person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor agrees to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
17. **Nondiscriminatory Services**. Contractor agrees that all goods and services under this Contract will be available to all qualified persons regardless of age, gender, race, religion, color, national origin, ethnic background, disability, or sexual orientation, and that none will be used, in whole or in part, for religious worship.
18. **Indemnification**. Contractor will defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, demands, losses, costs, expenses, and liabilities for any damages, fines, sickness, death, or injury to person(s) or property, including any and all administrative fines, penalties or costs imposed as a result of an administrative or quasi-judicial proceeding, arising directly or indirectly from or connected with the services provided hereunder that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control. If requested by County, Contractor will defend any such suits at its sole cost and expense. If County elects to provide its own defense, Contractor will reimburse County for any expenditures, including reasonable attorney's fees and costs. Contractor's obligations under this section exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of the County, its officers and employees. This provision will survive the expiration or termination of this Contract.
19. **Insurance**. During the entire term of this Contract and any extension or modification thereof, Contractor shall keep in effect insurance policies meeting the following insurance requirements unless otherwise expressed in the Special Conditions:
  - a. **Commercial General Liability Insurance**. For all contracts where the total payment limit of the contract is \$500,000 or less, Contractor will provide commercial general liability insurance, including coverage for business losses and for owned and non-owned automobiles, with a minimum combined single limit coverage of \$500,000 for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence. Such insurance must be endorsed to include County and its officers and employees as additional insureds as to all services performed by Contractor under this Contract. Said policies must constitute primary insurance as to County, the state and federal governments, and their officers, agents, and employees, so that other insurance policies held by

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them or their self-insurance program(s) will not be required to contribute to any loss covered under Contractor's insurance policy or policies. Contractor must provide County with a copy of the endorsement making the County an additional insured on all commercial general liability policies as required herein no later than the effective date of this Contract. For all contracts where the total payment limit is greater than \$500,000, the aforementioned insurance coverage to be provided by Contractor must have a minimum combined single limit coverage of \$1,000,000.

- b. **Workers' Compensation.** Contractor must provide workers' compensation insurance coverage for its employees.
- c. **Certificate of Insurance.** The Contractor must provide County with (a) certificate(s) of insurance evidencing liability and worker's compensation insurance as required herein no later than the effective date of this Contract. If Contractor should renew the insurance policy(ies) or acquire either a new insurance policy(ies) or amend the coverage afforded through an endorsement to the policy at any time during the term of this Contract, then Contractor must provide (a) current certificate(s) of insurance.
- d. **Additional Insurance Provisions.** No later than five days after Contractor's receipt of: (i) a notice of cancellation, a notice of an intention to cancel, or a notice of a lapse in any of Contractor's insurance coverage required by this Contract; or (ii) a notice of a material change to Contractor's insurance coverage required by this Contract, Contractor will provide Department a copy of such notice of cancellation, notice of intention to cancel, notice of lapse of coverage, or notice of material change. Contractor's failure to provide Department the notice as required by the preceding sentence is a default under this Contract
20. **Notices.** All notices provided for by this Contract must be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to County must be addressed to the head of the county department for which this Contract is made. Notices to Contractor must be addressed to the Contractor's address designated herein. The effective date of notice is the date of deposit in the mails or of other delivery, except that the effective date of notice to County is the date of receipt by the head of the county department for which this Contract is made.
21. **Primacy of General Conditions.** In the event of a conflict between the General Conditions and the Special Conditions, the General Conditions govern unless the Special Conditions or Service Plan expressly provide otherwise.
22. **Nonrenewal.** Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased by County under a new contract following expiration or termination of this Contract, and Contractor waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Contractor.
23. **Possessory Interest.** If this Contract results in Contractor having possession of, claim or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue & Taxation Code Section 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest. Contractor agrees that this provision complies with the notice requirements of Revenue & Taxation Code Section 107.6, and waives all rights to further notice or to damages under that or any comparable statute.

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24. **No Third-Party Beneficiaries.** Nothing in this Contract may be construed to create, and the parties do not intend to create, any rights in third parties.
25. **Copyrights, Rights in Data, and Works Made for Hire.** Contractor will not publish or transfer any materials produced or resulting from activities supported by this Contract without the express written consent of the County Administrator. All reports, original drawings, graphics, plans, studies and other data and documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Contract are "works made for hire" (as defined in the Copyright Act, 17 U.S.C. Section 101 et seq., as amended) for County, and Contractor unconditionally and irrevocably transfers and assigns to Agency all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. Unless required by law, Contractor shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without County's prior express written consent. If any of the works made for hire is subject to copyright protection, County reserves the right to copyright such works and Contractor agrees not to copyright such works. If any works made for hire are copyrighted, County reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.
26. **Endorsements.** In its capacity as a contractor with Contra Costa County, Contractor will not publicly endorse or oppose the use of any particular brand name or commercial product without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not publicly attribute qualities or lack of qualities to a particular brand name or commercial product in the absence of a well-established and widely accepted scientific basis for such claims or without the prior written approval of the Board of Supervisors. In its County-contractor capacity, Contractor will not participate or appear in any commercially produced advertisements designed to promote a particular brand name or commercial product, even if Contractor is not publicly endorsing a product, as long as the Contractor's presence in the advertisement can reasonably be interpreted as an endorsement of the product by or on behalf of Contra Costa County. Notwithstanding the foregoing, Contractor may express its views on products to other contractors, the Board of Supervisors, County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.
27. **Required Audit.**
- a. If Contractor expends \$750,000 or more in federal grant funds in any fiscal year from any source, Contractor must provide to County, at Contractor's expense, an audit conforming to the requirements set forth in the most current version of Code of Federal Regulations, Title 2, Part 200, Subpart F.
  - b. If Contractor expends less than \$750,000 in federal grant funds in any fiscal year from any source, but the grant imposes specific audit requirements, Contractor must provide County with an audit conforming to those requirements.
  - c. If Contractor expends less than \$750,000 in federal grant funds in any fiscal year from any source, Contractor is exempt from federal audit requirements for that year except as required by Code of Federal Regulations, Title 2, Part 200, Subpart F. Contractor shall make its records available for, and an audit may be required by, appropriate officials of the federal awarding agency, the General Accounting Office, the pass-through entity and/or the County. If an audit is required, Contractor must provide County with the audit.

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- d. With respect to the audits specified in sections (a), (b) and (c) above, Contractor is solely responsible for arranging for the conduct of the audit, and for its cost. County may withhold the estimated cost of the audit or 10 percent of the contract amount, whichever is greater, or the final payment, from Contractor until County receives the audit from Contractor.
28. **Authorization.** Contractor, or the representative(s) signing this Contract on behalf of Contractor, represents and warrants that it has full power and authority to enter into this Contract and to perform the obligations set forth herein.
29. **No Implied Waiver.** The waiver by County of any breach of any term or provision of this Contract will not be deemed to be a waiver of such term or provision or of any subsequent breach of the same or any other term or provision contained herein.