



City Council Report

915 I Street, 1st Floor

Sacramento, CA 95814

www.cityofsacramento.org

File ID: 2019-01246

September 10, 2019

Consent Item 21

Title: Licensing Agreement for CNG Fueling at Sacramento Regional Transit Facilities

Location: Citywide

Recommendation: Pass a Motion: 1) approving an amendment to the City's licensing agreement with Sacramento Regional Transit (RT), effective August 17, 2019, for the purchase of compressed natural gas through August 17, 2022; and 2) authorizing the City Manager or the City Manager's designee to execute the purchases specified above.

Contact: Alison Kerstetter, Program Specialist, (916) 808-1163; Mark Stevens, Fleet Manager, (916) 808-5869, Department of Public Works

Presenter: None

Attachments:

1-Description/Analysis

2-Agreement

Description/Analysis

Issue Detail: The Department of Public Works, Fleet Management Division, has an ongoing requirement to purchase compressed natural gas (CNG) for various city departments. The agreement will allow the City to use the Sacramento Regional Transit (RT) fuel site to purchase CNG.

Policy Considerations: The recommendations in this report are in accordance with City Code Chapter 3.56.

Economic Impacts: None

Environmental Considerations: No environmental review is necessary because the recommendations in this report involve the purchase of CNG for City vehicles and is not considered to be a project in accordance with Section 15378(b)(2) of the California Environmental Quality Act (CEQA) guidelines.

Sustainability: The recommended purchases are consistent with the updated Fleet Sustainability Policy adopted by City Council on December 12, 2017 (Resolution No. 2017-0478). The use of CNG provides a cleaner burning fuel and decreases the City's dependency on fossil fuels.

Commission/Committee Action: None

Rationale for Recommendation: Currently, the City of Sacramento does not own a CNG fueling station. This agreement will allow the City to use RT's fuel site to purchase CNG fuel. RT has competitively bid the fuel which we are purchasing. Approval is recommended for one (1) additional year as the total number of years on the agreement exceeds five (5) years.

Financial Considerations: Purchases under the recommended agreement will be made from in the Department of Public Works, Fleet Management Division's operating budget (Fleet Fund, Fund 6501) and charged to the appropriate Department's operating budget. Sufficient funds are available in the Department of Public Works, Fleet Management Fiscal Year (FY) 2019/20 operating budget for CNG purchases made through June 30, 2020. Purchases made after June 30, 2020, are subject to funding availability in the adopted budget of the applicable fiscal year.

Local Business Enterprise (LBE): Not applicable.

CONTRACT ROUTING SHEET

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, it is NOT part of the contract.

General Information (Required)

Original Contract # (supplements only): 2013-0851 Supplement/Addendum #: 02
 Assessor's Parcel Number(s): _____
 Contract Effective Date: 08/27/2013 Contract Expiration Date (if applicable): 06/30/2020
 \$ Amount (Not to Exceed): \$ 900,000.00 Adjusted \$ Amount (+/-): _____
 Other Party: Sacramento Regional Transit
 Project Title: Licensing Agreement for CNG Fueling at Sacramento Regional Transit Facilities
 Project #: _____ Bid/RFQ/RFP #: _____
 City Council Approval: YES if YES, Council File ID#: 2013-00577

Contract Processing Contacts

Department: Public Works Project Manager: Alison Kerstetter
 Contract Coordinator: Alison Kerstetter Email: akerstetter@cityofsacramento.org

Department Review and Routing

Accounting:

 (Signature) (Date)

Supervisor:

Alison Kerstetter Digitally signed by Alison Kerstetter Date: 2019.08.14 17:03:25 -07'00' 08/14/2019

Division Manager:

 (Signature) (Date)

Mark R Stevens Digitally signed by Mark R Stevens Date: 2019.08.15 07:15:44 -07'00' 08/15/2019

 (Signature) (Date)

Other:

 (Signature) (Date)

Special Instruction/Comments (i.e. recording requested, other agency signatures required, etc.)

