

City of Santa Fe, New Mexico

memo

DATE: February 11, 2014

TO: Finance Committee

FROM: Robert Rodarte, Purchasing Officer 
Purchasing Division

VIA: Marcos A. Tapia, Finance Director 
Finance Department

ISSUE: Award of Request for Proposal # '13/23/P
Compressed Natural Gas (CNG) Fueling Services for the Transit Division
and the Environmental Services Division

SUMMARY:

On March 15, 2013, three proposals were received for the above referenced service as follows:

	Written Score
Clean Energy, CA	2110
Zeit Energy, TX	2020
Trillium CNG, UT	1810

The evaluation criteria consisted of experience/qualifications (10%); technical competence (10%); capacity to perform/past performance (10%); preliminary project plan (20%); margin price (40%); and schedule (10%). The proposal was reviewed and evaluated by Robert Rodarte, Purchasing, Jon Bulthuis, Transit, Lawrence Garcia, Environmental Services, Mary MacDonald, CIP and Nick Schiavo, Water.

The using department has reviewed the proposals and recommends award to Clean Energy, CA in the amount of \$456,295.00.

Budget is available as outlined in memo of recommendation from using department.

ACTION:

It is requested that this recommendation of award to Clean Energy, CA in the amount of \$456,295.00 be reviewed, approved and submitted to the City Council for its consideration.

Attachment(s):

1. Memo of recommendation from the using department.
2. A copy of the professional service agreement.
3. A copy of tabulation score sheet

EVALUATION SCORES

'13/23/P

COMPRESSED NATURAL GAS (CNG) FUELING SERVICES FOR THE TRANSIT DIVISION AND THE ENVIRONMENTAL SERVICES DIVISION

Written Evaluation

Evaluation Committee	Clean Energy	Zeit Energy	Trillium CNG
Robert Rodarte	450	410	350
Jon Bulthuis	450	430	400
Lawrence Garcia	400	360	340
Mary MacDonald	420	430	400
Nick Schiavo	390	390	320
Total Score	2110	2020	1810

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Clean Energy (the "Contractor"). The date of this Agreement shall be when signed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

A. The Contractor shall provide the following services for the City: The ongoing operation and maintenance of the Station (as defined below) located at the Transit Division, 2931 Rufina Street, Santa Fe, New Mexico. As further described herein, the Contractor shall design, permit, and expand the time fill capacity of the system and upgrade existing equipment, as needed, to meet municipal and public fueling demands which shall be completed in accordance with the time schedule for completion set forth in the Contractor's Response to the RFP, which is incorporated herein by reference and made a part hereof. The Contractor's costs associated with the upgrades to the CNG Fueling Facility shall be paid by the City, in accordance with this Agreement, for both upfront infrastructure costs and ongoing operations and maintenance costs.

B. The Contractor shall be responsible for:

1. If requested in writing by the City, completion of an engineering report that specifies the

equipment upgrades to be made to the Station, capable of meeting existing and forecasted "time-fill" municipal and "fast-fill" public access fueling demands. This report shall include a development schedule that specifically addresses how fueling demands will be met, without interruption, during the upgrade process, including "back-up" plans should any unanticipated difficulties arise during the upgrade process.

2. Providing at a minimum the following components for the Station, all tasks listed in Exhibit B plus the following:

a. While the compressors and the gas dryer currently on-site at the Station have reached its useful life; the storage vessels have an unlimited lifespan as long as they are maintained properly and tested regularly. Since the vessels are in useable condition, they will be reconfigured into a vertical saddle rack and reinstalled and if, in the future, the storage vessels need to be repaired or replaced, or storage capacity expanded to accommodate the fueling of third party fleets, the Contractor agrees to do so, at no added cost;

b. Electrical system upgrade between the Transit Division's electrical panel and

compression station, to include new wiring, conduits and cable;

c. Underground gas line replacement between the compression station and each fueling post, to include the gas lines encased in concrete up to the shut-off valve at each existing station;

d. Design and construction of an addition to the existing "Time Fill" fueling station, on the Transit Division yard, with 18 fueling nozzles, that shall provide fuel at 3,000 PSIG for the Transit Division's Paratransit Section;

e. Design and construction of a new "Time Fill" fueling station, including concrete pavement and associated infrastructure, with 30 fueling nozzles, that shall provide fuel at 3,600 PSIG for the Environmental Services Division;

f. Upgrades to the CNG fueling facility shall comply with current federal & state codes with respect to security and safety and shall incorporate Federal Transit Administration safety and security recommendations wherever practical; and

g. Upgrades to existing public access "Fast Fill" station, as needed, including replacement of the dispenser and card reader at no cost to the

City should these items fail at any time during the term of the contract.

Note: All proposed equipment and materials shall include the original equipment manufacture's warranties, to the extent such warranties are still valid.

3. Securing, at Contractor's own expense, all necessary construction and environmental permits related to the Station upgrade;

4. Coordination with Public Service Company of New Mexico on all power supply upgrades;

5. Operating and maintaining the Station and bearing all costs related to the operation and maintenance of the Station, including the procurement of natural gas commodity and dispensing and selling CNG to the City and public;

6. Providing emergency repair service for the Station on a 24-hour, 7-day per week basis, providing emergency service within two (2) hours from the time contacted by the City, and respond and restore the operation of the Station as soon as commercially reasonable;

7. Conducting annual training classes for the City of Santa Fe Transit and Environmental Services staff for safety, operation and maintenance of the Station;

8. Applying for any federal tax credits associated with the sale of compressed natural gas from the Station and passing on any credits received based directly and solely on CNG sold from the Station to the City as long as the City has provided Contractor with all information reasonably requested by Contractor to apply for and receive such federal tax credits. In the event any of the federal tax credits passed on to the City hereunder are disallowed, the City shall deposit the federal tax credit in escrow for one year from the date of receipt so that in the event the federal government subsequently disallows the federal tax credit, the City will release the escrowed amount back to the Contractor not to exceed the amount already paid to the City;

9. Providing the services described in the Contractor's Response to the RFP and the Exhibits hereto, in close cooperation and consultation with the City of Santa Fe, secure all necessary construction and environmental permits, including any and all applications or permitting fees, for the services to be performed by Contractor, and manage construction of all new CNG facilities, if any;

10. Following execution of this Agreement, Contractor shall work with City staff to finalize the design of the upgrades to the Station; and

11. If requested in writing by the City, provide a written plan that ensures fueling to at least Transit Division's time fill station during all phases of the Station upgrade because the Transit and Environmental Services Divisions depend upon the existing Station daily to maintain service to the public.

C. This Agreement supersedes and replaces in its entirety the "Compressed Natural Gas Vehicle Fueling Station and CNG Sales and Retail Agreement" (Item #08-0823), executed by the parties and effective August 31, 2008.

D. Intent. This Agreement expresses the terms and conditions pursuant to which the City authorizes CE to own, operate, maintain, and retail fuel at the CNG station on property owned by the City located at 2931 Rufina Street, Santa Fe, NM. for the City's use and other third party users.

E. Definitions. As used in this Agreement, the following terms and expressions shall have the indicated meanings:

"Agreement" means this document and any and all exhibits attached hereto.

"CNG" means pipeline quality natural gas, compressed for vehicle use.

"CNG Vehicle(s)" means motor vehicles powered by internal combustion engines using CNG as a primary fuel.

"Diesel Gallon Equivalent" means (i) 6.06 pounds of CNG or such other number or units of measure as may now or in the future be prescribed by the federal government of the United States when CNG is being dispensed from a fast fill dispenser, and (ii) 137,380 BTUs/gallon or such other number or units of measure as may now or in the future be prescribed by the federal government of the United States when CNG is being dispensed from a time fill dispenser. Also referred to as a DGE.

"City" means the City of Santa Fe, acting by and through its employees, officers and authorized agents.

"CE" or "Contractor" means Clean Energy, acting by and through its employees, officers and authorized agents.

"Gasoline Gallon Equivalent" means (i) 5.66 pounds of CNG or such other number or units of measure as may now or in the future be prescribed by the federal government of the United States when CNG is being dispensed from a fast fill dispenser, and (ii) 124,340 BTUs/gallon or such other number or units of measure as may now or in the future be prescribed by the federal government of the United States when CNG is being dispensed from a time fill dispenser. Also referred to as a GGE.

"Premises" means that portion of the real property owned by the City and located at 2931 Rufina Street, Santa Fe, NM upon which the Station is located and operated.

"Station" means the facility for refueling CNG Vehicles owned, operated and maintained by CE on the Premises.

