

**Meeting Date: 8/20/2013**

**Report Type:** Consent

**Report ID:** 2013-00577

**Title: Licensing Agreement for CNG Fueling at Regional Transit (RT) Facilities (Two-Thirds Vote Required)**

**Location:** Citywide

**Issue:** The Department of General Services (DGS), Fleet Management Division, has a customer requirement to provide compressed natural gas (CNG) fuel for City vehicles. The recommended agreement will allow the City to use the Sacramento Regional Transit District (RT) fuel site to purchase CNG.

**Recommendation:** Pass a Resolution 1) suspending competitive bidding in the best interests of the City; and 2) authorizing the City Manager or the City Manager's designee to execute a three-year license agreement between the City and Regional Transit (RT) allowing the City to use RT's fuel site to purchase compressed natural gas (CNG) in an amount not to exceed \$900,000 for the three-year period provided that sufficient funds are available in the budget adopted for the applicable fiscal year.

**Contact:** Keith Leech, Fleet Manager, (916) 808-5869, Department of General Services

**Presenter:** None

**Department:** General Services

**Division:** Fleet Management Admin

**Dept ID:** 13001311

**Attachments:**

1-Description/Analysis

2-Agreement

3-Resolution

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**City Attorney Review**

Approved as to Form  
Kourtney Burdick  
8/12/2013 5:03:34 PM

**City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
8/2/2013 9:56:42 AM

**Approvals/Acknowledgements**

Department Director or Designee: Reina Schwartz - 8/7/2013 10:54:53 AM

## Description/Analysis

**Policy Considerations:** The recommendations in this report are in accordance with City Code Chapter 3.56 and Administrative Policy 4001 regarding the purchase of supplies and the suspension of competitive bidding.

**Economic Impacts:** None

### Environmental Considerations:

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

**Sustainability:** The recommended purchases are consistent with the Fleet Sustainability Policy adopted by City Council on February 16, 2010 (Resolution No. 2010-083).

**Commission/Committee Action:** None

**Rationale for Recommendation:** The DGS, Fleet Management Division, has a customer requirement to provide CNG fuel for City vehicles. However, the City does not currently own a CNG fuel station. The recommendation in this report will allow the City to use RT's fuel site to purchase CNG fuel at a price that is substantially below other sources. Suspending competitive bidding is recommended for the following reasons:

- The base CNG fuel price offered in the recommended agreement with RT is the price that RT pays through the State of California, Department of General Services 2011 Full Requirement Natural Gas contract, which was a competitively-bid contract.
- The City is not able to bid for its own CNG contract at this time because the City does not currently own a CNG fuel station.

**Financial Considerations:** Purchases under the recommended agreement will be made from the DGS operating budget (Fleet Fund, Fund 6501) and charged to the operating budget of the customer department. Sufficient funding exists in the FY2013/14 operating budgets for purchases made through June 30, 2014. Purchases made after June 30, 2014 are subject to funding availability in the adopted budget of the applicable fiscal year.

There are currently no CNG vehicles in the City fleet. The first CNG vehicles purchased are expected to arrive in September 2013. In determining the spending authority for the recommended agreement, Fleet Management staff considered the future need and also reviewed fuel usage for similar type vehicles that use liquefied natural gas (LNG). The LNG fuel usage was then converted to an estimate for CNG fuel using a gasoline gallon equivalent (GGE) conversion factor. Purchases are estimated to be \$300,000 in each year of the agreement.

The cost to the City for CNG under the recommended agreement is subject to change as RT's pricing changes. The cost per GGE includes the cost of the fuel itself, fuel station maintenance costs, administrative costs, and electrical power costs for the fuel compression. The current price is estimated to be \$0.86386 per GGE. This compares favorably to the average GGE price over the last 12 months for diesel and LNG of \$3.63 and \$1.21, respectively.

**Emerging Small Business Development (ESBD):** RT is not certified as an emerging/small business firm.



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

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-M/WBE:

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: [Signature] 7/3/2013

Contract Services: N/A

**City Attorney** Signature or Initial Date

City Attorney: [Signature] 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: \_\_\_\_\_

City Mgr: Yes  No

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

**For City Clerk Processing**

Finalized:  
Initial: \_\_\_\_\_  
Date: \_\_\_\_\_

Imaged:  
Initial: \_\_\_\_\_  
Date: \_\_\_\_\_

Received:  
(City Clerk Stamp Here)

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

**THIS AGREEMENT** is made and entered into on \_\_\_\_\_, 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 28<sup>th</sup> 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 28<sup>th</sup> 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 24<sup>th</sup> 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:  
Title:

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:**

*Katherine C. Boudine*

\_\_\_\_\_  
**CITY ATTORNEY**

**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 SUND 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.

## **RESOLUTION NO. 2013-**

Adopted by the Sacramento City Council

August 20, 2013

### **SUSPENDING COMPETITIVE BIDDING AND EXECUTING A LICENSE AGREEMENT TO PURCHASE COMPRESSED NATURAL GAS**

#### **BACKGROUND**

- A. The Department of General Services (DGS), Fleet Management Division, has a customer requirement to provide compressed natural gas (CNG) fuel for City vehicles. The recommended agreement will allow the City to use the Sacramento Regional Transit District (RT) fuel site to purchase CNG.
- B. City Code authorizes the City Council to suspend competitive bidding when, upon a two-thirds vote, the City Council determines it is in the best interests of the City to do so. Suspending competitive bidding is recommended for the following reasons:
- The base CNG fuel price offered in the recommended agreement with RT is the price that RT pays through the State of California, Department of General Services 2011 Full Requirement Natural Gas contract, which was a competitively-bid contract.
  - The CNG fuel price offered in the recommended agreement is substantially lower than that of other fuel sources.
  - The City is not able to bid for its own CNG contract at this time because the City does not currently own a CNG fuel station.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

Section 1. Determining that suspending competitive bidding is in the best interests of the City.

Section 2. Competitive bidding is suspended in order to execute an agreement with Regional Transit to purchase CNG.

Section 3. The City Manager or the City Manager's designee is authorized to execute a three-year license agreement between the City and RT allowing the City to use RT's fuel site to purchase CNG in an amount not to exceed \$900,000 for the three-year period

provided that sufficient funds are available in the budget adopted for the applicable fiscal year.