

AGREEMENT FOR FUEL MANAGEMENT SYSTEM SERVICES

This agreement for the provision of installing Fuel Management System services ("Agreement") is made and entered into this 21st day of July, 2015 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City"), and Fuel Serv ("Consultant"). City and Consultant are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

In consideration of the mutual promises contained herein, City and Consultant agree as follows:

ARTICLE 1 - ENGAGEMENT OF CONSULTANT

- 1.1 City hereby retains Consultant to perform installation and programming of new fuel management software system (FMS) at the location specified by City's Quality of Life Department (the "Services").
- 1.2 Consultant and its subcontractors shall possess all appropriate State contractors' licenses required for the performance of the Services, and shall not be debarred pursuant to Labor Code sections 1777.1 and 1777.7.

ARTICLE 2 - RESPONSIBILITIES OF CONSULTANT

- 2.1 The specific Services which Consultant shall perform are more particularly described in Exhibit "A," which is attached hereto and incorporated herein by this reference.
- 2.2 Consultant shall comply with all applicable federal, state and local laws and regulations in the performance of the Services including, but not limited, to all applicable Labor Code and prevailing wage laws and non-discrimination laws, and the Americans with Disabilities Act. Pursuant to Labor Code section 1773.2, copies of the prevailing rates of per diem wages as determined by the Director of the California Department of Industrial Relations for each craft, classification or type of worker needed to perform the Services are on file at City's Municipal Utilities and Engineering Department, located at the Civic Center, 35 Cajon Street, Suite 15A (Mailing: P.O. Box 3005), Redlands, California 92373.
- 2.3 Consultant acknowledges that if it violates the Labor Code provisions relating to prevailing wages that City may enforce such provisions by withholding payments to Consultant or its subcontractors pursuant to Labor Code section 1771.6.
- 2.4 If Consultant executes an agreement with a subcontractor to perform any portion of the Services, Consultant shall comply with Labor Code sections 1775 and 1777.7, and shall provide the subcontractor with copies of the provisions of Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815. Consultant acknowledges that the statutory provisions establishing penalties for failure to comply with state wage and hour laws and to pay prevailing wages may be enforced by City pursuant to Labor Code sections 1775

and 1813.

- 2.5 Consultant and its subcontractors shall comply with the provisions of Labor Code section 1776 regarding payroll records maintenance, certifications, retention and inspection.
- 2.6 Consultant acknowledges that eight (8) hours constitutes a legal day's work pursuant to Labor Code section 1810.
- 2.7 Consultant shall comply with the provisions of Labor Code section 1777.5 as to apprenticeships, and Labor Code sections 1771, 1775, 1776, 1777.5, 1813 and 1815.
- 2.8 Consultant shall guarantee the Services against defective materials or workmanship for a period of (1) year from the date of City's issuance of a Notice of Completion for the Services, except where longer warranty periods are specifically provided by manufacturer of equipment installed in connection with the provision of the Services. During the (1) one year warranty period, should Consultant fail to remedy defective material and/or workmanship, or to make replacements within five (5) days after written notice by City, it is agreed that City may make such repairs and replacement and the actual cost of the required labor and materials shall be chargeable to and payable by Consultant or his surety.

All work which has been rejected by City, shall be remedied, or removed and replaced by the Consultant at its own expense. Any defective material or workmanship which may be discovered before final acceptance of the Services or within (1) one year from the completion date specified in the Notice of Completion, shall be corrected immediately by Consultant at its own expense notwithstanding that such defects may have been overlooked in previous inspections and estimates. Failure to inspect work at any stage shall not relieve the Consultant from any obligation to perform sound and reliable work as herein described. It is Consultant's responsibility to deliver at the time of final acceptance a completed project that complies in all details with this Agreement.

City will endeavor to locate any errors or defective materials or workmanship and call them to the attention of Consultant prior to subsequent work being performed. However, City is under no obligation to do so and shall not be held liable because errors or defective material or workmanship by Consultant are not discovered prior to subsequent work.

Nothing in this section shall be construed to limit the rights of City to immediately correct conditions which may be unsafe or which may pose a public health nuisance. Should said conditions later be found to be caused by defective material and/or workmanship, Consultant and its surety shall reimburse City for costs reasonably incurred while attending the situation.

ARTICLE 3 - PERIOD OF SERVICE

- 3.1 Consultant shall commence the Services upon City's delivery to Consultant of a written "Notice to Proceed."

- 3.2 Consultant shall complete the Services within one hundred twenty days (120) calendar days from and after the date of the City's issuance to Consultant of the Notice to Proceed.

ARTICLE 4 - PAYMENT AND NOTICE

- 4.1 City shall pay Consultant the sum of Ninety Nine Thousand Three Hundred Ninety Two Dollars and Thirty Eight Cents (\$99,392.38) as complete compensation for the Services.
- 4.2 Subsequent payments by City to Consultant shall be made within thirty (30) days after City's receipt and approval of Consultant's invoice, by warrant payable to Consultant.
- 4.3 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:

Fred Cardenas, Director
Quality of Life Department
City of Redlands
35 Cajon Street, Suite 222
P.O. Box 3005 (mailing)
Redlands, CA 92373

Consultant:

Robert I. Rodriguez
Fuel Serv
5196 Benito Street Suite 6
Montclair, CA 91763

ARTICLE 5 - INSURANCE AND INDEMNIFICATION

- 5.1 All insurance required by this Agreement shall be maintained by Consultant throughout Consultant's performance of the Services, and shall be primary with respect to City and non-contributing to any insurance or self-insurance maintained by City.
- 5.2 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 Consultant is self-insured or exempt from the workers' compensation laws of the State of California. Consultant shall provide City with Exhibit "B," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to occupancy of the Premises.
- 5.3 Consultant shall secure and maintain in force throughout its performance of the Services comprehensive general liability insurance, with carriers acceptable to City, with

minimum coverage 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. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Services.

- 5.4 Consultant shall secure and maintain in force throughout its performance of the Services business automobile liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Consultant owned vehicles used for the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. A certificate of insurance and endorsements shall be delivered to City prior to commencement of the Services.
- 5.5 Consultant shall indemnify, hold harmless and defend City and its elected officials, employees and agents from and against any and all claims, losses and liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent or intentionally wrongful act or omission of Consultant, and its officers, employees and agents, in performing the Services.
- 5.6 Consultant is expressly prohibited from assigning any of the work associated with the Services without the prior written consent of City. In the event of agreement by the Parties to assign a portion of the Services, Consultant shall add the assignee as an additional insured to its insurance policies and provide City with the insurance endorsements prior to any work being performed by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in this Agreement.

ARTICLE 6 - GENERAL CONSIDERATIONS

- 6.1 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 recover its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 6.2 All documents, records, drawings, electronic data files and data base, photographic prints and negatives, designs and specifications, cost estimates, and other documents developed by Consultant for the Services shall become the property of City and shall be delivered to City upon completion of the Services.
- 6.3 Consultant is, for all purposes under this Agreement, an independent Consultant with respect to the performance of the Services and not an employee of City. All personnel employed by Consultant to perform the Services are for its account only, and in no event

shall Consultant or any 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. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the Parties.

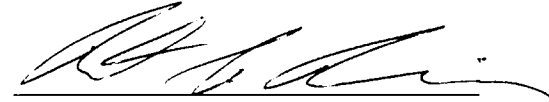
- 6.4 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Project by City.
- 6.5 City may terminate this Agreement for any reason, at any time at its sole discretion, upon two (2) calendar days prior written notice to Consultant.
- 6.6 Upon receipt of a termination notice, Consultant shall (1) promptly discontinue all work associated with the Services and (2) deliver or otherwise make available to City, copies of any data, design calculations, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by Contractor in performing the Services. Consultant shall be compensated on a pro-rata basis for any work completed up until notice of termination.
- 6.7 This Agreement, including the exhibits incorporated by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein and any prior negotiations, proposals and agreements relating to the subject matter hereof are superseded by this Agreement. Any amendment to this Agreement shall be in writing and approved by City and Consultant.
- 6.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, duly authorized representatives of the Parties have signed in confirmation of this Agreement.

CITY OF REDLANDS

By 
Paul Foster, Mayor

FUEL SERV


Robert I. Rodriguez, President

ATTEST:


Sam Irwin, City Clerk

EXHIBIT “A”

Scope of Services

Scope of Work

The following is a preliminary scope of work for the Project:

- Upgrade the current version of RTA to a version with a relational database management system backend (MS SQL Server Based) and replace the FMS with a new and more capable system.

Ideal enhancements include:

- An enhanced crystal reporting package allowing more effective data access and improve reporting quality and data management.
- Standardized RMDS database platform
- Interfaces into financial or other application packages
- Allows for global data changes in the database
- Easy query capabilities using standard SQL language
- Standardized report writer capability (using Crystal Reports, SSRS or any ODBC compatible Report Writer)
- High level of security for the data
- Easy/more secure backup capabilities for the data
- High compatibility with other enterprise software systems
- Sharing of data from the RTA system to other systems, spreadsheets, applications

The City’s existing system and our future system will include:

- Vehicles and authorized users master records reside in the Fuel Management System (FMS) database. Fuel authorizations are set and maintained in the FMS application, which are uploaded real time to the fuel island control (ICU) devices via fiber optic or a wired network connection.
- Vehicles are equipped with an integrated fueling device that communicates with the ICU devices to off load vehicle information from the vehicle’s onboard engine control unit (ECM) or on-board diagnostic (OBDII) computer interface. Information transferred includes fueling information, engine fault codes, and odometer and hour meter readings.
- The ICU authorized the vehicle to fuel from the appropriate fuel dispenser including the applicable fuel types and controls the amount of fuel allowed for disbursement.

- Comprehensive transaction details are available real-time via the FMS. Fuel tank levels are electronically monitored and reorder alerts are sent to the appropriate manager when the level reaches the minimum order level. Fuel deliveries are recorded and received in the FMS allowing accurate inventory quantity and fuel valuations and the disbursements are reconciled with the delivery to verify accurate quantities. Leak detection, water levels, tank quantities, etc., are available from within the FMS application through integration with the tank monitoring system.
- Management reports are available via the FMS which also produces data analytics, and transactional history. Reports are available for customers to review and reconcile their fueling history. The daily fuel transactions are integrated with the FMIS. Monthly billing and historical reconciliation is conducted within the FMIS through automated reporting. Full life cycle operational cost details is available through the FMIS using Intranet available reports and dashboards.
- Pursuant to Section 1770, et seq., of the California Labor Code, the successful Proposer shall pay not less than prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are available on the internet <http://www.dir.ca.gov/OPRL/PWD/index.htm> for State Wages and at <http://www.wdol.gov/dba.aspx> for Federal Wages.

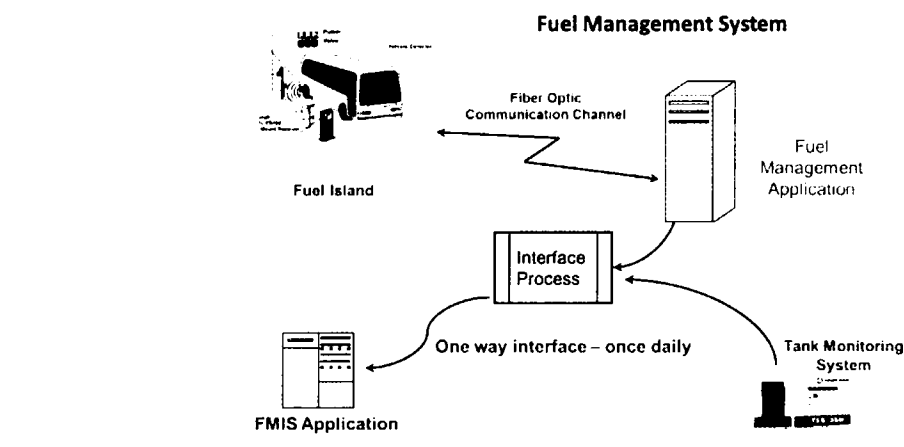
Task 1: Visual Inspection

The consultant will be given the opportunity to view the current FMS application via job walk.

Task 2: Utilize the typical full service FMS application

To properly manage this fuel program the city should have state-of-the-art equipment and systems in place. The following graphic outlines a typical full service FMS application.

Example Drawing:



Task 3: Provide a system that will enable automated fueling technologies

An example of simplified fueling operations enabled by adding automated fueling technologies is outlined as follows:

1. Vehicle pulls up to the fuel island
2. User inserts nozzle in vehicle filler neck
3. The ICU authenticates the vehicle via radio frequency
4. Once the vehicle is identified, the ICU verifies selected product and fueling is enabled.
5. The RF module on board the vehicle provides meter readings, engine error codes and other data for interface into the FMS and FMIS.

Task 4: Quality Assurance

- Assist in resolving problems related to software applications.
- Provide certification that the software and its components function to their full capability without error or omission.
- Provide a complete software installation report indicating that the components mentioned in the scope of work have been met.

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.

Fuel Serv

Date: 7-20-15

By: _____

Robert I. Rodriguez