Recording Requested

Other Party Signature Required

-----FOR CLERK & IT DEPARTMENTS ONLY – DO NOT WRITE BELOW THIS LINE-----

**SECOND AMENDMENT TO LICENSE AGREEMENT FOR USE OF
COMPRESSED NATURAL GAS FUELING FACILITIES**

THIS SECOND AMENDMENT to the License Agreement for Use of Compressed Natural Gas Fueling Facilities, (the "Principal Agreement") made and entered into on August 27, 2013, and Amended on August 17, 2016, between **SACRAMENTO REGIONAL TRANSIT DISTRICT**, a public corporation, therein referred to as "RT," and **CITY OF SACRAMENTO**, a municipal corporation, therein referred to as "CITY", is made and entered into on _____.

RECITALS

WHEREAS, RT allows CITY to use RT's CNG Fueling Station located at its Bus Maintenance Facility No. 2; and

WHEREAS, on August 17, 2016, RT and the CITY entered into a First Amendment to the Principal Agreement to extend the expiration date by three year; and

WHEREAS, the Agreement is about to expire; and

WHEREAS, the parties desire to amend the Principal Agreement to extend the term of the Agreement by three years.

WITNESS

NOW, THEREFORE, RT AND CITY DO MUTUALLY AGREE AS FOLLOWS:

Section 1: Article 1 of the Principal Agreement is amended in its entirety as follows:

"1. The term of this Agreement will commence upon execution by RT, and terminate on August 17, 2022, unless sooner terminated as provided herein."

Section 2: EFFECT. The effect of this Second Amendment to the Principal Agreement is to extend the term by 3 years.

Section 3: AMBIGUITIES. The parties have each carefully reviewed this Amendment and have agreed to each term of this Amendment. No ambiguity is presumed to be construed against either party.

Section 4: FULL FORCE AND EFFECT. To the extent not inconsistent herewith, all other terms and provisions of the Principal Agreement, as amended, remain the same and in full force and effect.

Section 5: AUTHORITY TO BIND. Each of the signatories to this Amendment represent that they are authorized to sign this Second Amendment on behalf of such party and that all approvals, resolutions and consents that must be obtained to bind such party have been obtained and that no further approvals, acts, or consents are required to bind such party to this Second Amendment.

Section 6: INTEGRATION. This Second Amendment embodies the entire agreement of the parties in relation to the scope of services herein described, and no other understanding whether verbal, written, or otherwise exists between the parties.

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IN WITNESS WHEREOF, the parties have entered into this First Amendment to the Principal Agreement on the day and year first hereinabove appearing.

CITY OF SACRAMENTO

**SACRAMENTO REGIONAL
TRANSIT DISTRICT**

By: _____
RYAN MOORE
Interim Public Works Director

By: _____
HENRY LI
General Manager/CEO

Approved as to Legal Form:

Approved as to Legal Form:

By: _____
City Attorney

By: _____
RT Attorney

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Requires Council Approval: No YES Meeting:
 Real Estate Other Party Signature Needed Recording Requested

General Information

Form with fields: Type: Commodity, PO Type: N/A, Attachment: No., Original Doc Number: 2013-0851, Not to Exceed: \$99,000, Other Party: Regional Transit, Certified Copies of Document, Project Name: License Agreement for Use of CNG Fueling Facilities, Deed: [X] None, Project Number, Bid Transaction #: N/A, E/SBE-DBE-M/WBE.

