

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

**Members of the Council:**

**SUBJECT: City Manager – Authorize Execution of a License Agreement for construction and operation of a natural gas fueling facility within the City Yard located at 20500 Madrona Avenue**

**RECOMMENDATION**

Recommendation of the City Manager that City Council authorize the execution of a License Agreement by and between the City of Torrance, a municipal corporation ("City"), Clean Energy, a California corporation ("CE") and Clean Energy Construction, a California corporation ("CECI") for the construction and operation of a compressed natural gas fueling facility within the Torrance City Yard complex located at 20500 Madrona Avenue for the exclusive use of the City of Torrance for fueling city vehicles.

**Funding**

Funding is not required for this transaction.

**BACKGROUND**

In December of 2009, the City of Torrance and Clean Energy (CE) entered into a License Agreement to allow for the construction and operation of a publicly accessible Compressed Natural Gas (CNG) Station. The station, which is located on Madrona Avenue and is just outside the fence area of the City Yard, was completed in late 2011 and has fueled private and public vehicles since that time. The contract with Clean Energy requires a contract rate for City use of the station. That cost is equal to the cost of the natural gas plus a compression fee that is utilized to offset the construction of the station and for long term maintenance.

The rate that has been paid for City vehicles, once the contract was in effect, is lower than other commercial facilities as shown here:

Date	Torrance Station (CNG)	Carson Station (CNG)	Port of LB Station (CNG)
Aug-12	\$1.51099	\$2.54600	\$2.34115
Jul-12	\$1.48758	\$2.52850	\$2.23310
Jun-12	\$1.48916	\$2.52850	\$2.32506
May-12	\$1.39746	\$2.52850	\$2.41701
Apr-12	\$1.40628	\$2.62850	\$2.41701
Mar-12	\$1.46406	\$2.62850	\$2.41701
Feb-12	\$1.46340	\$2.47850	\$2.32510
Jan-12	\$1.54200	\$2.47850	\$2.27910
Dec-11	\$1.56410	\$2.47850	\$2.27910
Nov-11	\$1.57400	\$2.47850	\$2.27910
Oct-11	\$2.47850	\$2.47850	\$2.27910
Sep-11	\$2.47850	\$2.47850	\$2.27910
Aug-11	\$2.47850	\$2.47850	\$2.27910
Jul-11		\$2.47850	\$2.27910

The growth of the City's CNG fleet has made it necessary to increase the amount of fast fill facilities available in order to increase efficiency and reduce time in fueling vehicles. City staff has been working with Clean Energy to site an area for fast fill pumps and a compression facility within the City Yard so that the City fleet could be filled on site.

### **ANALYSIS**

The construction of a CNG fueling facility within the City yard will keep public and private vehicles segregated making the fueling of the City fleet easier, safer and much faster.

The proposed license is for an initial term of 10 years and allows for automatic renewals for five additional 5-year terms unless either the City or Clean Energy gives notice six months prior to the beginning of the new term.

There are no costs to the City for the construction of the fueling facility which has an estimated cost to construct of \$2 million. CE will be responsible for all construction costs and the compression fee assessed to each gallon pumped will assist in returning their initial investment for the cost of construction back to CE. City staff has negotiated cost savings into the compression fee. City staff secured an AQMD grant of \$175,000 (see companion item) that will be designated to the construction of the facility, that grant will be used to buy down the initial compression fee from \$1.00 per gallon to .91 cents per gallon; this ensures a return of the \$175,000 back to the City through fuel flow. The City will also receive reductions in the compression fee based on cumulative flow of CNG. The fee will be reduced to .70 cents per gallon after the first 2 million gallons pumped and then to .33 cents per gallon after the second 2 million gallons or 4 million gallons total. It is anticipated that annual consumption of CNG will be 500,000 gallons per year so the first reduction in the compression fee be in approximately year four and the second should be in year seven or eight depending on the growth of the CNG fleet. The fee will be adjusted annually by CPI.

The License also guarantees the same pricing for all City vehicles at any of the CE operated stations in the area. The pricing guarantee will assist in any need to do offsite fueling either due to the City Yard station being out of service or for needs for fueling when out of the City Yard.

The City will contract directly with and pay directly for the actual natural gas used at the facility, in addition the City will be billed for the electricity used at the facility in arrears each month by CE.

