

**AGREEMENT FOR LUBRICITY ADDITIVE INJECTION SERVICES
FOR EPA DIESEL FUEL**

CALNEV Las Vegas Terminal, Nevada

THIS AGREEMENT, is made and entered into , by and between **CALNEV PIPE LINE LLC**, a Delaware limited liability company (hereinafter “**CALNEV**”), and «**COMPANY**», (hereinafter “**CUSTOMER**”).

RECITALS

WHEREAS, recent changes to the ASTM specification for EPA diesel fuel include a minimum lubricity specification; and

WHEREAS, industry recognizes the need for diesel lubricity additives to meet ASTM requirements; and

WHEREAS, logistic considerations in the distribution system dictate that the point of lubricity additive injection is at terminal locations; and

WHEREAS, **CUSTOMER**, in order to comply with said fuel specification, requires certain lubricity additive facilities and services to be available at certain **CALNEV** Terminals; and

WHEREAS, **CALNEV** is willing to provide necessary lubricity additive injection at its **CALNEV LAS VEGAS TERMINAL** for all EPA diesel fuel, at its expense, and is willing to provide the necessary services allowing **CUSTOMER** to comply with said specification; and

WHEREAS, **CUSTOMER** is willing to pay **CALNEV** for the services rendered.

NOW, THEREFORE, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

AGREEMENT

1. **CALNEV to Construct and Operate Injection Facilities at CALNEV LAS VEGAS TERMINAL.** **CALNEV** will construct, own, maintain and operate lubricity additive injection facilities at the **CALNEV LAS VEGAS TERMINAL** noted above (the “facility” or “facilities”).
2. **CALNEV to Purchase and Deliver Lubricity additive.** **CALNEV** shall arrange for purchase and delivery of any and all required lubricity additive.
3. **Injection of Lubricity Additive.** Upon receipt of **CUSTOMER**’s EPA diesel fuel at **CALNEV**’s **LAS VEGAS TERMINAL**, **CALNEV** shall inject into all EPA diesel fuel an amount of lubricity additive which it determines to be sufficient to comply with diesel lubricity requirements. **CALNEV** shall, upon request, provide **CUSTOMER** with documentation of additive injection, which **CALNEV** will keep on file at **CALNEV**’s **LAS VEGAS TERMINAL**.

4. **Indemnification for Lubricity Additive Injection Services.** CALNEV shall not be responsible for any losses, damages, expenses, costs, fines, claims, fines or penalties incurred or suffered by CUSTOMER that are in any way related to CALNEV's provision of Lubricity Injection services hereunder, including, but not limited to general damages, special damages, indirect or consequential damages, and fines or penalties. CUSTOMER hereby agrees to indemnify, defend, and hold CALNEV harmless from and against any liability, claims, causes of action, demands, damages, costs, expenses, taxes, fines or penalties arising in any way out of the services provided to CUSTOMER by CALNEV under this Agreement or for bringing any non-complying EPA diesel fuel into compliance, whether or not caused by or contributed to by the acts or omissions of CALNEV. It is the express intent of the parties hereto that CALNEV be indemnified from and against its negligence, strict liability, or any other legal theory of liability as to the subject matter of this Agreement and CALNEV's performance thereunder.
5. **Cost of Injection Services.** CUSTOMER shall pay CALNEV for lubricity additive injection services the sum of \$0.145 for each barrel of EPA diesel fuel delivered to tankage for the account of CUSTOMER at CALNEV's LAS VEGAS TERMINAL. Said injection charge is in addition to any existing terminal charges.

If charges are not paid by the due date stated on the invoice, SFPP shall have the right to assess finance charges on the entire past due balance (including principal and accumulated but unpaid finance charges) until paid in full, at a rate equal to 125% of the prime rate of interest as reported in the Wall Street Journal as of the first of the month in which the charges are due or the maximum finance rate allowed by applicable law, whichever is less.
6. **CALNEV's Right to Increase Cost of Injection Services.** CANEV shall have the right to increase said charges for injection services, as set forth in Section 5 hereof, upon thirty (30) days prior written notice to CUSTOMER.
7. **Force Majeure.** In the event either party is rendered unable, wholly or in part, by force majeure, to carry out its obligations under this Agreement, it is agreed, that upon notice by the party claiming force majeure, giving full particulars of such force majeure, by telephone, confirmed promptly in writing to the other party as soon as possible after the occurrence of the cause relied on, the obligations of the party giving such notice so far as it is affected by such force majeure shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible, be remedied with all reasonable dispatch. The term "force majeure" shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, lightning, failure of supply, earthquakes, fire, storms, floods, washouts, arrests, and restraints of government or people, explosions, breakage or accident to (1) machinery, (2) equipment, and (3) lines or pipe, valid rules, regulations and orders of governmental agencies and other causes whether of the same kind herein enumerated or otherwise, not within the control of the party claiming such suspension and which by the exercise of due diligence such party is unable to prevent or overcome. It is agreed and understood that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such cause is inadvisable in the discretion of the party having the difficulty.
8. **Termination.** This Agreement may be terminated by either party upon ninety (90) days prior written notice to the other party.

9. **Agreement Subject to LAS VEGAS TERMINAL AGREEMENT and Applicable Law.**

(a) This Agreement and the operations hereunder shall be subject to (1) the applicable provisions of the Terminal Agreements between CUSTOMER and Calnev, and (2) any lawful orders or laws of any governmental body affecting the operations of the terminal and to valid and applicable orders, rules, and regulations of any Federal, State, County, or local authority having jurisdiction. However, nothing in this Agreement shall be construed as a waiver of any right to question or contest any such order, law, rule or regulation in any forum having jurisdiction over the subject matter of this Agreement.

(b) In the event that it becomes necessary for either party to modify its performance under this Agreement to comply with additional valid regulations of any federal, state or local authority having jurisdiction, that compliance shall not be considered in derogation of this Agreement, and this Agreement shall continue in full force and effect; provided, however, that the party that is required to comply with such additional orders, laws, rules or regulations may modify its performance under the terms of this Agreement only to the extent required to effect such compliance.

10. **Notices.** All notices to CALNEV under this Agreement shall be addressed to:

CALNEV PIPE LINE LLC
1100 Town and Country Road
Orange, CA 92868

Attention: Customer Service

All notices to CUSTOMER hereunder shall be addressed to:

«COMPANY»
«STREET»
«CITY_STATE_ZIP»

Attention: General Manager

Notice by either party to the other under this Agreement shall be given by Certified or Registered mail, return receipt requested, provided that this shall not detract from the effectiveness of actual notice given and received by other means.

11. **Amendment.** This Agreement and any provision hereof shall not be modified, amended, waived or discharged in any manner other than by a written amendment executed by all parties to this Agreement.

12. **Choice of Law and Forum.** The validity, construction and enforceability of this Agreement shall be governed in all respects by the laws of the State of California, without regard to its conflict of laws rules. Any actions, proceedings or counterclaims brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement must be brought in a federal or state court in the State of California, and in the County of Orange.

13. **Construction of Agreement.** This Agreement is the product of the joint negotiation of the parties and their respective counsel and is not to be construed for or against either party merely by virtue of the fact that counsel for one of the parties may have prepared this Agreement.

14. **Counterparts.** This Agreement and any amendments hereto may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same Agreement.
15. **Headings.** The headings inserted at the beginning of each section are for convenience only, and do not add to or subtract from the meaning of the contents of each section.
16. **No Third Party Beneficiaries.** This Agreement is made for the sole and exclusive benefit of the parties hereto and their respective successors and assigns; no third party is intended to have or shall have any rights under this Agreement.
17. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the fullest extent permitted by law.
18. **Assignment.** This Agreement shall not be assigned by CUSTOMER without the prior written consent of CALNEV, which consent shall not be unreasonably withheld.
19. **Successors and Assigns.** Without limiting any restriction on assignment set forth herein, the provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns.
20. **Waiver.** No waiver by a party of any breach of any term, covenant or condition hereof shall be deemed a waiver of the same as to any subsequent breach. No covenant, term or condition of this Agreement shall be deemed waived unless waived in writing.
21. **Arbitration.** Any controversy or claim, at law or in equity, arising out of this Agreement, or the breach thereof, except controversies involving more than \$100,000.00, shall be settled by arbitration in accordance with the commercial arbitration rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS") in Los Angeles, California, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction.

CALNEV PIPE LINE LLC

«COMPANY»

By: _____

By: _____

Title: **Director-Business Development**

Title: _____

Print Name Signed: **Janet Torrices**

Print Name Signed: _____

Date: _____

Date: _____