Department Information

Department: Public Works Division: Fleet Management
Project Mgr: Iseña Garcia
Contract Services: N/A Division Mgr: Mark Stevens
Phone Number: 808-1163 Org Number: 15003311
Comment: Original Contract Amount: N/A

Review and Signature Routing

Department Signature or Initial Date
Project Mgr: JA 8/8/16
Contract Services:

City Attorney Signature or Initial Date
City Attorney: JZ 8/9/16

[X] Send Interoffice Mail to Iseña Garcia (12500)
[] Notify for Pick Up: Isena Garcia - 808-1163

Authorization Signature or Initial Date
Jerry Way Director, Public Works: WJ 8-11-16
City Mgr: Yes [] No []

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09) (Under \$100K - Blue)

For City Clerk's Office stamp area containing: Finalized: Initial: z, Date: 08/30/16, Imaged: Initial: [signature], Date: 9/1/16, Received: (City Clerk Stamp Here), Sacramento City Clerk's Office, 915 I St, 5th Floor, Received 08/30/2016 02:12 PM, 2013-0851-1, With: Regional Transit, Title: License Agreement Use of CNG Fueling Facilities, Page 6 of 14

**FIRST AMENDMENT TO LICENSE AGREEMENT FOR USE OF
COMPRESSED NATURAL GAS FUELING FACILITIES**

THIS FIRST AMENDMENT to the License Agreement for Use of Compressed Natural Gas Fueling Facilities, (the "Principal Agreement") made and entered into on August 27, 2013, between **SACRAMENTO REGIONAL TRANSIT DISTRICT**, a public corporation, therein referred to as "RT," and **CITY OF SACRAMENTO**, a municipal corporation, therein referred to as "CITY" is made and entered into on August 17, 2016.

RECITALS

WHEREAS, RT allows CITY to use RT's CNG Fueling Station located at its Bus Maintenance Facility No. 2; and

WHEREAS, the Agreement is about to expire; and

WHEREAS, the parties desire to amend the Principal Agreement to extend the term of the Agreement by three years.

WITNESS

NOW, THEREFORE, RT AND CITY DO MUTUALLY AGREE AS FOLLOWS:

Section 1: Article 1 of the Principal Agreement is amended in its entirety as follows:

"1. The term of this Agreement will commence upon execution by RT, and terminate 6 years later unless sooner terminated as provided herein."

Section 2: EFFECT. The effect of this First Amendment to the Principal Agreement is to extend the term by 3 years.

Section 3: AMBIGUITIES. The parties have each carefully reviewed this Amendment and have agreed to each term of this Amendment. No ambiguity is presumed to be construed against either party.

Section 4: FULL FORCE AND EFFECT. To the extent not inconsistent herewith, all other terms and provisions of the Principal Agreement, as amended, remain the same and in full force and effect.

Section 5: AUTHORITY TO BIND. Each of the signatories to this Amendment represent that they are authorized to sign this Amendment on behalf of such party and that all approvals, resolutions and consents that must be obtained to bind such party have been obtained and that no further approvals, acts, or consents are required to bind such party to this Amendment.

Section 6: INTEGRATION. This Amendment embodies the entire agreement of the parties in relation to the scope of services herein described, and no other understanding whether verbal, written, or otherwise exists between the parties.

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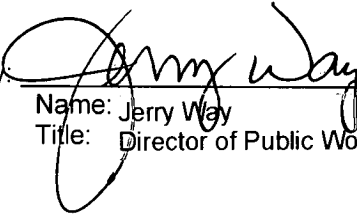
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**2013-0851-1
With: Regional Transt
Title: License Agreement Use of CNG
Fueling Facilities**

IN WITNESS WHEREOF, the parties have entered into this First Amendment to the Principal Agreement on the day and year first hereinabove appearing.

CITY OF SACRAMENTO

**SACRAMENTO REGIONAL
TRANSIT DISTRICT**

By: 
Name: Jerry Way
Title: Director of Public Works

By: 
HENRY LI
General Manager/CEO

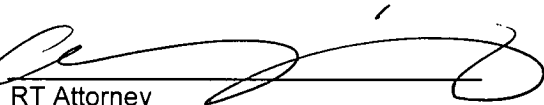
Approved as to Content:

By: 
NEIL NANCE, VP Strategic Planning
and System Development

Attested By:


Wendy Klock-Johnson
Assistant City Clerk

Approved as to Legal Form:

By: 
RT Attorney

H:\LEGAL FILES\CONTRACTS\2015to2019\K16Q3\CityCNGFueling1KA.doc

APPROVED AS TO FORM:


CITY ATTORNEY



Requires Council Approval: No YES Meeting: 8/20/2013

Real Estate Other Party Signature Needed Recording Requested

General Information

Type: Commodity PO Type: Interagency Agreement	Attachment: Original No.: Original Doc Number:
Not to Exceed: \$	
Other Party: Regional Transit	Certified Copies of Document::
Project Name: License Agreement for CNG Fueling	Deed: <input checked="" type="checkbox"/> None <input type="checkbox"/> Included <input type="checkbox"/> Separate
Project Number: N/A Bid Transaction #: N/A	E/SBE-DBE-MWBE:

Department Information

Department: General Services Division: Fleet Management

Project Mgr: Daniel Choe

Contract Services: N/A Division Mgr: Keith Leech

Phone Number: 808-6631 Org Number: 13001311

Comment: Original Contract Amount: N/A

Review and Signature Routing

Department	Signature or Initial	Date
Project Mgr:		7/3/2013
Contract Services:	N/A	

City Attorney	Signature or Initial	Date
City Attorney:		7/23/13

Send Interoffice Mail to Reina J. Schwartz (12500)

Notify for Pick Up

Authorization	Signature or Initial	Date
Reina Schwartz Director, General Services:		8/16/13
City Mgr: Yes <input type="checkbox"/> No <input type="checkbox"/>		

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

For City Clerk

Finalized:
Initial:

Date: 09/05/2013

Imaged:
Initial:

Date:

Received:
(City Clerk Stamp Here)

Title: License Agreement for CNG Fueling
Other Party: Regional Transit

2013-0851

RECEIVED
CITY CLERK'S OFFICE
CITY OF SACRAMENTO

2013 SEP - 5 A 10: 58

**LICENSE AGREEMENT FOR USE OF
COMPRESSED NATURAL GAS FUELING FACILITIES**

THIS AGREEMENT is made and entered into on August 27, 2013 ("Execution Date"), by and between **SACRAMENTO REGIONAL TRANSIT DISTRICT**, a public corporation ("RT"), and the **CITY OF SACRAMENTO**, a municipal corporation ("CITY").

RECITALS

WHEREAS, RT constructed a compressed natural gas fueling station ("CNG Station") at its Bus Maintenance Facility #2 at McClellan Park; and

WHEREAS, RT desires to allow CITY to use the CNG Station and obtain the benefit of the lower CNG prices paid by RT.

NOW THEREFORE, THE PARTIES DO HEREBY AGREES AS FOLLOWS:

Subject to the conditions, stipulations and provisions set forth below, RT hereby grants temporary and revocable non-exclusive permission to CITY to enter RT's Bus Maintenance Facility at 3701 Dudley Boulevard, McClellan, CA (the "Premises") to use the CNG Stations.