F. Station Operation. CE will operate and maintain the Station on the Premises, and shall be responsible for all costs relating to the operation and maintenance of the Station, procurement of natural gas commodity for the Station and retailing fuel to the City and third party users from the Station.

G. CNG Service to City. CE shall provide the Station with CNG to fuel the City's vehicles and will bill the City at the rate described in Exhibit A, which attached to this Agreement and incorporated by reference herein, for such CNG purchases.

H. CNG Service to Third Parties. CE shall provide the Station with CNG to fuel third-party vehicles and will bill the third-party users at rates set in CE's sole and absolute discretion.

I. Station Maintenance. CE shall maintain the Station in accordance with the following requirements:

1. Routine Maintenance. CE shall provide scheduled, routine maintenance service for the term of this Agreement and shall repair, or replace, any defective parts or equipment at its expense. CE shall also perform other

necessary maintenance or repairs, including emergency repairs, at its expense, in order to keep the Station operating. However, any maintenance or repair costs incurred due to damage, abuse or neglect by the City's personnel shall be billed to the City at CE's then-existing rates.

2. Scheduling. CE and the City shall mutually agree on times for maintenance services that require the Station to be out of operation for more than four (4) hours.

J. Training. CE shall offer reasonable training programs to educate the City's personnel as to the procedures for the safe and efficient use of the Station, including, without limitation, procedures relating to safe vehicle fueling, troubleshooting and appropriate emergency procedures.

K. Compliance with Law. In performing the obligations under this Agreement, CE shall comply in all material respects with all applicable federal, state and local laws, regulations, ordinances and rulings, including (but not limited to) those pertaining to health, safety, employment and environmental matters.

L. CE's Costs. CE shall not charge the City for other costs incurred in providing the services described in this Agreement. CE shall be responsible for paying utility costs, commodity costs and demand charges, incurred in providing the natural gas services for the City. CE shall be

responsible for the ad valorem or possessory interest taxes relating to the Station.

M. Maintenance of Premises. The City shall maintain the Premises and the real property in the vicinity of the Station in a clean, safe, and commercially reasonable condition suitable for CNG vehicle refueling use, including the ingress to, and egress from, the Station.

N. Protection of CE Property. The City shall use commercially reasonable efforts in storing and protecting CE's property and the Station, including spare parts for the Station and the Station itself.

O. Refueling Vehicles. The City employees shall refuel its CNG Vehicles. The City will provide appropriate training and supervision for employees, including, but not limited to, scheduling attendance at all appropriate training sessions provided by CE.

P. Compliance with Law. In performing its obligations under this Agreement, the City shall comply in all material respects with all applicable federal, state and local laws, regulations, ordinances and rulings, including, but not limited to, those pertaining to health, safety, employment and environmental matters.

Q. Payment of CE Billings. The City shall pay each invoice submitted by CE within thirty (30) days following receipt of the invoice by the City. For purposes of this

section, receipt shall be defined as three (3) days after the invoice is mailed by CE.

R. The City's Costs. The City is exempt from real and personal property tax under New Mexico state law. However, if the City is not exempt from any other taxes or assessments relating to the Premises, the City agrees to be responsible for those non-exempted taxes and assessments relating to the Premises.

S. Permitted Use. To enable CE to fulfill its obligations set forth herein, the City hereby licenses and permits CE to use the Premises for the purposes contemplated hereby in accordance with the terms and conditions of this Agreement. The City shall not, and shall not permit others to, levy any rent, charge, lien or encumbrance not expressly provided for in this Agreement against CE for the use of the Premises or the Station.

T. Clear Title. The City is, and shall remain during the term of this Agreement, the owner of the Premises, and shall not allow any lien or encumbrance affecting the Station or CE's performance hereunder. CE shall be the owner of the Station, and its parts and equipment. CE shall have the right to grant a lien or encumbrance against its right, title and interest in the Station or its equipment to a third party for financing purposes; provided, however, that CE shall not permit any liens or encumbrances of any kind to

be placed on the Premises, and shall promptly discharge, at its expense, any and all mechanic's, laborer's or materialman's liens, encumbrances or charges against the Premises or the Station related to its performance under this Agreement. CE shall pay all contractors or subcontractors performing work on behalf of CE timely in order to prevent the filing of any liens. However, if, because of any act or omission of CE any mechanic's or other lien, charge or order for the payment of money shall be filed against the Premises or the City's interest in the Premises, for work for, or materials furnished to CE, then CE, at CE's expense, shall cause it to be canceled or discharged of record by payment, deposit, bond or order of a court of competent jurisdiction or otherwise within thirty (30) days after CE receives actual notice of the filing of such lien.

U. Memorandum of Agreement. Upon CE's request, the City shall execute a memorandum reflecting this Agreement and the property interest of CE in recordable form to reflect CE's interest in the Station and the Premises. CE shall be responsible for all reasonable costs related thereto.

V. Sale, Abandonment or Removal. Unless otherwise agreed to by the Parties in writing, upon termination, for cause or without cause, or expiration of this Agreement, CE

shall either: (i) enter into a new Agreement with the City in accordance with the New Mexico Procurement Code and the City's Purchasing Manual; (ii) sell the Station to the City for an amount set forth in Paragraph 3 D herein; or (iii) abandon the same in place by quitclaiming all of its right, title and interest therein to the City. Thereafter, CE shall have no further rights or obligations under this Agreement with respect to the Premises.

V. Use of Station by Non-City Vehicles. During the term, CE will use commercially reasonable efforts to market the use of Station's public refueling dispenser to other third party owned vehicles ("Fleet Customers") and sell CNG fuel to the Fleet Customers at a price determined by CE in its sole and absolute discretion (the "Retail Rate").

W. Royalty. CE shall pay the City the amount of \$0.10 per GGE of CNG sold to third parties at the Station's public dispenser(s). Royalty payments relating to this Article shall be made by CE on a quarterly basis within thirty (30) days following the end of each calendar quarter.

X. Pricing of CNG. CE shall provide the City with CNG at a price per GGE plus commodity cost as described in Exhibit A. By signing this Agreement, the City hereby represents to CE that it will use 100% of the CNG purchased hereunder for vehicle use.

Y. Taxes. CE is currently required to, or may be required in the future to, collect and remit certain federal, state and local taxes, including fuel use taxes, on CNG sold at the Station, subject to certain exemptions. The City shall be responsible for all such applicable excise, sales and use taxes related to its purchases of CNG under this Agreement. If the City qualifies for an exemption from one or all of these taxes, the City shall furnish to CE appropriate certification authorizing non-payment of the applicable tax or taxes.

Z. Pre-Existing Conditions. If, at any time during the term of this Agreement, CE determines that pre-existing hazardous materials, soil conditions, underground hazards or soil contaminants exist that either: (a) require removal, replacement and/or disposal; (b) require remediation; or (c) require unanticipated soil or foundation work; CE shall notify the City in writing, whereupon the City shall, at its option and expense, either (i) terminate this Agreement upon written notice to CE, or (ii) undertake such required remediation, removal, replacement and/or disposal. If the City elects to undertake such required remediation, removal, replacement and/or disposal of pre-existing hazardous materials, the City shall diligently prosecute such activities and shall complete such activities as soon as commercially reasonable. Notwithstanding anything to the

contrary herein, CE shall not be financially or legally liable for any pre-existing hazardous materials, soil conditions, underground hazards or soil contaminants on the Premises and any required remediation, removal, replacement preparation work, and/or disposal required for such pre-existing hazardous materials unless such hazardous materials, soil conditions, or soil contaminants are brought onto the Premises by CE. Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Each party shall be solely responsible for fiscal or other sanctions, penalties or fines occasioned as a result of its own violation or alleged violation of requirements applicable to performance of this Agreement. Each party shall be liable for its acts or failure to act in accordance with this Agreement. The City is subject to the immunities of the Tort Claims Act. Notwithstanding the foregoing or anything to the contrary herein, CE shall be financially and legally liable for any and all remediation, removal, replacement preparation work and/or disposal activities related to hazardous materials, soil conditions, underground hazards or soil contaminants which are brought onto the Premises by CE. This section shall survive termination of this Agreement.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law to perform the operation and maintenance services it is required to perform hereunder, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. For the Station upgrades and capital costs and complete operations and maintenance service for the term of the Agreement, described in this Agreement and in Exhibit B, which is attached hereto and incorporated by reference herein, the City shall pay to the Contractor Four Hundred Fifty Six Thousand Two Hundred Ninety Five dollars (\$456,295), plus applicable gross receipts taxes. The City shall, in accordance with Exhibit A, pay compression service fees of \$1.27 per DGE for annual volumes less than 295,000 DGE, and \$1.19 per DGE for annual volumes greater than 295,000 DGE.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid to it under this Agreement.