The facility to be constructed will include the following:

- Two compressors
- One manual regenerative gas dryer
- Three ASME storage vessels
- Two fast-fill dual hose dispensers (one at Fleet location and one at Transit location)
- Four, single hose, time-fill fueling posts (Transit location)

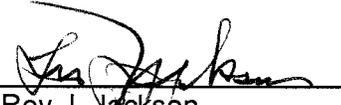
Respectfully submitted,

LeROY J. JACKSON  
CITY MANAGER

By

  
Brian K. Sunshine  
Assistant to the City Manager

CONCUR:

  
LeRoy J. Jackson  
City Manager

  
Rob Beste  
Public Works Director

  
Kim Turner  
Transit Director

  
Sheryl Ballew  
General Services Director

COMPRESSED NATURAL GAS VEHICLE  
FUELING STATION AND CNG SALES LICENSE AGREEMENT

This License Agreement (the "License" or "Agreement") is made and entered into as of November \_\_\_\_, 2012 by and between the City of Torrance, a municipal corporation ("City"), CLEAN ENERGY, a California corporation ("CE") and Clean Energy Construction, a California corporation ("CECI"). City, CE and CECI are sometimes referred to in this License individually as a "Party" or jointly as "Parties".

In consideration of the mutual promises, covenants, and agreements herein contained, the sufficiency of which is hereby agreed to by the Parties, the Parties hereto agree as follows:

ARTICLE 1  
SCOPE OF LICENSE AND DEFINITIONS

1.2 Intent. This License expresses the terms and conditions pursuant to which City authorizes CE to design, construct, operate and maintain a CNG Fueling Station on property owned by City located at 20500 Madrona Avenue Torrance, California for City's use and other authorized users.

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

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

"CECI" means Clean Energy Construction acting by and through its employees, officers and authorized agents.

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

"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.

"Fueling Station" means the facility for refueling City-owned CNG Vehicles, to be designed, constructed, operated, maintained and owned by CE including the compression and storage area, fast-fill site for the Fleet Division of the City of Torrance and a fast-fill and time-fill site(s) for the Transit Department of the City of Torrance as more fully described in Exhibit I and shown in Exhibit II.

"Gasoline Gallon Equivalent" means 124,800 BTU/gallon. Also referred to as a GGE.

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

"Party" or "Parties" means CE and City, in their respective capacities as parties to this License.

"Premises" means those portions of the real property owned by City and located at 20500 Madrona Avenue Torrance, California upon which the Fueling Station will be constructed and operated as more fully described in Exhibit I and shown in Exhibit II.

"Therm" means 100,000 British Thermal Units.

## ARTICLE 2 RESPONSIBILITIES OF CE

2.1 Fueling Station. CE shall design, construct, operate, maintain and own the Fueling Station on the Premises, and shall be responsible for obtaining, at its cost, all permits relating to the design, construction, operation and maintenance of the Fueling Station. The Fueling Station will be owned by CE and shall be located on the Premises as shown in Exhibit II. To the extent that this License contemplates the construction of a work of improvement or any related activity for which a license from the California Contractor's State License Board is required, all such work will be performed by CECI as a general contractor. The Fueling Station will include a minimum of two fast-fill dual hose dispensers designed for City vehicle access, inclusive, but not limited to buses, trash trucks and other City-owned and operated CNG Vehicles (the "Dispensers") and will include four (4) single hose time fill fueling posts as shown in Exhibit II. Further, the Fueling Station will be designed with multiple non-lubricated compressors for redundancy and a manual regenerative dryer system. CE will use commercially reasonable efforts to provide backup power for the Fueling Station in an event of a utility power outage lasting more than six (6) hours at the Fueling Station.

2.2 CNG Service to City. CE shall compress natural gas to provide CNG to the City and bill the City at the rate described in Exhibit III. For the duration of this Agreement, CE shall be solely responsible for compression of the natural gas for vehicle use and the sale of CNG to City for use in CNG vehicles owned or operated by City.

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

2.3.1 Routine Maintenance. CE shall provide scheduled, routine preventive maintenance services for the term of this License 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 Fueling Station operating. However, any maintenance or repair costs incurred due to damage, abuse or neglect by City's personnel shall be billed to City at CE's then-existing rates. CE agrees to provide 24 hours notice for any maintenance that will require closure of the Fueling Station for a period of more than four (4) consecutive hours.

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

2.3.3 Service Calls. CE shall be available to provide emergency repair service on a 24-hour, 7-day per week basis and will provide an emergency contact telephone number to City. In the event of an emergency at the Fueling Station, CE will respond to maintenance emergencies within four (4) hours following notification by City, and will diligently proceed to restore the operation of the Fueling Station within 48 hours of notification. If the Fueling Station is unable to dispense CNG, the City shall be entitled to obtain fuel from any public access station through which CE retails fuel, including but not limited to the CE public CNG stations at LAX, Carson or Long Beach, and the City will be charged the per GGE rate listed in Exhibit III until the Fueling Station is capable of dispensing fuel.

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

2.5 Compliance with Law. In performing the obligations under this License, 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.

2.6 CE's Costs. Except as specified in this Article 2 and in Exhibit III, or as may be separately agreed to by City and CE, CE shall not charge 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 Fueling Station.

### ARTICLE 3 CITY'S RESPONSIBILITIES

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

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

3.4 Utilities. CE shall pay any connection or installation fees associated with installing utility service at the Station, including gas, electricity, and telephone lines. City shall be responsible for payment of all electric utility and natural gas utility service consumed at the Fueling Station during the Term. The natural gas utility account will be in City's name and the electric utility account will be in CE's name. Natural gas utility service bills will be billed directly to the City by the gas utility. Electric utility service bills for the most recent usage period will, on a monthly basis, be passed through to City with no markup.

3.5 Compliance with Law. In performing its obligations under this License, 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.

3.6 Payment of CE Billings. City shall pay each invoice submitted by CE within thirty (30) days following receipt of the invoice by City. For purposes of this section, receipt shall be defined as three (3) days after the invoice is mailed by CE. Any payments not made when due shall accrue interest on the unpaid amount at a rate of 12% per annum, calculated from the date payment is due to and including the date payment is received by CE.

3.7 City's Costs. Except as specified in this Article, or as may be separately agreed to in writing by City and CE, City shall not charge CE for the materials or labor utilized in providing the services provided in this Article. CE shall not be responsible for any taxes relating to the Premises (including, without limitation, any real property taxes and assessments) except for any possessory interest taxes levied against the value of the improvements made by CE or the value assessed to the License, as well as any and all maintenance and repair costs, as contemplated in this Article.

#### ARTICLE 4 LICENSE TO USE PREMISES

4.1 Permitted Use. To enable CE to fulfill its obligations set forth herein, City hereby licenses and permits CE to use the Premises and grants the right of ingress to and egress from the Premises to CE, CE's employees, agents, servants, vendors, suppliers, for the purposes contemplated hereby in accordance with the terms and conditions of this License. The Fueling Station shall be for the sole use of City-owned CNG vehicles. CE will be given access to the vehicle access gate for entrance into the City Yard facility, located at 20500 Madrona Avenue, for the sole purpose of constructing and maintaining the Fueling Station. CE will comply with the written City security and safety procedures. CE will report any stolen or lost gate keys or gate cards immediately to City.

4.2 Clear Title. City is, and shall remain during the term of this License, the owner or lessee of the Premises, and shall not allow any lien or encumbrance affecting the Fueling Station or CE's performance hereunder. CE shall be the owner of the Fueling 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 Fueling 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 Fueling Station related to its performance under this License.

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

4.4 Sale, Abandonment or Removal. Unless otherwise agreed to by the Parties in writing, upon termination or expiration of this License, CE shall have the right, but not the obligation, to (i) sell the Fueling Station to City on mutually agreeable terms; (ii) remove the Fueling Station at CE's sole expense (including any and all merchandise, equipment, furnishings, fixtures, machinery and tools relating to the Fueling Station), from the Premises, which shall be restored in all material respects to their condition as of the date of this License, 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 City. Thereafter, CE shall have no further rights or obligations under this License with respect to the Premises.

4.5 Pre-Existing Conditions. The Premises shall be clear of pre-existing underground hazards, soil contaminants or unanticipated soil conditions that would impact the construction of the Fueling Station. If it is determined that underground hazards, soil contaminants or conditions exist that either (a) require removal, replacement, and disposal of soils or materials, (b) require remediation, or (c) deem the site unsuitable for the Fueling Station's construction, CE shall not be financially and legally responsible for such remediation, removal, replacement and disposal. If City does not commence, within thirty (30) days after discovery of any such pre-existing underground hazard or soil contaminant, and thereafter to diligently prosecute to completion the correction of such condition, CE may, without further obligation or penalty, terminate this License for cause by written notice to City.

## ARTICLE 5 TERM AND TERMINATION

5.2 Term. The initial term of this License shall commence on the date of this License (the "Effective Date") and end on the tenth (10th) anniversary of the date the City first purchases CNG from CE ("Initial Term"). This License shall automatically renew under the same terms and conditions for five consecutive five (5) year terms unless CE or City gives notice

of cancellation to the other party at least six (6) months prior to such renewal date. The Initial Term and any renewal terms are referred to herein as the "Term."

5.3 Notwithstanding the above, upon a material breach of this License, either Party shall have the right to terminate this License, for cause, upon fifteen (15) days written notice and opportunity to cure to the other Party, provided, however, that where it is not commercially reasonable to fully effect a cure to the other Party within the fifteen (15) day period set forth above, the Party in breach shall not be deemed to be in default of the License and subject to termination for cause where it commences implementation of the cure within such fifteen (15) day period and thereafter proceeds diligently to cure the breach.

5.4 Buyout by City. The City shall have the option to purchase the Fueling Station for the depreciated book value of the Fueling Station based on a ten (10) year straight line depreciation; provided, however (i) this buyout option shall not apply if CE terminates this Agreement pursuant to Section 4.5 or due to a breach by the City and (ii) during the Initial Term of this Agreement, the City shall not be entitled to exercise the buyout option unless and until, the Parties have entered into a mutually agreeable operations and maintenance agreement with a minimum of a five (5) year term, which will automatically renew under the same terms and conditions thereafter for consecutive five (5) year terms, unless CE or City gives notice of cancellation to the other party at least six (6) months prior to such renewal date.

## ARTICLE 6 PURCHASE OF CNG

6.2 Pricing of CNG. CE shall provide City with CNG at a price per Gasoline Gallon Equivalent as described on Exhibit III. By signing this License, City hereby represents to CE that it will use 100% of the CNG purchased hereunder for vehicle and or equipment use.

## ARTICLE 7 EXCISE, SALES AND USE 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 Fueling Station, subject to certain exemptions. City shall be responsible for all such applicable excise, sales and use taxes related to its purchases of CNG under this License. If City qualifies for an exemption from one or all of these taxes, City shall furnish to CE appropriate certification authorizing non-payment of the applicable tax or taxes. If City fails to maintain its exemption status, or for any other reason City's exemption becomes invalid without notifying CE thereof, City shall indemnify CE for all taxes, penalties and interest on any nonpayments and underpayments of taxes.

## ARTICLE 8 INDEMNIFICATION AND LIMITATION OF LIABILITY

8.2 Except to the extent that liabilities arise from City's or its employees, agents, contractors or subcontractors' negligence or willful misconduct, CE agrees to indemnify, defend and protect City and its officers, directors, agents and employees from and against and hold City and its officers, directors, agents and employees harmless and free from any and all liability, loss, cost, expense or obligation, including without limitation reasonable attorneys' fees, court costs and other expenses, including without limitation, those of appeal, on account of or arising out of, injury to or death of any person or persons or damage to or loss of use of property, from whatever cause, occurring during the Term related in any way to the construction, use, operation or maintenance of the Fueling Station by CE (except for any aspect of Fueling Station operation attributable to City or its employees or agents), negligence or willful misconduct by CE or its employees or agents or material breaches of this License by CE.

8.3 Indemnification Procedure. In the event any action is commenced or claim is made or threatened against an indemnified party, hereunder ("Indemnitee") as to which the other party ("Indemnitor") is obligated to indemnify Indemnitee or hold it harmless, Indemnitee shall promptly notify Indemnitor of such event and Indemnitor shall assume the defense of, and may settle, that part of any such claim or action commenced or made against Indemnitee which relates to Indemnitor's indemnification and Indemnitor may take such other steps as may be necessary to protect itself. Indemnitor shall not be liable to Indemnitee on account of any settlement of any such claim or litigation affected without Indemnitor's consent. The right of Indemnitor to assume the defense of any action shall be limited to that part of the action commenced against Indemnitee which relates to Indemnitor's obligation of indemnification and holding harmless.

8.4 Neither Party shall have any liability to the other Party for special, consequential, or incidental damages.

8.5 Dispute Resolution Procedures. In the event a dispute arises between the Parties related to this License, the following process shall be followed:

(a) Each Party will designate a senior executive ("Designated Representative") to represent it in connection with any dispute that may arise between the Parties (a "Party Dispute"). The designations shall be as described elsewhere herein. Subsequent changes in a Party's Designated Representative shall be in writing and communicated in the same manner.

(b) In the event that a Party Dispute should arise, the Designated Representatives will meet, with their attorneys, if they so agree, within ten (10) calendar days after written request by any Party to any other Party (the "Dispute Notice") in an effort to resolve the Party Dispute.

(c) If the Designated Representatives are unable to resolve the Party Dispute within ten (10) calendar days following their first meeting, the Party Dispute will be submitted to non-binding mediation in Los Angeles, California before a mediator made available to the Parties through JAMS.

(d) In the event that the mediation process fails to result in a resolution of the Party Dispute within sixty (60) calendar days following receipt of the Dispute Notice, the Parties may take any action they may deem necessary to protect their interests subject to the requirements of Section 11.7.

8.6 Force Majeure. In the event that CE is prevented from performing its duties and obligations pursuant to this License 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 by any supplier to CE, war, acts of terrorism, or Acts of God (hereinafter referred to as “Force Majeure”), then CE shall be excused from performance hereunder during the period of such disability (“Force Majeure Period”). If CE claims Force Majeure, CE shall notify City within 24 hours after it learns of the existence of a Force Majeure condition, and will also provide City with an estimate, if one can be reasonably made, of the anticipated Force Majeure Period. CE will also notify City within 24 hours after the Force Majeure condition has terminated. CE shall agree to use commercially reasonable efforts to correct whatever events or circumstance cause the Force Majeure event.

## ARTICLE 9 INSURANCE

CE shall procure at its sole expense, and maintain in full force and effect during the term of this License, including any renewals, with insurance carriers rated at least A- in Best's Insurance Report and admitted to do business in the state where the Fueling Station is located, the following primary insurance in at least the minimum amounts specified, with the City named in the commercial general liability policy and the automotive liability policy as an additional insured. With the exception of the workers' compensation policy, such insurance shall be endorsed to require at least thirty (30) days' written notice to the other respective Party of any cancellation. CE shall provide City with contractual liability relating to the Fueling Station and the potential liabilities relating thereto.

(a) Commercial General Liability Insurance, including blanket contractual liability applicable to personal injury and property damage, to a combined single limit of not less than \$5,000,000. Excess liability or umbrella liability coverage may be used to evidence or provide limits in addition to primary limits of no less than \$1 million on the commercial general liability policy.

(b) Commercial Automobile Liability Insurance, including owned, non-owned and hired automobiles covering bodily injury and property damage, to a combined single limit of \$1,000,000.

(c) Workers Compensation and Employers Liability

(i) Workers compensation in compliance with applicable state and

federal laws.

- (ii) Employers liability with a limit of not less than \$1,000,000.

The requirements for carrying the foregoing insurance shall not derogate from the provisions of indemnification as set forth in this License.

CE shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this License to:

City: City of Torrance  
 3031 Torrance Boulevard  
 Torrance, CA 90503  
 Attn: City Clerk  
 Fax: 310-618-2931

#### ARTICLE 10 DESIGNATED REPRESENTATIVES AND NOTICES

10.2 Representatives. Each Party hereby designates the following as its representative (and its “Designated Representative” for dispute resolution purposes) for the administration of this License:

CE and/or  
 CECI: Peter J. Grace  
 3020 Old Ranch Parkway  
 Suite 400  
 Seal Beach, CA 90740  
 Telephone: (562) 493-2804  
 Fax: (562) 493-4532  
  
 City: City Manager or designee  
 Telephone: 310-618-5880  
 Fax: 310-618-5891

10.3 Notices. Except for City’s request for service calls, which may be made by telephone, notices pertaining to this License shall be in writing and shall be transmitted either by personal delivery, facsimile, or by overnight delivery carrier and shall be deemed to be delivered up receipt. The addresses set forth below shall be the addresses used for notice purposes unless written notice of a change of address is given:

CE: Clean Energy  
 3020 Old Ranch Parkway  
 Suite 400  
 Seal Beach, CA 90740  
 Attn: Mr. Peter J. Grace  
 Fax: (562) 493-4532

City: City of Torrance  
 3031 Torrance Boulevard  
 Torrance, CA 90503  
 Attn: City Clerk  
 Fax: 310-618-2931

## ARTICLE 11 MISCELLANEOUS

11.2 Assignment. Neither Party shall have the right to assign its rights or obligations hereunder without obtaining the prior written consent of the other Party (which consent shall not be unreasonably withheld), and any attempted assignment without such prior written consent shall be void: provided that such consent shall not be necessary in the context of an acquisition of either party by asset sale, merger, change in control or operation of law. Permitted assigns and successors in interest shall have the benefit of, and shall be bound by, all terms and conditions of this License. Notwithstanding anything contained herein to the contrary, either Party may assign this License to such Party's parent corporation, an entity under common control with the Party, or a wholly-owned subsidiary of the Party without the consent of the other.

11.3 Headings. The headings in this License are for convenience and reference only, and shall not affect the interpretation of this License.

11.4 No Joint Venture. CE shall perform its duties herein as an independent contractor. Nothing contained herein shall be considered to create the relationship of employer and employee, partnership, joint venture or other association between the Parties, except as principal and independent contractor agent.

11.5 Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any provisions of this License shall operate or be construed as a waiver of any other default or defaults, whether of a like or different character. No waiver or modification of this License shall occur as the result of any course of performance or usage of trade.

11.6 Severability. If any provision of this License or the application thereof to any person or circumstances shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this License shall be valid and enforceable to the fullest extent

permitted by law, but only if, and to the extent, such enforcement would not materially and adversely alter the Parties' essential objectives as expressed herein.

11.7 Governing Law, Forum and Venue. This License shall be subject to and construed in accordance with the laws of the State of California with the courts of that State having jurisdiction to resolve all disputes which may arise under or which relate to this License. Any and all claims or actions arising out of or relating to this License shall be filed in and heard by the state or federal courts with jurisdiction to hear such suits located in Los Angeles, California, and each Party hereby consents to the jurisdiction of such courts and irrevocably waives any objections thereto, including, without limitation, objections on the basis of improper venue or forum non conveniens.

11.8 Counterparts and Facsimile Execution. This License may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which taken together shall constitute one and the same License. Delivery of an executed counterpart of this License by facsimile shall be equally as effective as delivery of a manually executed counterpart. Any Party hereto delivering an executed counterpart of this License by facsimile shall also deliver a manually executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of the counterpart executed and delivered by facsimile.

11.9 Attorney's Fees. If any action at law or equity is commenced concerning this License or to enforce its terms, the prevailing Party in such matter shall be entitled to the payment of reasonable attorneys' fees and costs as determined by the Court, in addition to any other relief which may be awarded to that Party.

11.10 Additional Documents. The Parties agree to execute and to deliver to each other any and all other additional documents and to take any additional steps reasonably necessary to complete, to document and to carry out the business transaction contemplated by this License.

11.11 Negotiated Transaction. The drafting and negotiation of this License has been participated in by all of the Parties. For all purposes, this License shall be deemed to have been drafted jointly by each of the Parties.

11.12 Representation regarding Authority to Sign License. Each of the representatives of the Parties signing this License warrants and represents to the other that he, she or it has the actual authority to sign this License on behalf of the Party for whom he, she or it is purporting to represent.

11.13 Entire License. This License and its exhibits contain the entire License between the Parties and it supersedes any prior written or oral agreements between the Parties concerning the subject matter of this License. There are no representations, agreements, or understandings between the Parties relating to the subject matter of this License which are not

fully expressed within this License and its exhibits.

11.14 Binding Effect. This License shall be binding upon and inure to the benefit of the respective heirs, successors, assigns, affiliates and personal representatives of the Parties.

11.15 Modification. This License shall not be modified, amended, or changed except in a writing signed by each of the Parties affected by such modification, amendment or change.

11.16 Damage to City-Owned Vehicles. If damage occurs to a City-owned CNG Vehicle and it is determined that (i) such damage is due solely to a malfunction of the Fueling Station and (ii) the Fueling Station was being utilized in a correct manner when the damage occurred, CE will, upon submission of a claim, reimburse City for the cost associated with the repair of the damaged CNG Vehicle.

11.16 Further Assurances. All of the Parties to this License agree to perform any and all further acts as are reasonably necessary to carry out the provisions of this License.

IN WITNESS WHEREOF, the Parties hereto have caused this License to be signed by their duly authorized representatives, effective as of the date first set forth above.

CLEAN ENERGY

By: \_\_\_\_\_

\_\_\_\_\_  
Peter J. Grace  
Senior Vice President, Sales &  
Finance

CITY OF TORRANCE  
A Municipal Corporation

By: \_\_\_\_\_

\_\_\_\_\_  
MAYOR FRANK SCOTTO

CLEAN ENERGY CONSTRUCTION

By: \_\_\_\_\_

\_\_\_\_\_  
Peter J. Grace  
Senior Vice President, Sales &  
Finance

ATTEST:

\_\_\_\_\_  
Sue Herbers, CITY CLERK

APPROVED AS TO FORM:

JOHN L. FELLOWS III,  
CITY ATTORNEY

By: \_\_\_\_\_

\_\_\_\_\_  
Patrick Q. Sullivan  
Assistant City Attorney

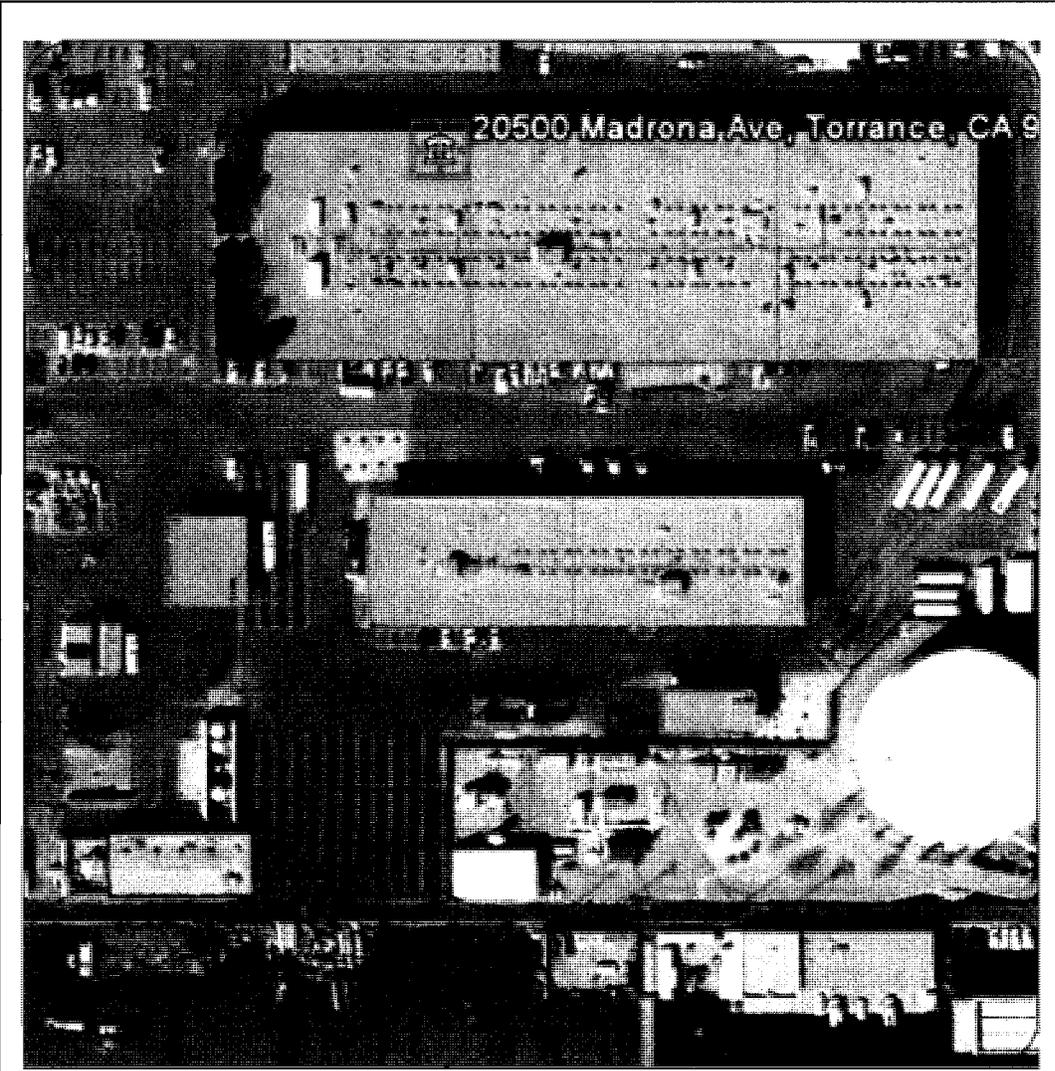
- Attachments: 1) Exhibit I Scope of Work  
2) Exhibit II The Premises and Fueling Station Locations  
3) Exhibit III CNG Pricing

**Exhibit I**  
**Scope of Work**

At CE's expense, CE will design, build, operate, maintain and own the CNG Fueling Station located on the Premises. CE will be responsible for all costs to build the Fueling Station, ongoing operations and maintenance costs, and keeping the equipment and adjacent areas clean and free of and trash. CNG equipment at the Fueling Station will include, but may not be limited to:

- Two compressors
- One manual regenerative gas dryer
- Three ASME storage vessels
- Two fast-fill dual hose dispensers (One at Fleet location and One at Transit location)
- Four, single hose, time-fill fueling posts (Transit location)

**Exhibit II**  
**The Premises and Fueling Station Locations**



Compressed Natural Gas Fueling Facility	20500 Madrona, Torrance, CA
Torrance Transit	CONCEPTUAL LAYOUT

 <b>Clean Energy®</b> 3020 OLD RANCH PARKWAY, SUITE 400   SEAL BEACH, CA 90740 TEL: 562.493.2804   FAX: 562.493.4532   www.cleanenergyfuels.com	CP-1
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**Exhibit III**  
**CNG Pricing**

The price per GGE for the City's purchases of CNG for City-owned and operated CNG Vehicles from the Fueling Station, shall be determined by the following formula:

The Compression Charge per GGE + any applicable excise, sales, and/or use taxes per GGE = CNG Price per GGE charged to the City.

**Additional CNG Pricing Terms:**

1. During the Term, the City shall have the option of paying to CE a lump sum of \$175,000 toward the construction of the Fueling Station from the grant funds that the City may receive from the South Coast Air Quality Management District Mobile Source Reduction Committee ("Grant Funds"). If CE receives the \$175,000 of Grant Funds, upon the later to occur of (i) CE receiving the total \$175,000 of Grant Funds and (ii) the date that CNG is first compressed by CE at the Fueling Station ("Funding Date"), the Compression Charge will equal: (a) \$0.91 per GGE for the first two (2) million GGEs of CNG purchased by the City after the Funding Date, (b) 0.70¢ per GGE for the second two (2) million GGEs of CNG purchased by the City after the Funding Date, and (c) after four (4) million GGEs of CNG have been purchased by the City after the Funding Date, the Compression Charge will equal \$0.33 per GGE of CNG for the remainder of the Term.
2. If the City does not pay the Grant Funds to CE, the Compression Charge will equal: (a) \$1.00 per GGE for the first two (2) million GGEs of CNG purchased by the City, (b) 0.70¢ per GGE for the second two (2) million GGEs of CNG purchased by the City, and (c) after four (4) million GGEs of CNG have been purchased by the City, the Compression Charge will equal \$0.33 per GGE for the remainder of the Term.
3. The applicable Compression Charge will be adjusted annually beginning January 1, 2015 by the increase in the United States Bureau of Labor Statistics Consumer Price Index All Items, for All Urban Consumers, Los Angeles-Anaheim-Riverside, California (1982-84=100).
4. The City will be responsible for all applicable excise, sales, and use taxes for fuel dispensed to the City's fleet.
5. Volumes of CNG consumed at the Fueling Station will be based on: (a) the Southern California Gas Company Bill and (b) the GGEs dispensed at the dispensers.
6. City shall be responsible for payment of all electric utility and natural gas utility service consumed at the Fueling Station during the Term. The natural gas utility account will be in City's name and the electric utility account will be in CE's name. Natural gas utility service bills will be billed directly to the City by the gas utility. Electric utility service bills for the most recent usage period will, on a monthly basis, be passed through to City with no markup.