1. The term of this Agreement will commence upon execution by RT, and terminate 3 years later unless sooner terminated as provided herein.
2. CITY desires to enter upon the Premises solely at its own risk to use RT's CNG Fueling Station.
 - (a) CITY or its agents may not do or perform any activities on the Premises other than using the Fueling Station. RT may terminate this Agreement if CITY performs unauthorized activities.
 - (b) CITY must provide a list of vehicles that will be using the fueling stations. RT will track fueling activity by vehicle number and/or fuel card.
 - (c) Prior to using the Fueling Station, each employee who will be engaged in fueling activities must receive RT training, estimated to take less than 2 hours. Training must be scheduled during weekdays and may be billed for by RT at cost.
 - (d) Fueling may be performed 24 hours a day, 7 days a week at the single remote fueling island. Between the hours of 4 a.m. and 6 p.m., an additional two fuel pumps will be available for use. RT may authorize other public agencies to use the Fueling Station as well and will work with all authorized users to coordinate fueling times to avoid delays.
 - (e) CITY or its contractors do not have the right to store any equipment or materials on the Premises. CITY or its contractors must immediately repair any damage to the Premises resulting from any activities performed pursuant to this Agreement.
3. During the term of this Agreement, RT may make an additional Fueling Station at 1323 28th Street, Sacramento, CA available for use by CITY. Any such approval will be subject to: (1) approval by the Federal Transit Administration of fueling by other public agencies at the location; and (2) construction of a fueling pump with a nozzle appropriate for use by CITY's vehicles. RT, in its sole discretion, may provide written notice to CITY of the availability of the additional Fueling Station. Unless otherwise stated in the written notice, use of the additional Fueling Station will be subject to all of the terms and conditions set out in this Agreement. In addition, use of the additional Fueling Station may be conditioned on the acceptance of additional terms and conditions, to be set out in the notice, that are applicable only to the 28th Street Fueling Station. RT does not warrant or guarantee that the additional Fueling Station will be available during the term of this Agreement.

4. CITY will be billed on an actual-cost basis for fueling activities in accordance with the attached Exhibit 1. Components of cost include: fuel costs, PG&E transportation cost, Department of General Services' fees, maintenance costs, administrative staff costs, and electrical compression costs. CITY will be billed monthly in arrears for all fueling costs incurred in the prior month. All invoices must be paid within 30 days after receipt. Upon request by CITY, RT will provide appropriate supporting documentation of its costs.
5. RT will not assume any responsibility for, or to protect against any loss, damage, theft or vandalism of any property or material that CITY may place upon the Premises.
6. Entry by CITY and its contractors onto the Premises under this Agreement will be deemed an acknowledgment by CITY that any dangerous condition or defect upon the Premises is known to CITY.
7. CITY and its agents must comply with all statutes, ordinances, regulations, rules, guidelines and other laws which apply to its activities under this Agreement. All activities must be conducted in accordance with good and safe business practices so as to minimize interference with the use, enjoyment and conduct of any other activity upon the Premises.
8. City shall defend, indemnify and hold harmless RT, its officers and employees, from and against all demands, claims, actions, liabilities, losses, damages and costs, including payment of reasonable attorneys' fees, whether incurred by RT's staff attorneys or outside attorneys, arising out of or resulting from the performance of this MOU, caused in whole or in part by the negligent or intentional acts or omissions of City, its officers, directors, agents, employees, volunteers, invitees, subconsultants, or subcontractors.

RT shall defend, indemnify and hold harmless City, its officers and employees from and against all demands, claims, actions, liabilities, losses, damages, and costs, including payment of reasonable attorneys' fees, whether incurred by City's staff attorneys or outside attorneys, arising out of or resulting from the performance of this MOU, caused in whole or in part by the negligent or intentional acts or omissions of RT, its officers, directors, agents, employees, volunteers, invitees, subconsultants, or subcontractors.

It is the intention of City and RT that the provisions of this paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, invitees, subconsultants or subcontractors. It is also the intention of City and RT that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, invitees, subconsultants, or subcontractors.

The foregoing requirements are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by CITY pursuant to this Agreement, including, but not limited to, the provisions concerning insurance.

9. RT acknowledges that City is a self-insured public entity. Within 30 days of execution of this Agreement, City shall provide RT with a letter of self-insurance stating that City's self-insurance program adequately protects against liabilities and claims arising out of the performance of this agreement.

Nothing in this Agreement is intended to make the public or any member thereof a third-party beneficiary hereunder, nor is any term or condition or other provision of this Agreement intended to establish a standard of care owed to the public or any member thereof.

The foregoing requirements are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by CITY pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

10. Either party may terminate this Agreement for convenience with 60 days' advance written notice. In addition, RT may terminate this Agreement for breach, effective immediately, if (a) RT has given written notice to CITY of a breach of this Agreement and (b) the breach remains uncured 30 days after the date of the notice; however, if such breach is capable of cure but cannot be cured during such 30-day period, no event of default will occur so long as CITY is diligently attempting to cure and does so within such additional period of time as is approved in writing by RT.
11. All notices and other communications under this Agreement will be in writing and will be deemed to have been duly given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) at the earlier of actual receipt or the second business day following deposit in the United States mail, postage prepaid. Notices and other communications will be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Article.

RT: Sacramento Regional Transit District
Attn: Chief of Facilities and Business Support Services
PO Box 2110
Sacramento CA 95812-2110
Phone: 916-556-0132
Fax: 916-455-3924

CITY: City of Sacramento
Attn: Fleet Management
5730 24th Street Bldg 1
Sacramento CA 95822
Phone: 916-215-3024
Fax: 916-808-6914

12. This Agreement is not assignable without RT's prior written permission.
13. This Agreement is binding upon, inures to the benefit of, and is enforceable by, the parties hereto and their respective beneficiaries, devisees, legatees, heirs, executors, estates, administrators, employees, officers, directors, shareholders, agents, attorneys, insurers, representatives, successors-in-interest and assigns.
14. All warranties, indemnities and waivers of rights contained in this Agreement will survive the expiration, termination or cancellation of this Agreement.
15. This Agreement constitutes the entire agreement between the parties with respect to the matters described herein. This Agreement may be modified only in writing, signed by both parties.
16. This Agreement will be governed by and construed in accordance with the laws of the State of California.
17. The parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. No ambiguity will be presumed to be construed against any party.
18. Each of the signatories to this Agreement represent that they are authorized to sign the Agreement on behalf of such party and that all approvals, resolutions and consents which must be obtained to bind such party have been obtained that no further approvals, acts or consents are required to bind such party to this Agreement.

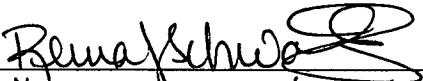
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove appearing.

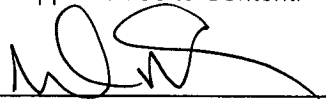
CITY OF SACRAMENTO

SACRAMENTO REGIONAL
TRANSIT DISTRICT

By: 
Name: Reima S. Schwartz
Title: Director, Dept. of General Services

By: 
MICHAEL R. WILEY
General Manager/CEO

Approved as to Content:

By: 
MIKE MATTOS
Chief of Facilities and Business Support Services


Approved as to Legal Form:

By: 
BRUCE A. BEHRENS, Chief Counsel

H:\LEGAL FILES\CONTRACTS\2010 to 2014\K13Q3\CitySacCNG Fueling Agreement.doc

APPROVED AS TO FORM:


CITY ATTORNEY

Attest:

Wendy Klock-Johnson
Assistant City Clerk

**EXHIBIT 1
AGENCY CNG PRICING FORMULA**

Disclaimer: All pricing is subject to change should RT's costs or pricing change. As noted below, the predictable changes have been noted. If there is an unexpected change, all agencies using RT's fueling system will be notified in advance of the changes.

RT prices CNG fueled from RT's fueling facilities to recover all of its costs and associated maintenance apportioned to the amount of CNG purchase as set forth below.

The CNG price at the compression fueling facility represents RT's fuel cost. This price is adjusted monthly as fuel prices change. The price in February 2013 was 50.391 cents per therm (57.446 center per GGE).

Maintenance and administration cots are estimated at 17.63 cents per term and 0.29 centers per therm for a total of 19.92 centers per therm (22.71 cents per GGE). These costs are adjusted annually.

Electrical power for compression is estimated at a prorated rate of 9.2 cents per therm (.23 centers per GGE). Electricity is based on SUMD rates and is adjusted when the rate changes.

RT personnel will be on site and the cost will be charged at 5 cents per therm (5.7 cents per GGE).

Total cost per therm is estimated at 75.511 cents per therm (86.386 cents per GGE).

Note: Insurance and safe use requirements are covered in the Contract.