C. Payment for the Station upgrades described in Exhibit B shall be made upon receipt and approval by the City of detailed statements containing an invoice detailing services completed and deliverables received and accepted by the City.

D. Unless otherwise agreed to by the parties, upon the termination for cause or no cause or expiration of the term of this Agreement, Contractor shall sell and the City shall purchase the Station, including all of the equipment that is presently located on the Premises plus the added upgraded equipment installed pursuant to this Agreement so that the Station is in "turn-key" condition, to the City for the depreciated amount (hereinafter referred to as the "Station Sum"), prorated as of the date of termination or expiration, as set forth in accordance with the depreciation table attached hereto as Exhibit C. By way of example only, if this Agreement remains in effect for the entire four year term, the amount of the sale shall be One Million Two Hundred Six Thousand Four Hundred Fifty Eight dollars (\$1,206,458), excluding gross receipts tax. Unless the City and CE have a new signed agreement, prior to the expiration or termination date of this Agreement, the City shall remit the Station Sum to CE and CE shall transfer the Station ownership to the City. Upon such sale, all parties shall execute appropriate sale documents, as reasonably requested and approved by the Governing Body. Contractor agrees not to remove any part of the Station before the sale is completed. The City and the Contractor

agree that the City shall dedicate a sufficient percentage of transportation and solid waste gross receipts tax revenues on a fiscal year basis to be deposited into a special fund to purchase the Station and that the City's agreement to purchase the Station upon expiration or termination of this Agreement is not a debt in the constitutional sense and is not payable from the City's general fund revenues.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and terminate exactly four (4) years from the effective date, unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon thirty (30) days written notice to the Contractor.

B. Upon termination of this Agreement, for any reason, prior to the expiration of the term, in addition to paying CE the sale price for the Station, as described above in Paragraph 3 D., the City shall pay the Contractor for CNG purchased from the Station by it prior to the effective date of termination and for the reasonable value of services satisfactorily performed and accepted by the City through the date Contractor receives notice of such termination, and for which compensation has not already been paid and prior approved reimbursable expenses incurred through the date Contractor receives notice of such termination.

C. Upon a material breach of this Agreement by the City, CE shall have the right to terminate this Agreement, for cause, upon sixty(60) days written notice and opportunity to cure to the City, provided, however, that where it is not commercially reasonable to fully effect a cure within the sixty (60) day period set forth above, the City shall not be deemed to be in default of the Agreement and subject to termination for cause where it commences implementation of the cure within such sixty (60) day period and thereafter proceeds diligently to cure the breach.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its

agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this contract.

8. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further agrees that in the performance of this Agreement no persons having any such interests shall be employed.

9. Force Majeure. In the event that CE or the City is prevented from performing its duties and obligations pursuant to this Agreement by circumstances beyond its control, including, without limitation, fires, floods, labor disputes, equipment failure, the interruption of utility services, the cessation of providing necessary products or services to CE or the City by any supplier to CE or the City, war, acts of terrorism, or Acts of God (hereinafter referred to as "Force Majeure"), then the party

affected by the Force Majeure event shall be excused from performance hereunder during the period of such disability ("Force Majeure Period"). If either party claims Force Majeure, it shall notify the other within 24 hours after it learns of the existence of a Force Majeure condition, and will also provide the other with an estimate, if one can be reasonably made, of the anticipated Force Majeure Period. The party affected by the Force Majeure event will also notify the other within 24 hours after the Force Majeure condition has terminated. The party affected by the Force Majeure event shall agree to use commercially reasonable efforts to correct whatever events or circumstance cause the Force Majeure event.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form

and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. If applicable, the Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of

any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of

services rendered to the Station. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor, and, if an audit is performed by the City, DFA or the State Auditor, then such auditing party will reimburse the Contractor's reasonable expenses incurred in cooperating with said audit and during the Contractor's business hours after providing Contractor with reasonable prior written notice. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality,

and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:

Jon Bulthuis
Transit Division Director
2931 Rufina St.
Santa Fe, NM 87507

Contractor:

Peter Grace
Senior Vice President
4675 MacArthur Court, Ste.800
Newport Beach, CA 92660

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF SANTA FE:

DAVID COSS, MAYOR

DATE: _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

CONTRACTOR:

APPROVED AS TO FORM:

By: _____
(Name & Title)



KELLEY BRENNAN, INTERIM CITY ATTORNEY 2/12/14

CRS # _____
City of Santa Fe Business
Registration # _____

APPROVED:

MARCOS TAPIA, DIRECTOR
FINANCE DEPARTMENT

BUSINESS UNIT/LINE

EXHIBIT A
CNG PRICING TO THE CITY

The price per DGE of CNG payable by the City to CE for CNG purchased by the City during the applicable month from the Station shall be calculated as follows:

Rate per DGE = (The costs CE incurs to deliver gas to the Station (including, without limitation, utility costs and transportation charges) during the applicable month/total number DGEs of CNG dispensed from the Station during the applicable month)+ the Compression Fee + all applicable federal, state and local taxes, fees and assessments per DGE.

The "Compression Fee" per DGE is calculated as follows:

Buyer's Monthly Consumption	Compression Fee per DGE
1 – 24,583	\$1.27
24,584 or more	\$1.19

"Buyer's Monthly Consumption" shall mean the aggregate amount of CNG in DGEs purchased by the City from the Station in any applicable calendar month during the term of the Agreement.

CPI ADJUSTMENT. Beginning January 1, 2015, and on each January 1st thereafter during the term of this Agreement, the Compression Fee charged by CE shall be increased by the change in the United States Bureau of Labor Statistics Consumer Price Index - All Urban Customers, West Urban Area, All Items (1982-84=100), as published monthly in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, from the effective date of this Agreement for the first such adjustment, or the date of the last adjustment for each subsequent adjustment, through the date of the current adjustment.

EXHIBIT B
STATION UPGRADES

In addition to the Station upgrades set forth in the Agreement, CE shall perform the following Station upgrades:

1. CE shall pave the Environmental Division time-fill station comprising an area of 9,800 square feet (70' W x 140' L) with concrete as well as add 10 additional time-fill posts. CE shall not be responsible for removing vegetation or existing concrete or asphalt as these shall be the City's responsibilities.
2. CE shall replace the underground gas lines between the compression station and each fueling posts, as well as the gas lines encased in concrete up to the shut-off valve at each existing station.

EXHIBIT C
STATION DEPRECIATION SCHEDULE

Year 1 starts the date the improvements are completed/equipment fully installed and operational, in accordance with the Schedule in the Contractor's Response to RFP

Year 1	\$1,432,668.78
Year 2	\$1,357,265.16
Year 3	\$1,281,861.54
Year 4	\$1,206,457.92
Year 5*	\$1,131,054.30
Year 6*	\$1,055,650.68
Year 7*	\$980,247.06
Year 8*	\$904,843.44
Year 9*	\$829,439.82
Year 10*	\$754,036.20
Year 11*	\$678,632.58
Year 12*	\$603,228.96
Year 13*	\$527,825.34
Year 14*	\$452,421.72
Year 15*	\$377,018.10
Year 16*	\$301,614.48
Year 17*	\$226,210.86
Year 18*	\$150,807.24
Year 19*	\$75,403.62
Year 20*	(\$0.00)

*Note - These values apply if this Agreement is renewed beyond the initial term by the parties through an amendment executed by the parties.

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, FEBRUARY 10, 2014**

ITEM 14

TRANSIT DIVISION

- REQUEST FOR APPROVAL OF THE COMPRESSED NATURAL GAS (CNG) FUELING STATION UPGRADE AND EXPANSION PROJECT WITH CLEAN ENERGY IN THE AMOUNT OF \$456,295, INCLUSIVE OF APPLICABLE GROSS RECEIPTS TAX (JON BULTHUIS)

PUBLIC WORKS COMMITTEE ACTION: Approved

SPECIAL CONDITIONS OR AMENDMENTS: New contract was passed out at PWC

STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON WURZBURGER	Excused		
COUNCILOR CALVERT, Acting Chair	X		
COUNCILOR IVES	X		
COUNCILOR RIVERA	X		
COUNCILOR TRUJILLO	Excused		

City of Santa Fe, New Mexico

memo

Date: January 28, 2014
To: Public Works Committee
Via: Isaac Pino, Public Works Director
From: Jon Bulthuis, Transit Director 
RE: Compressed Natural Gas (CNG) Fueling Station Upgrade and Expansion Project

Item & Issue

The City of Santa Fe issued Request for Proposal (RFP) '13/23/P in order to identify and recommended a vendor to complete the needed upgrade and expansion of the City of Santa Fe's compressed natural gas (CNG) fueling facility located at the transit yard on Rufina Street. The fuel compressors and storage tank equipment, initially purchased and installed when transit services were initiated in 1991, have now exceeded their useful life.

