

AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of technical consulting and design services for the LCNG Station Expansion ("Agreement") is made and entered in this 3rd day of September, 2013 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and Fuel Solutions, Inc. ("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 engages Consultant to provide preliminary design, technical specifications, bidding and construction phase services, and construction management services for City's LCNG Station Expansion (the "Services").
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant 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 consultants in the industry providing like and similar types of Services.

ARTICLE 2 – SERVICES OF CONSULTANT

- 2.1 The Services that Consultant shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by reference.
- 2.2 Consultant shall comply with applicable federal, state and local laws and regulations in the performance of this Agreement including, but not limited to, applicable State prevailing wage laws relating to the performance of "construction" work as defined by Public Contract Code section 1720.

ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 3.2 City designates Fred Cardenas, 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 Consultant shall perform and complete the Services in a prompt and diligent manner in accordance with the schedule set forth in Exhibit "B," entitled "Project Schedule," which

is attached hereto and incorporated herein by reference. The Services shall commence within ten (10) days of the Effective Date of this Agreement.

ARTICLE 5 – PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of Thirty Seven Thousand Eight Hundred Eighty Three Dollars (\$37,883). City shall pay Consultant on a time and materials basis up to the not to exceed amount, in accordance with Exhibit "C" entitled "Project Costs," and based upon the hourly rates shown in Exhibit "D," entitled "Rate Schedule." Both Exhibits "C" and "D" are attached hereto and incorporated herein by this reference.
- 5.2 Consultant shall submit monthly invoices to City describing the Services performed during the preceding month. Consultant'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 project. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 5.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

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
Reb Guthrie
President
Fuel Solutions, Inc.
12340 Santa Monica Blvd. #133
Los Angeles, Ca 90025

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to whom notices and payments are to be given by giving notice pursuant to this section 5.3.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 Insurance required by this Agreement shall be maintained by Consultant for the duration of its performance of the Services. Consultant shall not perform any Services unless and until the required insurance listed below is obtained by Consultant. Consultant 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.

- 6.2 Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance in accordance with the laws of the State of California, with an insurance carrier acceptable to City as described in Exhibit "E," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference.
- 6.3 Consultant shall secure and maintain comprehensive general liability insurance with carriers acceptable to City. 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 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.
- 6.4 Consultant shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made.
- 6.5 Consultant shall have 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 Consultant owned vehicles used in connection with Consultant'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.
- 6.6 Consultant 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 and negligent act, omission or failure to act by Consultant, its officers, employees and agents in performing the Services.

ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Consultant 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 Consultant's Services. Consultant 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 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:
- A. Does not make or participate in:

- (i) the making or any City governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;
- (ii) the issuance, denial, suspension or revocation of City permits, licenses, applications, certifications, approvals, orders or similar authorization or entitlements;
- (iii) authoring City to enter into, modify or renew a contract;
- (iv) granting 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) granting City approval to a plan, design, report, study or similar item;
- (vi) adopting, or granting 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 officially determines that Consultant must disclose its financial interests, Consultant 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 Consultant 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.

8.3 Project related documents, records, drawings, designs, cost estimates, electronic data files, databases and any other documents developed by Consultant in connection with its performance of the Services, and any copyright interest in such documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.

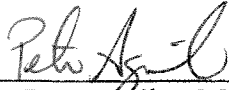
8.4 Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor of its agents shall have control over the conduct of Consultant or Consultant's employees, except as herein set forth. Consultant shall supply all necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Consultant are for its account only, and in no event shall Consultant 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. Consultant

shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind City to any obligation.

- 8.5 Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City; provided, however this Agreement may be terminated by City, in its sole discretion, by providing ten (10) days prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate. If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant. Upon receipt of a termination notice, Consultant 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, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services. Consultant shall be compensated on a pro-rata basis for Services completed up to the date of termination.
- 8.6 Consultant 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 Consultant pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Consultant.
- 8.7 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, and written or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, an amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.
- 8.8 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.9 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.

