

**CITY OF ARDMORE
ARDMORE POLICE DEPARTMENT**

Council Letter No. 4170
Meeting Date: July 16, 2018

Mayor and City Commission
City of Ardmore, Oklahoma

RE: Traffic Control at Valero Refinery

Dear Commission Members:

Staff requests the City Commissioners approve a Contractual Agreement between the City of Ardmore and Valero Refinery for services of Ardmore Police Officers for traffic control for the Refinery Turnaround. Police Officers will be needed from 5:00 A.M. to 7:00 A.M. and 5:00 P.M. to 7:00 P.M. daily beginning August 20, 2018 and ending October 26, 2018. Valero Refinery agrees to compensate the City at the rate of \$40.00 per officer and vehicle, per hour.

Staff recommends approval of this Contractual Agreement with the Valero Refinery.

Respectfully submitted,



Ken Grace
Chief of Police

Reviewed by: _____


City Manager

**CONTRACT FOR POLICE SERVICES BETWEEN
THE CITY OF ARDMORE AND
VALERO REFINING COMPANY-OKLAHOMA**

This Contract for Police Services (the "Contract") is entered into effective as of August 15, 2018, by and between the City of Ardmore, a Municipal corporation (the "City") and Valero Refining Company-Oklahoma, a Michigan corporation ("Valero"). The City and Valero may be referred to herein as the "Party" or collectively as the "Parties."

WHEREAS, Valero has periodic turnaround events when additional workers are brought to Valero's refinery located at 1 Valero Way, Ardmore, OK 73401 (the "Refinery") to perform necessary maintenance work at the Refinery (the "Turnaround"); and,

WHEREAS, Valero will, from time to time during the Turnaround, need traffic control and related law enforcement functions; and,

WHEREAS, Valero intends and desires to contract with the City for the provision of law enforcement officers ("Officers") to perform the Services (defined in Paragraph 1 below) during the Turnaround; and,

WHEREAS, the City believes that is in the best interest of the public to make Officers available to perform these Services.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein stated and in consideration of the mutual benefits, which will accrue to the Parties, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Engagement of City and Scope of Services. Valero hereby engages the City to provide Officers during the Turnaround to perform the work described in Paragraph 1(a)-(d) below (collectively, the "Services") and City accepts such engagement pursuant to the terms and conditions set forth herein. The City shall use its good faith and best efforts to perform the following scope of Services understanding that time and quality of the Services shall be of the essence:

- a. Provide uniformed, on-duty Officers, near the Refinery, on mutually agreed upon dates provided to City by Valero to provide traffic control at or near the Refinery entrance;
- b. Provide law enforcement vehicles for Officers to use in the performance of its traffic control function;
- c. Ensure that Officers working will be restricted to the area near the entrance of the Refinery (except in the event of a City emergency requiring the response of all Officers pursuant to Paragraph 19) and
- d. Coordinate the work with Valero in accordance with the terms and conditions set out herein.

2. Term. This Contract shall be effective from the 15th day of August 2018, through the 15th day of November 2018. The Parties anticipate that the Turnaround will occur, and the City's Services will be needed, beginning on the 20th day of August 2018, though the 26th day of October 2018. Notwithstanding the foregoing, unless Valero elects otherwise, this Contract will remain in effect until the Turnaround is completed.

3. Compensation. Valero and the City agree that City will be compensated at the rate of Forty Dollars (\$40.00) per Officer and vehicle (collectively), per hour (the "Hourly Rate") to provide the Services. It is anticipated that approximately five hundred (500) man-hours will be required for the Turnaround. The City estimates the cost of Services to be Twenty Thousand and No/100 Dollars (\$20,000.00). The Parties recognize, however, that the actual number of man-hours necessary to perform the Services may fluctuate and that the cost may vary from this estimate. The City will bill Valero at the Hourly Rate for the actual number of man-hours required for the Turnaround in accordance with Paragraph 6 below.
4. Contract Subject to Commission Approval. This Contract is subject to approval by the City of Ardmore's Mayor and Board of Commissioners and shall not go into effect unless and until the Commission votes to approve this Contract.
5. Cancellations. Valero may, in its discretion, stop, suspend or cancel the Services to be performed at any time (the "Cancellation"); provided, however, in the event such cancellation occurs within twenty-four (24) hour(s) of the requested time of performance of the Services, Valero will reimburse the City in an amount equal to two (2) hours at the Hourly Rate for each Officer scheduled to perform the Services as evidenced by supporting time sheets and/or schedules.
6. Billing. The City shall keep and compile records of Services rendered and shall submit an invoice with supporting time sheets to Valero, within thirty (30) days after the expiration of the Contract. Payments shall be due within thirty (30) days after Valero's receipt and approval of such invoice.
7. Requesting Officers. Attached hereto as Exhibit A, Valero has provided the City with a written list of mutually agreed upon dates, times and locations upon which Officers are needed to perform the Services ("Request for Officers").
8. Number of Officers. The City will determine the minimum number of Officers needed to properly perform the Services and will contact Valero as soon as practicable to discuss the matter and the Parties shall mutually agree on the number of Officers to be provided.
9. Officers Assigned. The assignment of Officers shall be at the City's sole discretion. Valero may not request particular Officers for assignment.
10. Supervision of City's Officers. It is specifically acknowledged by the Parties that Officers shall remain, at all times, under the supervision of City. Officers shall be subject to City's rules and regulations and all laws of the State at all times.
11. Disputes with Officers. Should Valero have any dispute with an Officer, Valero shall notify the City, in writing, specifically describing the nature of the dispute. The City shall investigate disputes as quickly as practicable and shall decide whether the Officer should continue to provide Services under this Contract. During the investigation of a dispute, Valero shall remain liable for all costs associated with this Contract.
12. Independent Status of the Parties. Valero is a separate, legal entity from the City and City is a separate, legal entity from Valero. The Parties make this Contract accordingly. All persons working for a Party under this Contract shall be employees of that Party and shall not be considered employees of the other Party. The hiring, discharge, supervision, and management of the employees of City, or Valero, respectively, who provide Services under this Contract, including, but not limited

to, the determination from time to time of the qualifications of such employees who are required to perform the duties of the Parties, and the establishment, revision and administration of wage scales, rates of compensation, conditions of employment, and job and position description with respect to all such employees hereunder shall be within the sole direction of the employee's respective employer.

13. Disclaimer. City makes no warranty or guarantee of any type with regard to the performance of Officers assigned hereunder; provided, however, the City shall require all Officers to perform duties in compliance with City's policies and procedures and with the laws of the State of Oklahoma.

14. Authority. By entering into this contract with Valero, the City does not delegate any decision-making authority to Valero. Valero's powers shall not include any decision-making authority, whatsoever, in relation to City and its activities. The City maintains its autonomy to operate and accomplish its purpose and objectives as described in its founding documents. Valero has no authority to obligate City or any of its funds and shall only have use of Officers and equipment provided to Valero pursuant to this Contract.

15. Non-Discrimination. The Parties covenant (1) that no person shall be excluded from participation in, denied the benefit of, or otherwise subject to discrimination under the terms of this Contract on the ground of race, color, age, sex, handicap or national origin; and (2) that, in carrying out the terms and conditions of this Contract, no person shall be subjected to discrimination on the grounds of race, color, age, handicap or national origin.

16. Compliance with Laws. Each Party shall conduct business under the terms of this Contract in such a manner that it does not violate federal, state or local laws or regulations applicable to the conduct of its operations under the terms of this contract.

17. Default. Under this Contract, default occurs when either Party fails to keep, observe or perform any material agreement, term or provision of this Contract to be kept, observed or performed by it and such conduct continues for a period of thirty (30) days after written notice thereof by the other Party.