The capacity of the original system is also under-sized given the increase in CNG fueled vehicles now operated by the City of Santa Fe. At the Transit Division, the number of CNG vehicles has steadily increased over the years to now include support vehicles, as well as vehicles used to deliver service to the Santa Fe Ride Paratransit Program, in addition to the buses of Santa Fe Trails. As such, an addition of eighteen (18) new fueling bays in the transit yard is included in the project (*see Exhibit A*). The Environmental Service Division is also in the process of replacing aging diesel solid waste trucks and purchasing new equipment powered by CNG. This transition will require thirty (30) new fueling bays to be constructed on Solid Waste Division property adjacent to the compression station (*see Exhibit B*). Although not all of these fueling bays will be used immediately, the capacity of compressors and storage equipment included in the upgrade will provide for their use once the Solid Waste Division's conversion to CNG vehicles is complete.

The majority of the investment in new capital equipment, and the fuel distribution system described above, will be financed through compression fees assessed by the vendor over the term of the contract (*see Exhibit C*). At the expiration of the contract term, the City of Santa Fe will have the option to pay the vendor \$1,131,054 for the depreciated value of the improvements, or

to continue to finance that cost through a compression fee assessment with the subsequent vendor.

However, the City of Santa Fe will pay the vendor upfront for additions to the scope of work negotiated following submittal of their proposal. Specifically, the Environmental Service Division will pay the vendor \$256,777 for concrete paving at the new fueling bays, and (10) additional fueling posts, not included in the original bid. The Transit Division will pay the vendor \$199,518 for replacement of existing fuel distribution lines that are no longer compliant with building codes. These payments will be made following completion of construction, and acceptance of the additions, as noted above.

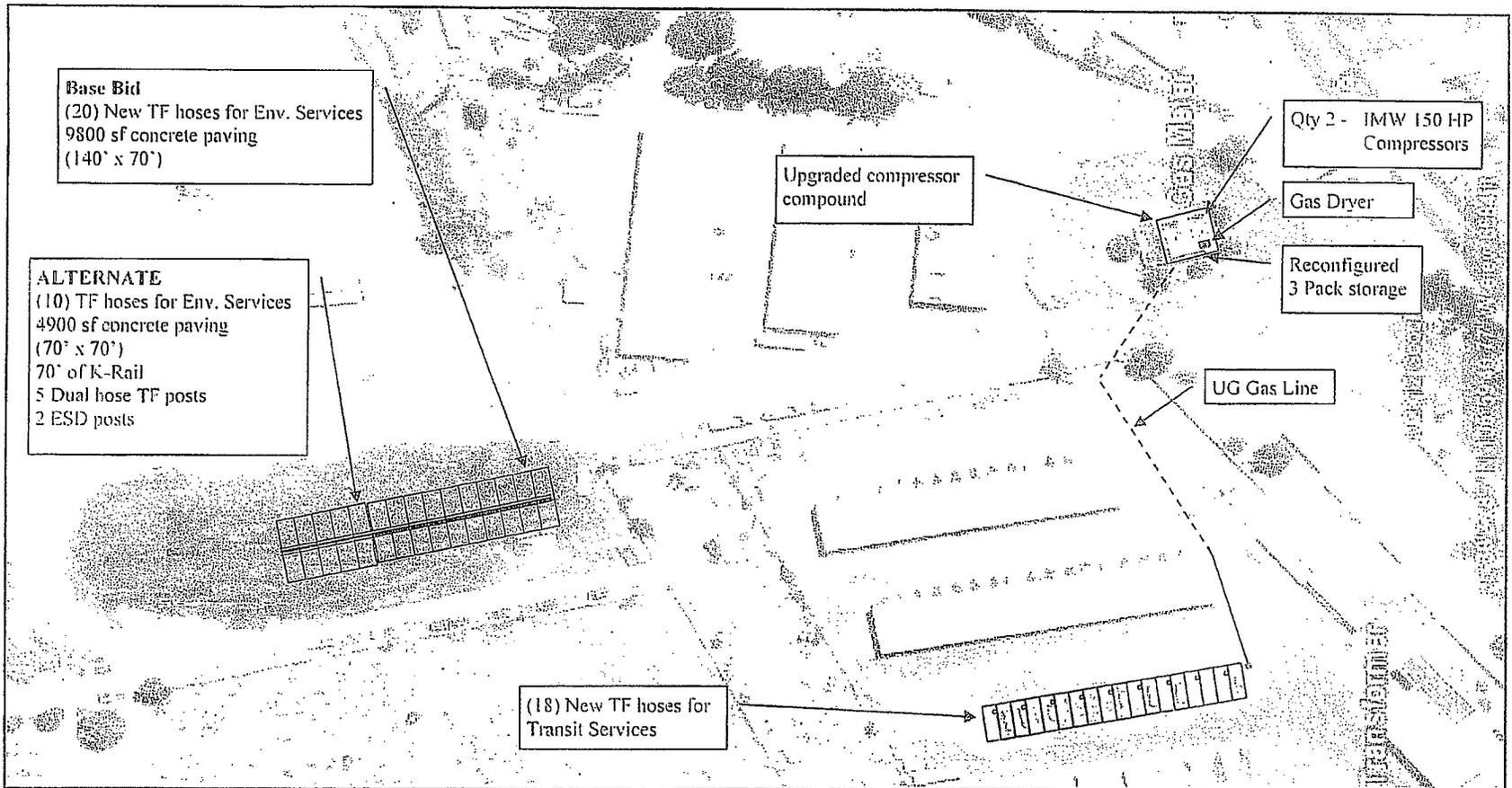
Action Requested

Three vendors responded to the RFP and their proposals were evaluated by the selection committee: Clean Energy, Zeit Energy, and Trillium CNG. Based on the responses provided in the proposals, the selection committee is recommending that the City of Santa Fe choose Clean Energy as the preferred vendor (*see Exhibit D*) and that the Governing Body approve the attached contract with Clean Energy (*see Exhibit E*).



CITY OF SANTA FE

COMPRESSED NATURAL GAS FUELING FACILITY		2931 Rufina Street, Sana Fe, NM 87507	
CONCEPTUAL LAYOUT		SCALE: 1"=140'	
 Clean Energy [®] <small>3020 OLD RANCH PARKWAY, SUITE 400 SEAL BEACH, CA 90740 TEL. 562.493.2604 FAX: 562.453.4532 www.cleanenergyfuels.com</small>	CUSTOMER APPROVAL:		CP-1
	BUSINESS DEVELOPMENT APPROVAL:		
	DESIGNER:	DATE: 6/21/2013	



ENVIRONMENTAL SERVICES TIME FILL (BASE BID)

- 1) 1" UG gas feed line from compressor (approx. 520 feet)
- 2) 140 feet of K-rail (3/4" gas line)
- 3) 10 dual hose Time Fill posts
- 4) Park ES trucks nose-to-nose in 14' wide stalls
- 4) 3 ESD posts (70 foot spacing)

TRANSIT TIME FILL

- 1) UG gas line from existing transit time fueling
- 2) 9 Dual Hose Time Fill Posts, caisson mounted
- 3) Park Paratransit vehicles side-by-side in 10' wide stalls
- 4) install 4 ESD buttons (approx. 60 foot spacing)

COMPRESSOR COMPOUND UPGRADES

- 1) Qty 2—IMW50 Single 150 HP Compressors (New)
- 2) PSB NG-SR-10-3 Single Tower Gas Dryer (New)
- 3) Priority Panel with Cascade Fast Fill controls and two time fill control valves (New)
- 4) 3-Pack ASME Storage Vessels (reconfigured)

CITY OF SANTA FE RFP #13/23/P



3020 OLD RANCH PARKWAY, STE. 400
 SEAL BEACH, CA 90740
 TEL: (562) 493-2804
 FAX: (562) 493-4532
 WWW.CLEANENERGYFUELS.COM

CNG Fueling Services for the Transit Division and
 the Environmental Services Division
 Project Site: 2931 Rufina Street Santa Fe, NM 87507

Revision 2
 8/28/2013

CP
 SKETCH
 H

EXHIBIT B

9124 Hackney Rd NE
 Albuquerque, NM 87109
 (505) 554-6215 FAX (214) 572-6581
 blittauer@cleanenergyfuels.com

Blake Littauer
 Manager, Regional Sales

www.cleanenergyfuels.com

October 24, 2013



Jon Bulthuis
 Director, Transportation Department
 City of Santa Fe
 2931 Rufina St
 Santa Fe, NM 87507

RE: Clarification Response on RFP # 13/23/P for Compressed Natural Gas Fueling Services for the Transit Division and the Environmental Services Division

Dear Mr. Bulthuis:

Clean Energy (CE) is pleased to present the City with pricing for the CNG station upgrade pricing as well as associated projects not included in the original scope of work under the RFP.