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

CITY OF REDLANDS

By: 
Pete Aguilar, Mayor

By: 
Henry S. (Reb) Guthrie, President

Attest:


Sam Irwin, City Clerk

EXHIBIT A – SCOPE OF WORK
Proposed Schedule for Design & Development of LCNG Station Expansion
City of Redlands Project No. 47017

Task	Weeks to Complete	
	Each Task	Cumulative
Notice to proceed issued by City	0	0
Task 1 – Preliminary Design & Investigation	3	3
1.01 Conduct civil survey as needed		
1.02 Review and document any existing L/CNG fueling system & maint. history as needed		
1.03 Project-kickoff meeting with fleet staff, including conducting programming questionnaire to determine basis of design		
1.04 Code analysis and research		
1.05 Review & determine required performance & features for LCNG upgrade		
1.06 Conduct design-coordination meeting with all design-team members		
1.07 Prepare basis of design memorandum for review and approval by the City		
1.08 Prepare preliminary/50% design-drawing package		
1.09 Prepare 50% specification package		
1.1 Submit 50% design package to City (submittal-1)		
1.11 Conduct preliminary design-review meeting with City of Redlands Fire Dept.		
1.12 Develop preliminary budgetary based on 50% design (equipment and const.)		
1.13 Preliminary design review with fire department and other AHJs as appropriate		
1.14 Teleconference & project management (various)		
Task 2 – Design & Construction Documents	8	11
2.01 Meet with City staff to review 50% design submittal		
2.02 Incorporate City comments/feed back from 50% submittal		
2.03 Conduct design-coordination meeting with all design-team members		
2.04 Prepare 95% design-construction drawings		
2.05 Prepare 95% specifications		
2.06 Prepare 95% cost estimate		
2.07 Submit 95% drawings to client & Building / Fire Officials (submittal-2)		
2.08 Teleconference & project management (various)		
Task 3 – Permitting & Bid Documents	8	19
3.01 Incorporate client & Officials comments/feed back from 95% submittal		
3.02 Prepare 100% design-construction drawings		
3.03 Prepare 100% specifications		
3.04 Prepare 100% cost estimate		
3.05 Revise/resubmit dwgs for plan chk as required - "Bid Set" (submittal-3)		
3.06 Obtain final Fire Marshal & City Building Dept. approval of design drawings		
3.07 Provide updated/final cost estimate		
3.08 Provide updated schedule (long lead items, etc.)		
3.09 Teleconference & project management (various)		
Task 4 – Bidding & Construction Award	16	35
4.01 Provide contact info for potential bidders/contractors		
4.02 Assist City to conduct pre-bid conference		
4.03 Reply to technical questions from contractors during bidding		
4.04 Teleconference & project management (various)		
Task 5 – Construction Assistance	Combined with Task 4	
5.01 Review shop drawings & submittals from contractor – includes deferred submittal for canopy engineering; also to be reviewed by City Building Dept.		
5.02 Attend construction-progress meetings as needed		
5.03 Respond to RFIs from contractor		
5.04 Review onsite testing & startup		
5.05 Review change orders & modifications to specifications		
5.06 Final inspections, punch list process, determine substantial completion – includes functional and performance testing		
5.07 Review/verify O&M manuals for all equipment and devices		
5.08 Review & field verify contractor's as-built markups of design drawings		
5.1 Coordinate/review facility & fueling training by contractor		
5.11 Coordinate FD-familiarization training for new equipment (as needed)		

EXHIBIT B – PROJECT SCHEDULE

Proposed Schedule for Design & Development of LCNG Station Expansion
City of Redlands Project No. 47017

Task #	Task	Weeks Duration	
		Each Task	Cumulative
-	Notice to proceed issued by City	0	0
1	Preliminary design & investigation	2	2
2	Construction documents & plan check	8	10
3	Bidding period services	8	18
4	Construction phase services	16	34
5	Construction management and Q/A	Combined with Task 4	

EXHIBIT C – PROJECT COSTS

Scope and Fee Proposal by Fuel Solutions, Inc. to the City of Redlands
for Design Consulting to Upgrade its LCNG Fueling System