18. Termination, Remedies upon Default.

- a. Termination without Default. The Parties agree that the termination of this Contract may be effected by either Party by giving the other Party notice, in writing, at least thirty (30) days prior to the desired date of termination. Termination may be effected for no reason or any reason at all. The Parties acknowledge that all services and costs due herein shall accrue until the date of termination and that any amount owed to City at the time of termination shall be immediately remitted to City subject to receipt and approval of properly submitted and documented invoice.
- b. Termination upon Default. Upon default and in addition to any other remedies available to it on account of such event of default, either Party may terminate this Contract without further notice. The Party terminating the Contract must provide a written notice to the other Party immediately.
- c. Remedies Non Exclusive. No right or remedy herein conferred upon or reserved to either of the Parties is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative to any other right or remedy given hereunder or now or hereafter legally existing upon default.

- d. **No Waiver.** The failure of either Party to insist upon the strict observance or performance of any of the provisions of this Contract or to exercise any right or remedy provided in this Contract shall not impair any such right or remedy nor be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Contract to the Parties may be exercised from time to time and as often as may be deemed expedient by the Parties.

19. **Emergency Withdrawal of Officers.** City may temporarily withdraw and shall not be obligated to provide services hereunder in the event that a City representative determines that there is an unsafe condition which cannot be corrected or if Valero fails to correct the condition and in either event, Valero shall only be obligated to pay City for services provided prior to such withdrawal and for services rendered after City agrees that the condition no longer exists. Further, City may temporarily withdraw Officers if an emergency situation arises within the City's jurisdiction that requires the attention of all available City personnel.

20. **Notices.** Whenever notice is required to be given in writing, such notice shall be hand-delivered or mailed by certified mail, return receipt requested, and directed to the respective Parties at the following addresses:

CITY: City Manager
City of Ardmore
PO Box 249
Ardmore, OK 73402

VALERO REFINING
COMPANY- OKLAHAOMA: Vice President
Kevin Lassahn
One Valero Way
Ardmore, OK 73401

or such other address as a Party shall specify by like notice to the other Party hereto. Notices shall be effective on the date of delivery.

21. **City's Representations and Warranties.** To induce Valero to enter into this Contract, City makes the following representations and warranties to Valero:

- a. Each of the recitals set forth in this Contract is true and correct.
- b. City has power and authority and all legal rights to enter into and perform this Contract. The Mayor of the City executing this Contract is duly and properly in office and fully authorized to execute the Contract. This Contract, when duly authorized, executed and delivered by the Parties hereto, shall create a valid and binding obligation on the part of City.

22. **Valero's Representations and Warranties.** To induce City to enter into this Contract, Valero makes the following representation and warranties to City:

- a. Each of the recitals set forth in this Contract is true and correct.

- b. Valero is currently in good standing with the Oklahoma Tax Commission and Oklahoma Secretary of State and shall maintain its status during the course of this Contract.
- c. The undersigned has the full power and authority and all legal rights to enter into and cause the performance of this Contract. This Contract, when duly authorized, executed and delivered by the Parties hereto, shall create a valid and binding obligation on the part of Valero, enforceable against Valero in accordance with its terms.

23. Interpretation of Law and Venue. This Contract shall be deemed to have been made in the State of Oklahoma and shall be construed and interpreted in accordance with the laws of the State of Oklahoma. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Contract may be brought against any of the Parties in the courts of the State of Oklahoma, County of Carter, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Oklahoma, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

24. Insurance. Unless a greater amount of insurance is specified by City, Valero shall maintain, at its own expense, throughout the term of the Contract, a policy or policies, naming the City as additionally insured. All policies must be obtained by an insurance or indemnity carrier authorized to do business in the State of Oklahoma. Under this section, all insurance policies must remain in effect during the term of this Contract. No policy can be canceled, materially altered or not renewed without first providing at least thirty (30) days' notice to the City.

- a. One Hundred Thousand Dollars (\$100,000.00) for any claimant who has a claim for loss of property arising out of a single act, accident or occurrence.
- b. One Hundred Seventy-Five Thousand Dollars (\$175,000.00) for any claimant for any other loss [such as personal injury, death, etc.] arising out of a single act, accident or occurrence.
- c. One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single occurrence or accident.
- d. Workers Compensation insurance, meeting the statutory limits, to cover Valero's employees but not City's employees.

25. Indemnification and Hold Harmless. If the City is, without fault on the part of the City, named as a party to any action commenced by a third party arising out of or in connection with this Contract, Valero shall defend, indemnify and hold harmless the City and any and all officers, agents and employees of the City against all damages, including but not limited to, any loss, liability, expense, suit, or claim for injury to persons or damages to property arising out of sole negligence of Valero, its employees and agents under or in connection with this Contract, whether or not any act or omission complained of is authorized, allowed or prohibited by Valero and all reasonable expenses together with all damages and penalties thereto, except to the extent caused by the negligence, sole negligence or willful misconduct of City and its Officers, employees, agents and representatives.

Expenses shall include, without limitation, all out-of-pocket expenses, attorney's fees, witness fees and discovery costs.

26. Assignment. Neither Party shall assign this Contract or any interest herein without the express, written consent of the other Party. Notwithstanding, Valero may assign this Contract to any of its affiliates without consent of City.

27. Construction. Captions and other headings contained in this Contract are for reference and identification purposes only and do not alter, modify, amend, limit or restrict the contractual obligations of the Parties.

28. Integration, Amendments and Waivers. This Contract constitutes the entire agreement between the Parties and may not be amended, altered, modified or changed in any way except in writing signed by all Parties to this Contract and which specifically references this Contract. There are no other agreements, representations or warranties, whether oral or written, regarding the subject matter of this Contract. No course of dealings involving the Parties hereto and no usage of trade shall be relevant or admissible to interpret, supplement, explain or in any way vary any of the terms expressly set forth in this Contract. Any amendment to this Contract shall be attached to this Contract and all of the terms in this Contract not addressed in the amendment shall remain in full force and effect. Any waiver of any provision of this Contract shall be made in writing executed by the Party who could demand fulfillment of such waived provision.

29. Counterparts. This Contract may be executed in any number of counterparts, and when each Party has signed and delivered to the other at least one (1) such counterpart, each counterpart shall be deemed an original and when taken together with other signed counterparts shall constitute one (1) agreement; provided, however, this Contract shall not be binding upon the Parties hereto until signed by all of the Parties.

30. Binding Effect. This Contract binds the Parties and any successors and assigns of the Parties.

31. Severability. If any one or more of the sections, sentences, clauses or parts to be held invalid for any reason, the invalidity of such section, sentence, clause or part shall not affect nor prejudice the applicability and validity of any other provision of this Contract.

32. Good Faith and Best Efforts. City and Valero agree to perform obligations under this Contract in good faith and use their respective best efforts to ensure that each perform in a timely manner.

33. Force Majure. Performance may be suspended by either Party in case of Act of God, war, riots, fire, explosion, strike, injunction, inability to obtain fuel, power, labor or transportation, accident, national defense requirements or any cause beyond the control of such Party, which presents the performance of such Party. If City is unable to provide all Services due to any of these circumstances, it may continue to provide as many Officers as possible. In that event, Valero shall be obligated to pay only for such Services actually rendered.

34. Governmental Tort Claims Act. By entering into this Contract, City and its "employees" as defined by the Governmental Tort Claims Act, 51 Okla. Stat. § 151 *et seq.*, do not waive sovereign immunity, any defenses, or any limitations of liability as may be provided for by law. No provision of this Contract modifies and/or waives any provision of the Governmental Tort Claims Act.

IN WITNESS WHEREOF, the Parties hereto have executed this contract the day and year first above written.

Date: _____

“CITY”
THE CITY OF ARDMORE, OKLAHOMA,
An Oklahoma Municipal Corporation

By: _____
Sheryl Ellis, Mayor

(SEAL)

ATTEST: _____
City Clerk

Date: _____

“VALERO”
Valero Refining Company - Oklahoma

By: _____

Printed Name Title

(CORPORATE SEAL)

ATTEST: _____
Secretary

VALERO'S ACKNOWLEDGEMENT

STATE OF OKLAHOMA)
) ss:
COUNTY OF CARTER)

On this _____ day of _____, 2018, before me, a Notary Public, in and for the above state and county, personally appeared _____, known to me to be or who proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument and acknowledged that he or she executed the same for the purposes contained therein.

Notary Public

Commission Number: _____

My Commission Expires: _____

EXHIBIT A