1. Price for Scope of Work Meeting RFP Requirements

As the reliable operator of the City's CNG fueling station for the past several years, CE is in a unique position to provide the City with a cost-saving solution. CE's in-house CNG experts will ensure the timely and successful completion of the City's upgrade. Upon completion, CE's technicians and 24/7 Customer Support Center will ensure reliable and responsive continued services.

As submitted in CE's RFP response, the price for meeting the original scope of work is outlined in the table below:

CITY OF SANTA FE'S COMPRESSION FEE (Santa Fe Transit and Environmental Services)		
	Annual Volume in DGEs	Price per DGE
<i>Original Bid (3/15/2013)</i>	<295,000	\$1.27
	>295,000	\$1.19

CITY OF SANTA FE'S DEPRECIATED VALUE OF STATION	
<i>Original Bid (Year 5)</i>	\$1,131,054

North America's leader in clean transportation

2. Solid Waste Incremental Scope Costs

The cost to pave the Environmental Division time-fill station comprising an area of 9,800 square feet (70' W x 140' L) with concrete as well as add 10 additional time-fill posts is included in the table below:

ENVIRONMENTAL SERVICES PAVING AND INSTALLATION OF ADDITIONAL TIME-FILL POSTS	
6/19/2013 - Concrete Paving	\$117,504
9/10/13 - 10 Additional Time-Fill Posts	\$138,773
TOTAL SOLID WASTE COST	\$256,777

Please note that this price does not include removal of vegetation, existing concrete or asphalt.

3. Santa Fe Trails Incremental Scope Costs

The cost to the City to replace the existing underground gas lines between the compression station and each fueling post, as well as the gas lines encased in concrete up to the shut-off valve at each existing station is included in the table below:

UNDERGROUND GAS LINE REPLACEMENT	
7/19/2013 - Underground Gas Line Replacement	\$199,518

It is a pleasure to provide the City with this information and we look forward to the opportunity to expand our partnership. Please do not hesitate to contact me at (505) 554-6215 or blittauer@cleanenergyfuels.com.

Sincerely,



Blake Littauer
Manager, Regional Sales

EVALUATION SCORES

'13/23/P

COMPRESSED NATURAL GAS (CNG) FUELING SERVICES FOR THE TRANSIT DIVISION AND THE ENVIRONMENTAL SERVICES DIVISION

Written Evaluation

Evaluation Committee	Clean Energy	Zeit Energy	Trillium CNG
Robert Rodarte	450	410	350
Jon Bulthuis	450	430	400
Lawrence Garcia	400	360	340
Mary MacDonald	420	430	400
Nick Schiavo	390	390	320
Total Score	2110	2020	1810

EXHIBIT D

DRAFT

EXHIBIT E

CITY OF SANTA FE
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Santa Fe (the "City") and Clean Energy (the "Contractor"). The date of this Agreement shall be when signed by the City and the Contractor, whichever occurs last.

1. SCOPE OF SERVICES

A. The Contractor shall provide the following services for the City: The ongoing operation and maintenance of the Station (as defined below) located at the Transit Division, 2931 Rufina Street, Santa Fe, New Mexico. As further described herein, the Contractor shall design, permit, and expand the time fill capacity of the system and upgrade existing equipment, as needed, to meet municipal and public fueling demands. The Contractor's costs associated with the upgrades to the CNG Fueling Facility shall be paid by the City in accordance with Article 3, after services are rendered, for both upfront infrastructure costs and ongoing operations and maintenance costs.

B. The Contractor shall be responsible for:

1. If requested in writing by the City, completion of an engineering report that specifies the equipment upgrades to be made to the Station, capable of meeting existing and forecasted "time-fill" municipal and "fast-fill" public access fueling

demands. This report shall include a development schedule that specifically addresses how fueling demands will be met, without interruption, during the upgrade process, including "back-up" plans should any unanticipated difficulties arise during the upgrade process.

2. Providing at a minimum the following components for the Station, all tasks listed in Exhibit B plus the following:

a. New compression and storage equipment, including but not limited to compressors, dryer, storage tanks and priority panel;

b. Electrical system upgrade between the Transit Division's electrical panel and compression station, to include new wiring, conduits and cable;

c. Underground gas line replacement between the compression station and each fueling post, to include the gas lines encased in concrete up to the shut-off valve at each existing station;

d. Design and construction of an addition to the existing "Time Fill" fueling station, on the Transit Division yard, with 18 fueling nozzles, that shall provide fuel at 3,000 PSIG for the Transit Division's Paratransit Section;

e. Design and construction of a new "Time Fill" fueling station, including concrete pavement and associated infrastructure, with 30 fueling nozzles, that shall provide fuel at 3,600 PSIG for the Environmental Services Division;

f. Upgrades to the CNG fueling facility shall comply with current federal & state codes with respect to security and safety and shall incorporate Federal Transit Administration safety and security recommendations wherever practical; and

g. Upgrades to existing public access "Fast Fill" station, as needed, including replacement of the dispenser and card reader at no cost to the City should these items fail at any time during the term of the contract.

Note: All proposed equipment and materials shall be new with original equipment manufacture's warranties.

3. Securing all necessary construction and environmental permits related to the Station upgrade;

4. Coordination with Public Service Company of New Mexico on all power supply upgrades;

5. Operating and maintaining the Station and bearing all costs related to the operation and maintenance of the Station, including the procurement

of natural gas commodity and dispensing and selling CNG to the City and public;

6. Providing emergency repair service for the Station on a 24-hour, 7-day per week basis, providing emergency service within two (2) hours from the time contacted by the City, and respond and restore the operation of the Station as soon as commercially reasonable;

7. Conducting annual training classes for the City of Santa Fe Transit and Environmental Services staff for safety, operation and maintenance of the Station;

8. Applying for any federal tax credits associated with the sale of compressed natural gas from the Station and passing on any credits received based directly and solely on CNG sold from the Station to the City as long as the City has provided Contractor with all information reasonably requested by Contractor to apply for and receive such federal tax credits. In the event any of the federal tax credits passed on to the City hereunder are disallowed, the City shall, subject to the Appropriations clause herein, repay to Contractor the amount of disallowed credits that the Contractor had already paid to the City;

9. Providing a significant amount of services in close cooperation and consultation with the City of Santa Fe in order to design the optimum CNG fueling facility, secure all necessary construction and environmental permits, and manage construction of all new CNG facilities;

10. Following execution of this Agreement, Contractor shall work with City staff to finalize the design of the upgrades to the Station; and

11. If requested in writing by the City, provide a written plan that ensures fueling to at least Transit Division's time fill station during all phases of the Station upgrade because the Transit and Environmental Services Divisions depend upon the existing Station daily to maintain service to the public.

C. This Agreement supersedes and replaces in its entirety the "Compressed Natural Gas Vehicle Fueling Station and CNG Sales and Retail Agreement" (Item #08-0823), executed by the parties and effective August 31, 2008.

D. Intent. This Agreement expresses the terms and conditions pursuant to which the City authorizes CE to own, operate, maintain, and retail fuel at the CNG station on property owned by the City located at 2931 Rufina Street, Santa Fe, NM for the City's use and other third party users.

E. Definitions. As used in this Agreement, the following terms and expressions shall have the indicated meanings:

"Agreement" means this document and any and all exhibits attached hereto.

"CNG" means pipeline quality natural gas, compressed for vehicle use.

"CNG Vehicle(s)" means motor vehicles powered by internal combustion engines using CNG as a primary fuel.

"Diesel Gallon Equivalent" means (i) 6.06 pounds of CNG or such other number or units of measure as may now or in the future be prescribed by the federal government of the United States when CNG is being dispensed from a fast fill dispenser, and (ii) 137,380 BTUs/gallon or such other number or units of measure as may now or in the future be prescribed by the federal government of the United States when CNG is being dispensed from a time fill dispenser. Also referred to as a DGE.

"City" means the City of Santa Fe, acting by and through its employees, officers and authorized agents.

"CE" or "Contractor" means Clean Energy, acting by and through its employees, officers and authorized agents.

"Gasoline Gallon Equivalent" means (i) 5.66 pounds of CNG or such other number or units of measure as may now or in the future be prescribed by the federal government of the

United States when CNG is being dispensed from a fast fill dispenser, and (ii) 124,340 BTUs/gallon or such other number or units of measure as may now or in the future be prescribed by the federal government of the United States when CNG is being dispensed from a time fill dispenser. Also referred to as a GGE.

"Premises" means that portion of the real property owned by the City and located at 2931 Rufina Street, Santa Fe, NM upon which the Station is located and operated.

"Station" means the facility for refueling CNG Vehicles owned, operated and maintained by CE on the Premises.

F. Station Operation. CE will operate and maintain the Station on the Premises, and shall be responsible for all costs relating to the operation and maintenance of the Station, procurement of natural gas commodity for the Station and retailing fuel to the City and third party users from the Station.

G. CNG Service to City. CE shall provide the Station with CNG to fuel the City's vehicles and will bill the City at the rate described in Exhibit A, which attached to this Agreement and incorporated by reference herein, for such CNG purchases.

H. CNG Service to Third Parties. CE shall provide the Station with CNG to fuel third-party vehicles and will bill the third-party users at rates set in CE's sole and absolute discretion.

I. Station Maintenance. CE shall maintain the Station in accordance with the following requirements:

1. Routine Maintenance. CE shall provide scheduled, routine maintenance service for the term of this Agreement and shall repair, or replace, any defective parts or equipment at its expense. CE shall also perform other necessary maintenance or repairs, including emergency repairs, at its expense, in order to keep the Station operating. However, any maintenance or repair costs incurred due to damage, abuse or neglect by the City's personnel shall be billed to the City at CE's then-existing rates.

2. Scheduling. CE and the City shall mutually agree on times for maintenance services that require the Station to be out of operation for more than four (4) hours.

J. Training. CE shall offer reasonable training programs to educate the City's personnel as to the procedures for the safe and efficient use of the Station, including, without limitation, procedures relating to safe vehicle fueling, troubleshooting and appropriate emergency procedures.

K. Compliance with Law. In performing the obligations under this Agreement, CE shall comply in all material respects with all applicable federal, state and local laws, regulations, ordinances and rulings, including (but not

limited to) those pertaining to health, safety, employment and environmental matters.

L. CE's Costs. Except as specified in this Article, or as may be separately agreed to by the City and CE, CE shall not charge the City for other costs incurred in providing the services described in this Article. CE shall be responsible for the ad valorem or possessory interest taxes relating to the Station.

M. Maintenance of Premises. The City shall maintain the Premises and the real property in the vicinity of the Station in a clean, safe, and commercially reasonable condition suitable for CNG vehicle refueling use, including the ingress to, and egress from, the Station.

N. Protection of CE Property. The City shall use commercially reasonable efforts in storing and protecting CE's property and the Station, including spare parts for the Station and the Station itself.

O. Refueling Vehicles. The City employees shall refuel its CNG Vehicles. The City will provide appropriate training and supervision for employees, including, but not limited to, scheduling attendance at all appropriate training sessions provided by CE.

P. Compliance with Law. In performing its obligations under this Agreement, the City shall comply in all material respects with all applicable federal, state and local laws,

regulations, ordinances and rulings, including, but not limited to, those pertaining to health, safety, employment and environmental matters.

Q. Payment of CE Billings. The City shall pay each invoice submitted by CE within thirty (30) days following receipt of the invoice by the City.

R. The City's Costs. Except as specified in this Agreement related to CE's responsibility to pay for maintenance and repair costs and except for CE's responsibility to pay utility costs, commodity cost and demand charges incurred in providing the natural gas services for the City, or as may be separately agreed to in writing by the City and CE, the City shall not charge CE for the material or labor utilized in providing the services provided in this Article.

S. Permitted Use. To enable CE to fulfill its obligations set forth herein, the City hereby licenses and permits CE to use the Premises for the purposes contemplated hereby in accordance with the terms and conditions of this Agreement. The City shall not, and shall not permit others to, levy any rent, charge, lien or encumbrance not expressly provided for in this Agreement against CE for the use of the Premises or the Station.

T. Clear Title. The City is, and shall remain during the term of this Agreement, the owner of the Premises, and

shall not allow any lien or encumbrance affecting the Station or CE's performance hereunder. CE shall be the owner of the Station, and its parts and equipment. CE shall have the right to grant a lien or encumbrance against its right, title and interest in the Station or its equipment to a third party for financing purposes; provided, however, that CE shall not permit any liens or encumbrances of any kind to be placed on the Premises, and shall promptly discharge, at its expense, any and all mechanic's, laborer's or materialman's liens, encumbrances or charges against the Premises or the Station related to its performance under this Agreement. CE shall pay all contractors or subcontractors performing work on behalf of CE timely in order to prevent the filing of any liens. However, if, because of any act or omission of CE any mechanic's or other lien, charge or order for the payment of money shall be filed against the Premises or the City's interest in the Premises, for work for, or materials furnished to CE, then CE, at CE's expense, shall cause it to be canceled or discharged of record by payment, deposit, bond or order of a court of competent jurisdiction or otherwise within thirty (30) days after CE receives actual notice of the filing of such lien.

U. Memorandum of Agreement. Upon CE's request, the City shall execute a memorandum reflecting this Agreement

and the property interest of CE in recordable form to reflect CE's interest in the Station and the Premises. CE shall be responsible for all reasonable costs related thereto.

V. Sale, Abandonment or Removal. Unless otherwise agreed to by the Parties in writing, upon termination or expiration of this Agreement, CE shall have the right, but not the obligation, to (i) sell the Station to the City for an amount set forth in Paragraph 3 D herein; or if no sale is concluded then either(ii) remove the Station at CE's sole expense (including any and all merchandise, equipment, furnishings, fixtures, machinery and tools relating to the Station), from the Premises, which shall be restored in all material respects to their condition as of the date of this Agreement, excluding the removal of any underground piping which may be left in place by CE; or (iii) abandon the same in place by quitclaiming all of its right, title and interest therein to the City. Thereafter, CE shall have no further rights or obligations under this Agreement with respect to the Premises. Notwithstanding the above, in the event of termination by reason of a material breach by CE or termination without cause by CE, the City may, in its sole and absolute discretion, elect to purchase the Station for not to exceed the amount set forth in Paragraph 3 D herein.

V. Use of Station by Non-City Vehicles. During the term, CE will use commercially reasonable efforts to market the use of Station's public refueling dispenser to other third party owned vehicles ("Fleet Customers") and sell CNG fuel to the Fleet Customers at a price determined by CE in its sole and absolute discretion (the "Retail Rate").

W. Royalty. CE shall pay the City the amount of \$0.10 per GGE of CNG sold to third parties at the Station's public dispenser(s). Royalty payments relating to this Article shall be made by CE on a quarterly basis within thirty (30) days following the end of each calendar quarter.

X. Pricing of CNG. CE shall provide the City with CNG at a price per GGE plus commodity cost as described in Article 3 A. By signing this Agreement, the City hereby represents to CE that it will use 100% of the CNG purchased hereunder for vehicle use.

Y. Taxes. CE is currently required to, or may be required in the future to, collect and remit certain federal, state and local taxes, including fuel use taxes, on CNG sold at the Station, subject to certain exemptions. The City shall be responsible for all such applicable excise, sales and use taxes related to its purchases of CNG under this Agreement. If the City qualifies for an exemption from one or all of these taxes, the City shall furnish to CE

appropriate certification authorizing non-payment of the applicable tax or taxes.

Z. Pre-Existing Conditions. If, at any time during the term of this Agreement, CE determines that hazardous materials, soil conditions, underground hazards or soil contaminants exist that either: (a) require removal, replacement and/or disposal; (b) require remediation; or (c) require unanticipated soil or foundation work; CE shall notify the City in writing, whereupon the City shall, at its option and expense, either (i) terminate this Agreement upon written notice to CE, or (ii) undertake such required remediation, removal, replacement and/or disposal. If the City elects to undertake such required remediation, removal, replacement and/or disposal, the City shall diligently prosecute such activities and shall complete such activities as soon as commercially reasonable. Notwithstanding anything to the contrary herein, CE shall not be financially or legally liable for any proven pre-existing hazardous materials, soil conditions, underground hazards or soil contaminants on the Premises and any required remediation, removal, replacement preparation work, and/or disposal required for such proven, pre-existing hazardous materials unless such hazardous materials, soil conditions, or soil contaminants are brought onto the Premises by CE. CE shall be financially and legally liable for any and all

remediation, removal, replacement preparation work and/or disposal activities related to hazardous materials, soil conditions, underground hazards or soil contaminants are brought onto the Premises by CE.

2. STANDARD OF PERFORMANCE; LICENSES

A. The Contractor represents that it possesses the personnel, experience and knowledge necessary to perform the services described under this Agreement.

B. The Contractor agrees to obtain and maintain throughout the term of this Agreement, all applicable professional and business licenses required by law to perform the operation and maintenance services it is required to perform hereunder, for itself, its employees, agents, representatives and subcontractors.

3. COMPENSATION

A. For the Station upgrades described in Exhibit B, which is attached hereto and incorporated by reference herein, the City shall pay to the Contractor Four Hundred Fifty Six Thousand Two Hundred Ninety Five dollars (\$456,295)), inclusive of applicable gross receipts taxes; and, for all Station capital costs as well as complete operations and maintenance service for the term of the agreement, compression service fees of \$1.27 per DGE for annual volumes less than 295,000 DGE, and \$1.19 per DGE for annual volumes greater than 295,000 DGE.

B. The Contractor shall be responsible for payment of gross receipts taxes levied by the State of New Mexico on the sums paid to it under this Agreement.

C. Payment shall be made upon receipt and approval by the City of detailed statements containing a report of services completed and deliverables received and accepted by the City.

D. Upon the expiration of the term of this Agreement, the City may exercise an option to purchase the Station. The parties agree to have an independent third party appraiser set the Sale Price upon expiration, or if the parties cannot agree upon an independent third party appraiser, an average of two appraisers, one chosen by each party, will be the Sale Price at this time. If, upon expiration of the term of this Agreement, the City exercises its option to purchase the Station, Contractor shall sell the Station to the City for the Sale Price which in no event shall exceed One Million Two Hundred Six Thousand Four Hundred Fifty Eight dollars (\$1,206,458) (the "Station Sum"). If the City decides to purchase the Station, the City shall remit the the Sale Price or the Station Sum to CE, whichever is less, and all parties shall execute appropriate sale documents, approved by the Governing Body.

E. If the Agreement is terminated prior to the expiration of the term, for any reason, including but not limited to an uncured default by the City, the City may exercise an option to purchase the Station. The parties agree to have an independent

third party appraiser set the Sale Price prior to the expiration of the term, or if the parties cannot agree upon an independent third party appraiser, an average of two appraisers, one chosen by each party, will be the Sale Price at this time. If, upon expiration of the term of this Agreement, the City exercises its option to purchase the Station, Contractor shall sell the Station to the City for the Sale Price prior to expiration of the term or for an amount equal to the depreciated book value of the Station as determined by the schedule attached hereto as Exhibit C and incorporated by reference herein, whichever is less. If the City decides to purchase the Station, the City shall remit the Sale Price or Exhibit C price to CE, whichever is less, and all parties shall execute appropriate sale documents, approved by the Governing Body prior to the effective date of termination or as soon as practicable thereafter.

4. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

5. TERM AND EFFECTIVE DATE

This Agreement shall be effective when signed by the City and the Contractor, whichever occurs last, and terminate exactly four (4) years from the effective date, unless sooner pursuant to Article 6 below.

6. TERMINATION

A. This Agreement may be terminated by the City upon thirty (30) days written notice to the Contractor.

B. Upon termination of this Agreement, for any reason, prior to the expiration of the term, if the City decides to purchase the Station, in addition to paying CE the Sale Price or the Exhibit C price, whichever is less, for the Station, as described above, the City shall pay the Contractor for CNG purchased from the Station by it prior to the effective date of termination and for the reasonable value of services satisfactorily performed and accepted by the City through the date Contractor receives notice of such termination, and for which compensation has not already been paid and prior approved reimbursable expenses incurred through the date Contractor receives notice of such termination.

C. Upon a material breach of this Agreement by the City, CE shall have the right to terminate this Agreement, for cause, upon sixty(60) days written notice and opportunity to cure to the City, provided, however, that where it is not commercially reasonable to fully effect a cure within the sixty (60) day

period set forth above, the City shall not be deemed to be in default of the Agreement and subject to termination for cause where it commences implementation of the cure within such sixty (60) day period and thereafter proceeds diligently to cure the breach.

7. STATUS OF CONTRACTOR; RESPONSIBILITY FOR PAYMENT OF EMPLOYEES AND SUBCONTRACTORS

A. The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement.

B. Contractor shall be solely responsible for payment of wages, salaries and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

C. The Contractor shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this contract.

8. CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. Contractor further

agrees that in the performance of this Agreement no persons having any such interests shall be employed.

9. Force Majeure. In the event that CE or the City is prevented from performing its duties and obligations pursuant to this Agreement by circumstances beyond its control, including, without limitation, fires, floods, labor disputes, equipment failure, the interruption of utility services, the cessation of providing necessary products or services to CE or the City by any supplier to CE or the City, war, acts of terrorism, or Acts of God (hereinafter referred to as "Force Majeure"), then CE or the City shall be excused from performance hereunder during the period of such disability ("Force Majeure Period"). If either party claims Force Majeure, it shall notify the other within 24 hours after it learns of the existence of a Force Majeure condition, and will also provide the other with an estimate, if one can be reasonably made, of the anticipated Force Majeure Period. Both parties will also notify the other within 24 hours after the Force Majeure condition has terminated. Both parties shall agree to use commercially reasonable efforts to correct whatever events or circumstance cause the Force Majeure event.

10. ASSIGNMENT; SUBCONTRACTING

The Contractor shall not assign or transfer any rights, privileges, obligations or other interest under this Agreement, including any claims for money due, without the prior written consent of the City, which shall not be unreasonably withheld,

conditioned or delayed. The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City.

11. RELEASE

Upon the early termination, for any reason, or expiration of this Agreement, and after Contractor receives all payments due to it under this Agreement from the City, the Contractor agrees to release the City, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Agreement claims for which Contractor has provided the City with prior written notice. The Contractor agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

12. INSURANCE

A. The Contractor, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability, in a form and with an insurance company acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an

additional insured and that the City is notified no less than 30 days in advance of cancellation for any reason. The Contractor shall furnish the City with a copy of a Certificate of Insurance as a condition prior to performing services under this Agreement.

B. If applicable, the Contractor shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Contractor's employees throughout the term of this Agreement. Contractor shall provide the City with evidence of its compliance with such requirement.

C. Contractor shall maintain professional liability insurance throughout the term of this Agreement providing a minimum coverage in the amount required under the New Mexico Tort Claims Act. The Contractor shall furnish the City with proof of insurance of Contractor's compliance with the provisions of this section as a condition prior to performing services under this Agreement.

13. INDEMNIFICATION

The Contractor shall indemnify, hold harmless and defend the City from all losses, damages, claims or judgments, including payments of all attorneys' fees and costs on account of any suit, judgment, execution, claim, action or demand whatsoever arising from Contractor's performance under this Agreement as well as the performance of Contractor's employees, agents, representatives and subcontractors.

14. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

15. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Contractor. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

16. RECORDS AND AUDIT

The Contractor shall maintain, throughout the term of this Agreement and for a period of three years thereafter, detailed records that indicate the date, time and nature of services rendered to the Station. These records shall be subject to inspection by the City, the Department of Finance and Administration, and the State Auditor, during the Contractor's business hours after providing Contractor with reasonable prior

written notice. The City shall have the right to audit the billing both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

17. APPLICABLE LAW; CHOICE OF LAW; VENUE

Contractor shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Contractor agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

18. AMENDMENT

This Agreement shall not be altered, changed or modified except by an amendment in writing executed by the parties hereto.

19. SCOPE OF AGREEMENT

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the services to be performed hereunder, and all such agreements, covenants and understandings have been merged into this Agreement. This Agreement expresses the entire Agreement and

understanding between the parties with respect to said services. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

20. NON-DISCRIMINATION

During the term of this Agreement, Contractor shall not discriminate against any employee or applicant for an employment position to be used in the performance of services by Contractor hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NOTICES

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

City of Santa Fe:

Contractor:

Jon Bulthuis
Transit Division Director
2931 Rufina St.
Santa Fe, NM 87507

Peter Grace
Senior Vice President
4675 MacArthur Court, Ste.800
Newport Beach, CA 92660

IN WITNESS WHEREOF, the parties have executed this Agreement

on the date set forth below.

CITY OF SANTA FE:

DAVID COSS, MAYOR

DATE: _____

ATTEST:

YOLANDA Y. VIGIL
CITY CLERK

CONTRACTOR:

APPROVED AS TO FORM:

By: _____
(Name & Title)

KELLEY BRENNAN, INTERIM CITY ATTORNEY

CRS # _____
City of Santa Fe Business
Registration # _____

APPROVED:

MARCOS TAPIA, DIRECTOR
FINANCE DEPARTMENT

BUSINESS UNIT/LINE ITEM

EXHIBIT A
CNG PRICING TO THE CITY

The price per DGE of CNG payable by the City to CE for CNG purchased by the City during the applicable month from the Station shall be calculated as follows:

Rate per DGE = (The costs CE incurs to deliver gas to the Station (including, without limitation, utility costs and transportation charges) during the applicable month/total number DGEs of CNG dispensed from the Station during the applicable month)+ the Compression Fee + all applicable federal, state and local taxes, fees and assessments per DGE.

The "Compression Fee" per DGE is calculated as follows:

<u>Buyer's Monthly Consumption</u>	<u>Compression Fee per DGE</u>
1 – 24,583	\$1.27
24,584 or more	\$1.19

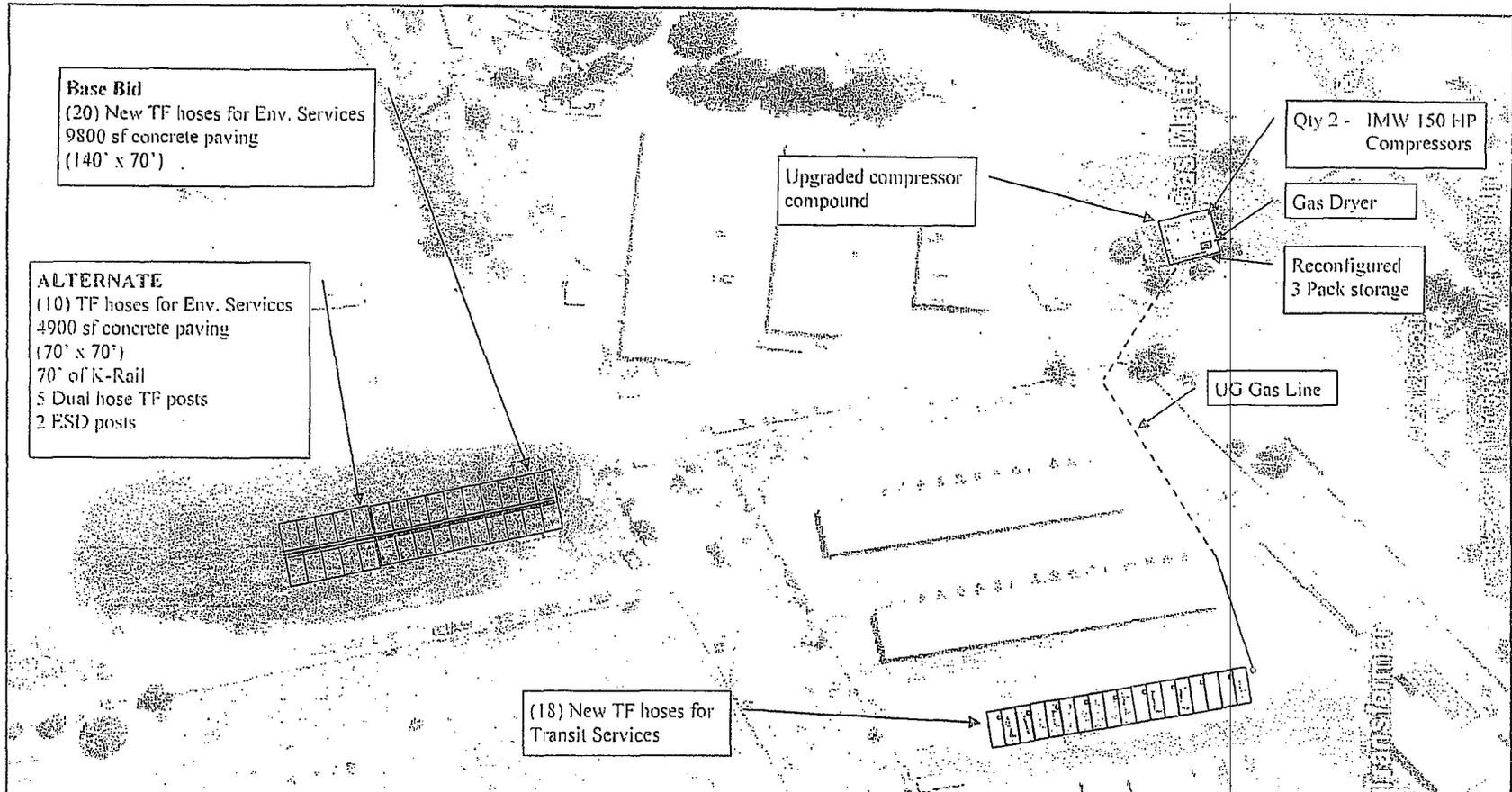
"Buyer's Monthly Consumption" shall mean the aggregate amount of CNG in DGEs purchased by the City from the Station in any applicable calendar month during the term of the Agreement.

CPI ADJUSTMENT. Beginning January 1, 2015, and on each January 1st thereafter during the term of this Agreement, the Compression Fee charged by CE shall be increased by the change in the United States Bureau of Labor Statistics Consumer Price Index - All Urban Customers, West Urban Area, All Items (1982-84=100), as published monthly in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor, from the effective date of this Agreement for the first such adjustment, or the date of the last adjustment for each subsequent adjustment, through the date of the current adjustment.

EXHIBIT B
STATION UPGRADES

In addition to the Station upgrades set forth in the Agreement, CE shall perform the following Station upgrades:

1. CE shall pave the Environmental Division time-fill station comprising an area of 9,800 square feet (70' W x 140' L) with concrete as well as add 10 additional time-fill posts. CE shall not be responsible for removing vegetation or existing concrete or asphalt as these shall be the City's responsibilities.
2. CE shall replace the underground gas lines between the compression station and each fueling posts, as well as the gas lines encased in concrete up to the shut-off valve at each existing station.



<u>ENVIRONMENTAL SERVICES TIME FILL (BASE BID)</u>	<u>TRANSIT TIME FILL</u>	<u>COMPRESSOR COMPOUND UPGRADES</u>
1) 1" UG gas feed line from compressor (approx 520 feet) 2) 140 feet of K-rail (3/4" gas line) 3) 10 dual hose Time Fill posts 4) Park ES trucks nose-to-nose in 14' wide stalls 4) 3 ESD posts (70 foot spacing)	1) UG gas line from existing transit time fueling 2) 9 Dual Hose Time Fill Posts, caisson mounted 3) Park Paratransit vehicles side-by-side in 10' wide stalls 4) install 4 ESD buttons (approx. 60 foot spacing)	1) Qty 2—IMW50 Single 150 HP Compressors (New) 2) PSB NG-SR-10-3 Single Tower Gas Dryer (New) 3) Priority Panel with Cascade Fast Fill controls and two time fill control valves (New) 4) 3-Pack ASME Storage Vessels (reconfigured)

CITY OF SANTA FE RFP #13/23/P

	3020 OLD RANCH PARKWAY, STE. 400 SEAL BEACH, CA 90740 TEL: (562) 493-2804 FAX: (562) 493-4532 WWW.CLEANENERGYFUELS.COM	CNG Fueling Services for the Transit Division and the Environmental Services Division Project Site: 2931 Rufina Street Santa Fe, NM 87507	Revision 2 8/28/2013	CP SKETCH H
	EXHIBIT B			

EXHIBIT C
STATION DEPRECIATION SCHEDULE

Year 1	\$1,432,668.78
Year 2	\$1,357,265.16
Year 3	\$1,281,861.54
Year 4	\$1,206,457.92
Year 5*	\$1,131,054.30
Year 6*	\$1,055,650.68
Year 7*	\$980,247.06
Year 8*	\$904,843.44
Year 9*	\$829,439.82
Year 10*	\$754,036.20
Year 11*	\$678,632.58
Year 12*	\$603,228.96
Year 13*	\$527,825.34
Year 14*	\$452,421.72
Year 15*	\$377,018.10
Year 16*	\$301,614.48
Year 17*	\$226,210.86
Year 18*	\$150,807.24
Year 19*	\$75,403.62
Year 20*	(\$0.00)

*Note - These values apply if this Agreement is renewed beyond the initial term by the parties through an amendment executed by the parties.