

AGREEMENT TO PERFORM NON-PROFESSIONAL SERVICES FOR EQUIPMENT AND SUPPLIES

This agreement for the provision of supply and delivery of renewable liquid natural gas (“RLNG”) (“Agreement”) is made and entered in this 21st day of May, 2019 (“Effective Date”), by and between the City of Redlands, a municipal corporation (“City”) and Clean Energy (“Contractor”). City and Contractor are sometimes individually referred to herein as a “Party” and, together, as “Parties.” In consideration of the mutual promises contained herein, City and Contractor agree as follows:

ARTICLE 1 – ENGAGEMENT OF CONTRACTOR

- 1.1 City hereby engages Contractor to supply and deliver RLNG and associated services for City (the “Services”).
- 1.2 The Services shall be performed by Contractor in a professional manner, and Contractor represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional Contractors in the industry providing like and similar types of Services.

ARTICLE 2 – SERVICES OF CONTRACTOR

- 2.1 The Services that Contractor shall perform are more particularly described in Exhibit “A,” entitled “Scope of Services,” which is attached hereto and incorporated herein by reference.
- 2.2 Contractor shall comply with applicable federal, state and local laws and regulations in the performance of this agreement including, but not limited to, State prevailing wage laws.

ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Contractor information in its possession that may assist Contractor in performing the Services.
- 3.2 City designates Chris Boatman, Quality of Life Director, as City’s representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City’s policies and decisions with respect to performance of the Services.

ARTICLE 4 – PERFORMANCE OF SERVICES

- 4.1 Contractor shall perform and complete the Services in a prompt and diligent manner. The Services shall commence immediately after the Effective Date of this Agreement.
- 4.2 The term of this Agreement shall be for a period of one (1) year from the Effective Date of this Agreement (the “Initial Term”). The City shall have the option to extend the

Initial Term of this Agreement by two (2) additional one-year terms (each, an “Extended Term”), on the same terms and conditions, by providing written notice to Contractor at least thirty (30) days prior to the expiration of the Initial Term or any Extended Term. The Initial Term and the Extended Terms are collectively referred to herein as the “Term” of this Agreement.

- 4.3 If Contractor’s Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with City Council adopted policy for the same. It shall be the obligation of Contractor to obtain a copy of such policy from City staff.

ARTICLE 5 – PAYMENTS TO CONTRACTOR

- 5.1 The compensation for Contractor’s performance of the Services shall not exceed the amount of five hundred sixty one thousand six hundred thirty two dollars forty cents (\$561,632.40) for the Services provided during the Initial Term. Should this Agreement be renewed, the compensation for Contractor’s performance for the Services shall not exceed the amount of five hundred sixty one thousand six hundred thirty two dollars forty cents (\$561,632.40) for the second Renewal Term; and five hundred sixty one thousand six hundred thirty two dollars forty Cents (\$561,632.40) for the third Renewal Term, bringing the total possible amount of compensation to a not-to-exceed amount of one million six hundred eighty four thousand eight hundred ninety seven dollars twenty cents (\$1,684,897.20). City shall pay Contractor on a total price per RLNG gallon (fixed price excluding commodity and tax fluctuations on a monthly basis as further described in this sentence) delivered calculated using the monthly adjusted Natural Gas Price Index based upon the Southern California Border price in accordance with Exhibit “A,” entitled “Scope of Services” attached hereto and incorporated herein by reference.
- 5.2 Contractor shall submit monthly invoices to City describing the Services performed during the preceding month. Contractor’s invoices shall include a brief description of the Services performed, the dates the Services were performed, the number of hours spent and by whom, and a description of reimbursable expenses related to the Services. City shall pay Contractor no later than thirty (30) days after receipt and approval by City of Contractor’s invoice.
- 5.3 Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

City
 City Clerk
 City of Redlands
 35 Cajon Street
 P.O. Box 3005 (mailing)
 Redlands, CA 92373
jdonadlson@cityofredlands.org
 (909) 798-7531

Contractor
 Chad Lindholm, Vice President, Sales
 Clean Energy
 4675 MacArthur Court, Suite 800
 Newport Beach, CA 92660
Clindholm@cleanenergyfuels.com
 (949) 437-1000

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 The following insurance coverage required by this Agreement shall be maintained by Contractor for the duration of its performance of the Services. Contractor shall not perform any Services unless and until the required insurance listed below is obtained by Contractor. Contractor shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. Insurance policies shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.
- A. Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that Contractor is self-insured or exempt from the workers' compensation laws of the State of California. Contractor shall execute and provide City with Exhibit "B" entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to performance of the Services.
 - B. Comprehensive General Liability insurance with carriers acceptable to City in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, for public liability, property damage and personal injury is required. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
 - C. Business Auto Liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit bodily injury liability and property damage liability. This coverage shall include all Contractor owned vehicles used in connection with Contractor's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 6.2 Contractor shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent act or omission by, or the willful misconduct of, Contractor, or its officers, employees and agents in performing the Services.

ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Contractor covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Contractor's Services. Contractor further covenants and represents that in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.
- 7.2 Contractor agrees it is not a designated employee within the meaning of the Political Reform Act because Contractor:
- A. Does not make a governmental decision whether to:
 - (i) approve a rate, rule or regulation, or adopt or enforce a City law;
 - (ii) issue, deny, suspend or revoke any City permit, license, application, certification, approval, order or similar authorization or entitlement;
 - (iii) authorize City to enter into, modify or renew a contract;
 - (iv) grant City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
 - (v) grant City approval to a plan, design, report, study or similar item;
 - (vi) adopt, or grant City approval of, policies, standards or guidelines for City or for any subdivision thereof.
 - B. Does not serve in a staff capacity with City and, in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of Interest Code under Government Code section 87302.
- 7.3 In the event City determines that Contractor must disclose its financial interests, Contractor shall complete and file a Fair Political Practices Commission Form 700, Statement of Economic Interests, with the City Clerk's office pursuant to the written instructions provided by the City Clerk.

ARTICLE 8 – GENERAL CONSIDERATIONS

- 8.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 8.2 Contractor shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms and conditions of this Agreement. Any assignment or attempted assignment without such prior written consent may, in the sole discretion of City, result in City's immediate termination of this Agreement.

- 8.3 Contractor is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor of its agents shall have control over the conduct of Contractor or Contractor's employees, except as herein set forth. Contractor shall supply all necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Contractor are for its account only, and in no event shall Contractor or personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City. Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Contractor have any authority, express or implied, to bind City to any obligation.
- 8.4 This Agreement may be terminated by City, in its sole discretion, by providing not less than ten (10) days prior written notice to Contractor of City's intent to terminate. If this Agreement is terminated by City, an adjustment to Contractor's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Contractor at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Contractor. Upon receipt of a termination notice, Contractor shall immediately discontinue its provision of the Services and, within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of project related data, drawings, specifications, reports, summaries and such other information and materials as may have been accumulated by Contractor in performing the Services. Contractor shall be compensated on a pro-rata basis for Services completed up to the date of termination.
- 8.5 Contractor shall maintain books, ledgers, invoices, accounts and other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Contractor.
- 8.6 This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, any amendment to this Agreement shall be in writing, approved by City and signed by City and Contractor.
- 8.7 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.8 If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate the remaining sentences, clauses, paragraphs or

sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.


- 8.9 City warrants that all RLNG purchased by City pursuant to this Agreement shall be consumed as a vehicle fuel (either as LNG or LCNG) and City shall provide Contractor with reasonable cooperation with respect to the requirements for the generation of RINs under the EPA renewable fuels standard and LCFS Credits under the California Air Resources Board Low Carbon Fuel Standard. Contractor shall generate and retain all LCFS Credits, RINs, and any other emission reduction credits or environmental attributes or credits available (if applicable), related to the RLNG provided by Contractor to City pursuant to this Agreement except for federal and state tax credits available and allowed under Internal Revenue Code Sections 6426 and 6427 which shall be filed for and retained by City.

IN WITNESS WHEREOF, duly authorized representatives of City and Contractor have signed in confirmation of this Agreement.

CITY OF REDLANDS

By: 
Paul W. Foster, Mayor

CLEAN ENERGY

By: 
Chad Lindholm, Vice President, Sales

ATTEST:


Jeanne Donaldson, City Clerk

EXHIBIT "A"**SCOPE OF SERVICES****CLASS 2 – Renewable Liquefied Natural Gas (RLNG)**

NO.		Description	Base Year	Option Year 1	Option Year 2
Commodity Rate	1	So. Cal. Gas Monthly Index: \$US/MMBtu (Fixed, as of February 2019)	\$3.485	\$3.485	\$3.485
	2	Conversion From: MMBtu to RLNG Gal factor (fixed)	12.1	12.1	12.1
	3	Sub-Total – Price of RLNG Gallon (Line 1 / Line 2)	\$0.2880	\$0.2880	\$0.2880
Vendor Bid	4	Liquefaction (fixed) Per RLNG Gallon	\$ 0.2600	\$ 0.2600	\$ 0.2600
	5	Markup/Discount (fixed) Per RLNG Gallon	\$(0.0900)	\$(0.0700)	\$(0.0500)
	6	AB 32 Cap & Trade regulation related cost per Gallon (if applicable)	\$ 0.0035	\$ 0.0035	\$ 0.0035
	7	Delivery Fee Per RLNG Gallon	\$ 0.1300	\$ 0.1340	\$ 0.1382
	8	Sales Tax 7.75% (applicable)	\$ 0.0355	\$ 0.0370	\$ 0.0386
	9	Total – Price Per RLNG Gallon (Fixed Price Including Commodity and Taxes)	\$0.6271	\$0.6526	\$0.6783

The City's total price per RLNG gallon will fluctuate due to monthly commodity index price changes and applicable sales tax. Line Items 2, 4, 5, and 7 will be fixed for the entire base term of the Agreement. The City of Redlands Fleet pays the CA Excise Tax directly to the state and is exempt from Federal Excise Tax.

EXHIBIT "B"**WORKERS' COMPENSATION INSURANCE CERTIFICATION**

Every employer, except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

CHECK ONE


☒ I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work and activities required or permitted under this Agreement. (Labor Code §1861).

☐ I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

CLEAN ENERGY

Date: 5/17/19

By: 
Chad Lindholm, Vice President, Sales