FS-Redlands LCNG Design Fee Proposal 081413.xlsx • Fee Summary

Consultant	Title	\$ Rate	Task 1 - Investigation & Prelim. Design	Task 2 - Design & Constru. Docs	Task 3 - Permitting & Bid Docs	Task 4 - Bidding & Const. Award	Task 5 - Construction Assistance	\$ Total
Reb Guthrie	Project Manager, Principal	164.00	16	16	12	8	12	
Faye Farahmand, P.E.	Project Engineer	148.00	12	24	16	8	8	
Bruce Guthrie	Assist. Project Manager, Principal	150.00	0	4	4	0	8	
Rex Barker	Sr. Mechanical Design Specialist	88.00	4	28	20	4	16	
Staff	Administrative	45.00	2	2	4	2	4	
\$ Extended Fee for Base Design Fee			4,842	9,330	6,876	2,938	5,940	\$ 29,928
Summary Fee for Subconsultants by Task			16%	31%	23%	10%	20%	
Subconsulting Under FS by Discipline (Firm)								
			\$ Direct					
Sub-Consultants (lump sum all tasks, includes travel & other direct costs)	Electrical – PolyPhase Engineering		900	1,300	800			3,000
	Structural – none (see Note 3)							0
	Site survey – Betz & Associates		3900					3,900
	Subconsulting Labor, Subtotal							6,900
Total Labor by Task			9,642	10,630	7,676	2,938	5,940	
Subtotal for Base Consulting Labor (Fixed fee, paid on completion of approved work)								\$36,826
Estimated Other Direct Costs (paid on actual costs):								
Travel:			Units	\$/Unit	Extend			
Auto travel to/from Redlands			8	78	622			
Not used					0			
Rental car (days)			0	80	0			
Lodging & per diem			0	240	0			
Misc.:			-	-	-			
Drawing reproduction			3	110	330			
Express postage/delivery			3	35	105			
Not used			0	0	0			
Other Direct Costs, Subtotal								1,057
TOTAL (all consulting labor and estimated expenses)								\$ 37,883
Task #			1	2	3	4	5	
ODCs %			15%	15%	25%	25%	20%	100%
ODC \$ Cost Distributed by Task			159	159	264	264	211	1,057
TOTAL \$ Base Cost (labor & direct costs)			9,801	10,789	7,940	3,202	6,151	\$37,883

Proposal Notes: 1) Survey scope is for the dispenser area to be upgraded, including adjacent traffic areas; survey scope can be expanded to cover additional portions of the yard as requested by the City. 2) Survey scope/fee can be omitted if City provides complete and accurate AutoCAD drawings for the project area. 3) Design engineering for the canopy extension is assumed to be assigned under the Contractor's canopy subcontractor/vendor as a 'deferred submittal'; design engineering for the canopy extension can be added to FS's scope as directed by the City at a cost of about \$3800. 4) Scope includes assessment of upgrade of LCNG-pump and HEX capacities, but excludes design implementation of upgrades, depending ability to upgrade and complexity.



EXHIBIT D – RATE SCHEDULE



CONSULTING & DESIGN ENGINEERING FOR FUELING INFRASTRUCTURE

M E M O R A N D U M

TO: Deborah Allen, City of Redlands

FROM: Reb Guthrie

DATE: August 26, 2013

SUBJECT: Labor rates for Fuel Solutions consultants for City of Redlands Project No. 47017, Design & Development of LCNG Station Expansion

Consulting-Labor Rates for Fuel Solutions, Inc.

Name	Title	\$ Hourly Rates (all inclusive)
Reb Guthrie	Project Manager & Principal	164.00
Bruce Guthrie	Assistant Project Manager & Principal	150.00
Faye Farahmand, P.E.	Senior Project Engineer	148.00
Rex Barker	Mechanical Design Specialist	88.00
Jackie Horak	Administrative	45.00

The above labor rates for staff of Fuel Solutions, Inc. are fully loaded and include a 10% fee, and shall be valid for the term of the above-reference project. These rates are applicable for any add-services work for the project that is ordered by the City on time and materials, and outside of the base contract scope as indicated in the project RFP and Fuel Solutions' associated proposal dated 8-14-13.

Henry S. (Reb) Guthrie, President

8/26/2013

Date

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EXHIBIT "E"

**WORKERS' COMPENSATION INSURANCE CERTIFICATION TO PERFORM
TECHNICAL CONSULTING AND DESIGN SERVICES FOR THE LCNG STATION
EXPANSION**

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 in one or more insurer 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.

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 of this Agreement. (Labor Code §1861).

Fuel Solutions, Inc.

By: _____

Henry S. (Reb) Guthrie, President

Date: