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Robert McKernan

API Contract No.: 2017-111041

Blue Advertising, LLC  
607 14th St NW, Suite 300  
Washington, DC 20005

This letter of agreement between the American Petroleum Institute (hereinafter "API") and Blue Advertising, LLC (hereinafter "Consultant") is as follows:

1. **Scope of Work.** API authorizes Consultant to create advertising to advance API's views on \_\_\_\_\_ and provide advertising strategy, creative, production, and advertisement placement services for API's radio, digital, print, television and out-of-home advertising campaign, as specified in Consultant's proposal, which is attached and made a part hereof.

Consultant shall complete tasks and prepare deliverables in the timeframe specified in the proposal, unless otherwise approved by API. Consultant will not make any media placements without the prior written approval of API. Said approval may be via verbal or written communication.

2. **Consultant Authorized Representative.** Consultant agrees Robert McKernan shall be the project manager. Consultant shall give API prior written notice of the replacement or reduction in the level of effort of the project managers. API shall have the right to approve a reduction in effort and, in the case of replacement of the project managers, API shall have the right to approve a successor.

3. **API Authorized Representative.** Technical and administrative aspects of this agreement will be under the direction of Linda Rozett, American Petroleum Institute, 1220 L Street, NW, Washington, D.C. 20005, or as otherwise designated. The API representative for work conducted hereunder is Jocelyn Kelly. Consultant shall send all correspondence and reports relating to this agreement to the designated representative's attention at the foregoing address.

4. **Compensation.** Pursuant to Consultant's proposal, Consultant shall provide all of the services under this agreement in an amount not to exceed \_\_\_\_\_ as follows:

- \_\_\_\_\_ not to exceed \_\_\_\_\_ (inclusive of agency commissions on gross media buys of 12%. The net media equals 85% of the gross media. The gross media is the net media divided by 0.85.)
- Production and all other expenses: not to exceed \_\_\_\_\_ (billed at cost with no agency mark-up)
- Agency creative fee/retainer: \_\_\_\_\_ invoiced monthly and payable within 30 days of API's receipt of an invoice.

An equal opportunity employer

Consultant shall adhere to the dollar amounts in the above categories unless API directs otherwise. The parties will execute an amendment to this agreement, as necessary, to provide for additional services agreed upon by the parties. API may withhold up to 15% of the agreement amount, pending API's acceptance of all deliverables.

- 5. Invoicing and Expense Documentation Guidelines.** Consultant agrees to follow the guidelines in Exhibit A, *API Invoicing and Expense Documentation Guidelines*, including how to submit invoices for payment, what constitutes allowable out of pocket expenses, and payments that the Consultant may not pay directly on API's behalf. Additional financial terms for this agreement are as follows:

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- a. Consultant reserves the right to bill API in advance for any third party expenditures, and ad buys, and require payment of such bills prior to incurring any third party expense on behalf of API.
- b. All third party expenditures, including all production expenses, travel and miscellaneous out-of-pocket expenses are to be invoiced to API net, without commissions or mark-ups.
- c. Provided that API has approved the relevant expenditure, on either a line item or cumulative basis, contracts that Consultant enters into on API's behalf with third party vendors, including media vendors, will state that if API does not pay Consultant for all amounts owed to such vendors, then the vendors' sole recourse for payment is from API. Consultant shall not enter into contracts on API's behalf with third party vendors that will cause the overall cost of this agreement to exceed the budget stated in paragraph 5, including contract cost overruns, unless agreed to in writing by API.
- d. Consultant shall adhere to the budget specified in its attached proposal, unless otherwise directed and approved in writing by API.
- e. In the event that the ad placement budget is increased, the parties agree to execute an amendment to this agreement outlining the new budget and fees, if applicable.
- f. In the event the cost of an expenditure is expected to exceed the approved amount by more than ten (10) percent, Consultant must obtain prior written approval from API. If Consultant is unable, due to extraordinary circumstances, to obtain such approval in writing, Consultant may obtain API's oral approval, provided Consultant confirms such oral approval not later than two (2) business days from the time oral approval is obtained.
- g. API may, during the progress of any work hereunder, by written or oral order to Consultant, require additions, modifications, suspension, or termination of such assigned work, provided in the case of termination of substantial portion of the work, API shall provide Consultant with thirty (30) days notice. Upon receipt of such instructions from API, Consultant shall take no action that may increase the expense to API and will use best efforts to avoid any penalties for work modification, suspension, or termination from third party suppliers. API will hold Consultant harmless with respect to any costs incurred by Consultant as a result thereof.

- h. In purchasing any materials or services for API's account, Consultant will exercise reasonable care in selecting suppliers, and make every effort to obtain the lowest price for the desired quality of materials or services. Wherever possible, Consultant will obtain competitive bids. In no event shall Consultant purchase any materials or services from any supplier which is a subsidiary or affiliated company, or which is known to Consultant to be owned or controlled by any Consultant directors or officers, without making full disclosure to API of any such relationship.
  - i. If any digital or media buying execution is to be done via programmatic means (i.e., use of DSP, exchanges, etc.) in order to leverage consumer data and/or drive cost efficiencies or where the Consultant can make an additional profit or gain an agency opportunity, Consultant shall appropriately provide transparency to the process, optimization, its fees and related costs as line items in the media placements for API's approval.
  - j. If at any time Consultant receives discounts or rebates from any production or media supplier engaged by Consultant to perform work for API, whether based on volume of work given to such supplier by Consultant or otherwise which applies to purchase made by Consultant on behalf of API, then and in such event, Consultant will remit to API, within a reasonable time after Consultant's receipt of such discount or rebate, such proportion thereof as the volume of work given by Consultant to such supplier on API's behalf bears to the total volume of work given by Consultant to such supplier from all of Consultant's clients during the pertinent period to which the discount or rebate is applicable.
- 6. **Term.** This agreement shall be effective on January 1, 2017 and shall terminate on April 30, 2017.
- 7. **Subcontract.** It is understood that Consultant has sole right to subcontract production and media placement services to vendors of its choosing subject to the prior written approval of API. Subject to other provisions of this agreement, Consultant shall be responsible for the performance of and payment to its subcontractors. Consultant shall require subcontractors to comply with all terms of this agreement.
- 8. **Substantive Conflicts.** During the period of this agreement, Consultant and its personnel shall not represent or engage in efforts for any other party or entity on matters or issues that conflict with positions taken by API. Consultant shall immediately notify the API designee if he becomes aware of the existence of a conflict or potential conflict. Consultant shall not release any information concerning work hereunder to anyone outside API, without prior written approval of API, except for reports required by law. Consultant shall not perform similar work for an entity or individual unless Consultant obtains prior written permission from API approval authority [REDACTED]. This restriction shall remain in effect until the agreement terminates.
- 9. **Compliance with Advocacy Laws.** Consultant and any of its agents agree that they shall comply with and render all services under this Agreement in accordance with all applicable federal, state and local laws and regulations, including without limitation the Federal Election Campaign Act of 1971, as amended; the gift and travel rules of the United States Senate and the United States House of Representatives, as amended; the Standards of Ethical Conduct of Employees of the Executive Branch; the Lobbying Disclosure Act of 1995, as amended; the CAN-SPAM Act; the Children's Privacy Protection Act; and any other applicable lobbying, election campaign finance, gift and travel, ethics, and privacy laws. As

Consultant's efforts on API's behalf may extend to action within the meaning of the Lobbying Disclosure Act of 1995, Consultant will, if applicable, register with and report to Congress under the provisions of that Act. At all times, Consultant's and its agents' relationships with public officials and candidates for public office will be maintained in such a manner as to avoid any impropriety or appearance of impropriety that may be attributed to API. Consultant agrees to provide training to all employees reasonably anticipated to provide services under this Agreement on compliance with all applicable laws and regulations, and that Consultant will provide a copy of any training materials to API upon request.

**10. Compliance.** Consultant agrees that it: (a) will comply with all applicable laws governing bribery and corrupt practices, including but not limited to the U.S. Foreign Corrupt Practices Act; (b) will not take any action in furtherance of bribery of a government official or employee, or any political party or candidate; and (c) will not give or offer anything of value to any government official or employee, or any political party or candidate, for the purpose of: (i) influencing or rewarding any act or decision of such official, employee, party or candidate, either directly, or indirectly through an agent or subcontractor; (ii) inducing such official, employee, party or candidate to violate his or her lawful duty; (iii) inducing such official, employee, party or candidate to influence any government or instrumentality thereof; or (iv) securing any improper advantage for API. For the purposes of this paragraph, employees of state-owned entities are considered to be "government officials or employees." Consultant agrees to notify API immediately if Consultant receives any information indicating a possible violation of the requirements of this paragraph. Consultant represents that no government official or employee, or any political party or candidate has an ownership interest greater than 5% in Consultant. Consultant further agrees to notify API if, during the term of this Agreement, any government official or employee, or any political party or candidate acquires an ownership interest greater than 5% in Consultant. Consultant agrees that API may, in its sole discretion, immediately terminate this Agreement if API learns information which it determines, in its sole discretion, to be evidence of a breach by Consultant or Consultant's officers, directors, employees, or agents, of any representation set forth in this paragraph, and that API shall not be liable for any damages alleged to be caused by such termination. Consultant and any of its agents agree that they shall comply with and render all services under this agreement in accordance with all other applicable federal, state and local laws and regulations.

**11. Intellectual Property Ownership.** API understands that Consultant's pre-existing proprietary materials used for work under this agreement shall remain the property of Consultant. Such proprietary materials include, but are not limited to Consultant databases, media lists, media training guides, BrandCare materials and proposals Consultant submits to API that API does not engage Consultant to implement. Notwithstanding any provision of this agreement to the contrary, API shall obtain no ownership rights in or to: (i) materials prepared by Consultant prior to or outside the scope of this agreement, excluding items API has requested and paid Consultant to develop; and/or (ii) stock photography or any materials obtained from third parties pursuant to license agreements.

All advertisements, photography, art work, reports, drawings, drafts, data, print materials/mechanicals and other documents or materials developed hereunder (including those created by a subcontractor), and the right to copyright such reports, drawings, drafts, data and other documents, whether in electronic media or hard copy, shall be the sole property of API, except to the extent that any such materials are proprietary to Consultant or a third party, as set forth in the preceding paragraph. Consultant shall include whatever



language is necessary in its agreement with any subcontractors to ensure that all work created by the subcontractor under this agreement becomes the intellectual property of API. API may use its proprietary materials in any manner in which API, in its sole discretion, deems fit and proper, including submission to governmental agencies, use in litigation, or use in other proceedings before governmental bodies. Consultant shall receive approval from API for all advertisements before releasing them for placement. Consultant will not use any content, information, processes, knowledge or any copyrightable work created under this agreement, the aforementioned items or other material developed therefrom for any other purpose than to satisfy the terms of this agreement, or release the content or findings of the work performed hereunder to parties outside API without prior review and written approval from API, unless they are in the public domain or are otherwise publicly released by API. Consultant agrees to preserve the confidentiality of information furnished hereunder by API. Further, Consultant shall not disclose the existence of this Agreement, its terms, the content or findings of the work performed hereunder to any parties outside API, and shall preserve the confidentiality of information furnished hereunder by API or received on behalf of API.

- 12. Trademarks.** If API requests that Consultant create any logos, slogans, trademarks, designs, service marks or other trademarkable items ("Trademarks") under this engagement, both API and Consultant will cooperate in risk assessment to determine whether such Trademarks are available for API's use and do not infringe rights of other parties. API will undertake the necessary legal analysis to ensure that the trademark is available for use. Should API desire to register any Trademarks, API will do so at its own cost and in compliance with all applicable laws.
- 13. Talent Personnel.** If Consultant seeks to hire talent that would obligate Consultant to any contractual obligations, such as union or guild agreements including the SAG-AFTRA Commercials Contract governing the hiring and use of performers in commercial materials, Consultant will confer with API before entering into any such contracts and API shall have the right to review such proposed contracts and approve or reject such proposed contracts.
- 14. Indemnification.** Consultant and API mutually represent and warrant that none of the material contained in any advertisements or other deliverables will violate or infringe upon the propriety or statutory rights of any person or entity, or constitute an invasion of anyone's right to privacy. In the event Consultant or API are alleged to have engaged in any conduct which, if true, would constitute a breach of such warranty, the parties mutually shall defend, indemnify and hold each other and their respective officers, directors, members, employees, and agents harmless from any and all claims or causes of actions, including court costs and reasonable attorneys' fees resulting from such conduct.
- Notwithstanding any other provision of this agreement, API agrees to hold Consultant harmless for actions brought by third parties for API's negligent acts arising out of the performance of this agreement. Consultant agrees to hold API harmless for actions brought by third parties for negligent acts by Consultant and/or its subcontractors arising out of their performance of this agreement.
- 15. Assignment.** Consultant may not assign this agreement without API's prior written consent.
- 16. Termination.** Either party may terminate this agreement by giving 30 days written notice to the other. Upon receipt of such notice of termination, Consultant shall cease incurring costs on this agreement except with the prior approval of API for such costs which are necessary

to close out the agreement. In the event of such termination, API's sole obligation will be to reimburse Consultant for actual costs incurred as of the date of termination and subsequent costs incurred with prior approval of API, including legal, uncancellable commitments to third parties. In no event shall such payment include costs and/or anticipated fees for unperformed work or exceed the maximum amount of the agreement as set forth in paragraph 4. Should Consultant elect to terminate this agreement, Consultant agrees to complete any assignments underway, if API so requests.

- 17. Right to Inspect.** API shall have the right at all reasonable times during the course of the agreement, and for a reasonable period following completion of the agreement, to inspect Consultant facilities, including equipment and technical and financial records relating to the work conducted hereunder, for the purpose of insuring conformance with this agreement and with generally accepted good scientific practices, and to verify the accuracy of invoices. Such inspection shall include the right to photocopy records pertaining to work conducted hereunder, excluding individual timesheets.
- 18. Return of Information.** Upon termination of this agreement, Consultant shall return to API any information furnished hereunder by API, together with all documents, data or other material developed therefrom.
- 19. Independent Contractor.** It is understood that Consultant is acting as an independent contractor in its performance of any and all work hereunder and nothing in this agreement is intended or should be construed to create a partnership, joint venture, or employment relationship. Consultant agrees not to refer to itself as API's agent nor refer to the relationship between the parties as a joint venture or partnership. Consultant shall be responsible for payment of all taxes solely based on Consultant's income as may be applicable under the agreement. API shall be responsible for all other taxes, including, without limitation, taxes on the sale or use of goods and services, value added taxes, and general services taxes, imposed by any government or taxation authority, as a result of Consultant's performance of the services.
- 20. Complete Agreement.** This agreement sets forth the entire agreement between the parties and supersedes all prior proposals, understandings or agreements, oral or written, relating thereto.
- 21. Modification.** Any change, modification, extension, termination, or waiver of this agreement or any of its provisions must be in writing and signed by the undersigned or their successors.
- 22. Restrictions on Publicity.** Consultant will not use the trademark or name of the American Petroleum Institute or any abbreviation thereof, in any publicity, advertising, or for other promotional purposes without the prior written approval of API, except as needed to execute its responsibilities under this agreement.
- 23. Choice of Law.** The laws of the District of Columbia shall govern this agreement. The parties agree that the only venue for hearing any disputes related to this agreement shall be the District of Columbia.
- 24. Limited Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE OR OTHER INDIRECT DAMAGES (INCLUDING, LOST REVENUES OR PROFITS), OR FOR ANY CLAIM MADE

AGAINST CONSULTANT BY ANY OTHER PARTY. SUCH LIMITED LIABILITY SHALL NOT EXCEED THE FEES PAID TO CONSULTANT BY API.

**25. Execution and Counterparts.** This agreement may be signed in multiple counterparts that together shall constitute a single agreement. This agreement, including any modifications, waivers, or notifications relating thereto, may be executed and delivered by facsimile, electronic mail, or other electronic means. Any such electronic transmission shall constitute the final agreement of the parties and conclusive proof of such agreement.

**26. Inconsistencies.** In the event of inconsistencies between this agreement and its attachments, the express terms of this agreement shall govern.

**27. Insurance.** Consultant agrees to maintain at all times while this Agreement is in effect insurance in form and amount sufficient to meet the obligations of Consultant contained in this Agreement, but in no event less than the following occurrence-based insurance coverage in the form and from insurance companies reasonably suitable to API (collectively, the "Required Insurance Coverage") in Exhibit B.

**28. Survival.** Paragraphs 7-27 shall survive the termination of this agreement.

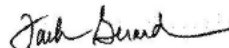
If the above terms and conditions are acceptable, please sign below and return an executed copy of this agreement to API.

Blue Advertising, LLC



Date: 1/11/2017 | 10:57 AM EST

American Petroleum Institute



Jack Gerard  
President & Chief Executive Officer

Date: 1/11/2017 | 10:58 AM EST

**EXHIBIT A**  
**API INVOICING AND EXPENSE DOCUMENTATION GUIDELINES**

Please review these Guidelines carefully. Payment will be delayed for incomplete invoices or unsubstantiated expenses. For questions, contact the API representative named in the agreement. Sections III and IV also apply to invoices submitted for subcontractor expenses.

**I. General Invoice Guidelines**

1. Invoices shall reference API Contract No.: 2017-111041.
2. API may request specific activity/expense itemization on the invoice.
3. Each invoice shall have a unique invoice number that will not subsequently be reused.
4. Invoices shall be in US dollars unless otherwise specified in the agreement.
5. Invoices shall provide a detailed description of the services provided. This includes, but is not limited to, tasks performed, hours worked, goods procured, itemized expenses.
6. Invoices are payable within 30 days of API's receipt of a complete and accurate invoice.
7. API may withhold up to 15% of the agreement amount, pending API's acceptance of all deliverables.
8. A current W-9 and banking information are required from new vendors; payment is contingent upon receipt of a W-9. International vendors may have additional requirements.

**II. Submitting Invoices for Payment**

1. API uses Anybill, a third party vendor, to receive and route invoices for payment.
2. Submit invoices to Anybill using one of the following methods; do not include API staff on communications to Anybill:
  - a. **Anybill Email (preferred):**
    - i. Email submissions are limited to ONE PDF FILE per invoice, which includes all backup documentation, AND cannot exceed 10 MB.
  - b. If the above TWO criteria cannot be met, fax or mail the invoice to:
    - i. Anybill Address:
    - ii. Anybill Fax:

**III. Required Supporting Documentation**

1. Documentation is required for expense reimbursement of \$75 USD or more.
2. Documentation must show amount incurred by Consultant; estimates or quotes are insufficient.
3. Expenses must be itemized on the invoice, or an attachment to the invoice, such that totals match amounts on supporting documentation.
4. Receipts must be legible, oriented upright, and be in the same sequential order as the itemization.

**IV. Out of Pocket Expenses**

1. Reimbursement of travel expenses is limited to coach class transportation and reasonable accommodations if travel is requested by API.
2. Air travel must include the ticketed itinerary stating the fare amount, taxes, fees, etc., as well as class designation.
3. If upgrading from coach class, include documentation identifying the coach fare at the time the ticket was purchased, and clearly identify the amount of overage paid by Vendor.
4. Reimbursement for vehicle mileage shall be at the prevailing IRS rate.

End of Exhibit A

**EXHIBIT B  
REQUIRED INSURANCE COVERAGE**

**I. General Liability: Minimum Limits of:**

- Each Occurrence - \$1,000,000
  - Personal & Advertising Injury - \$1,000,000 (note this coverage is likely to be excluded for a media firm)
  - Products & Completed Operations - \$1,000,000
  - General Aggregate - \$2,000,000
- API named as an Additional Insured  
Waiver of Subrogation in favor of API  
Consultant insurance as "primary and noncontributory" to API's own insurance

**II. Network Security And Privacy Liability:**

Technology Products and Services, Media, Misc. Professional Services  
Errors and Omissions, Privacy Liability, Security Liability

**Minimum limits of:**

- \$5,000,000 each occurrence/Per person approach
- API named as an Additional Insured  
Waiver of Subrogation in favor of API  
Consultant insurance as "primary and noncontributory" to API's own insurance

**III. Umbrella: Minimum limits of:**

- \$2,500,000 General and Products Completed Operations Aggregate
- API named as an Additional Insured  
Waiver of Subrogation in favor of API  
Consultant insurance as "primary and noncontributory" to API's own insurance

**IV. Media Liability: Minimum limits of:**

- General Aggregate - \$2,000,000
- API named as an Additional Insured  
Waiver of Subrogation in favor of API  
Consultant insurance as "primary and noncontributory" to API's own insurance

The insurance coverage and limits required under this Agreement are designed to meet the minimum requirements of API and evidence insurance. They are not designed as a recommended insurance program for the Consultant. The Consultant shall be responsible for the sufficiency of its own insurance program to cover their risk under this Agreement. All policies will be written by insurers permitted to conduct business in the state of exposure, with A.M. Best ratings of no less than A-VII. Failure of API to notify Consultant of noncompliant insurance certificates does not indicate acceptance or relieve Consultant of its obligations under this Agreement. No deductible under any Required Coverage policy shall exceed 5% of the per occurrence limit for that policy. All Required Coverage except for the coverage listed in subsection (i) will name API and its Affiliates as additional insureds. All Required Coverage will be primary with respect to any other insurance or self-insurance available to API and will contain a special clause requiring written notice by the insurer to API not less than thirty days in



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advance of cancellation or non-renewal. Consultant will provide to API certificates of insurance evidencing the Required Coverage and requirements at the commencement of this Agreement and at any time afterwards that API requests.

End of Exhibit B