AGREEMENT BETWEEN THE
CITY OF SAN JOSE
AND
PINNACLE CNG COMPANY
FOR CNG FUELING STATION OPERATION
AND MAINTENANCE SERVICES AT
THE NORMAN Y. MINETA
SAN JOSE INTERNATIONAL AIRPORT
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AGREEMENT FOR OPERATION MANAGEMENT AND MAINTENANCE
OF COMPRESSED NATURAL GAS FUELING STATION
AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT
BETWEEN THE CITY OF SAN JOSE
AND PINNACLE CNG COMPANY

This agreement for Compressed Natural Gas Fueling Station Operation and Maintenance Services, dated, for convenience, as of ____________, 2010, is entered into by and between the City of San Jose (City) and Pinnacle CNG Company, a Texas corporation (Operator).

RECITALS

WHEREAS, the City of San Jose owns the Norman Y. Mineta San Jose International Airport (Airport), which is located in the County of Santa Clara, State of California; and

WHEREAS, the City of San Jose wishes to secure operation and maintenance services at the Norman Y. Mineta San Jose International Airport for a compressed natural gas (CNG) fueling station on Airport property; and

WHEREAS, the City of San Jose has invited and received proposals for such operation and maintenance services; and

WHEREAS, Pinnacle CNG Company has submitted the proposal deemed by the City of San Jose to be the most favorable.

NOW, THEREFORE, in consideration of the covenants, terms and conditions of this Agreement for Compressed Natural Gas Fueling Station Operation and Maintenance Services, the parties agree:

1 DEFINITIONS

The following terms used in this Agreement for Compressed Natural Gas Fueling Station Operation and Maintenance Services shall have the meanings set forth below, unless the context clearly indicates otherwise:

1.1 Agreement
Means this non-exclusive Agreement for Compressed Natural Gas Fueling Station Operation and Maintenance Services.

1.2 Airport
Means the Norman Y. Mineta San Jose International Airport located in the City of San Jose, County of Santa Clara, State of California, as illustrated in Exhibit A, together with any appurtenant properties or facilities acquired for purposes associated herewith.
1.3 Anniversary Year
Means a period of twelve (12) consecutive calendar months, whether or not all twelve (12) months fall within the same calendar year. The first day of the term of this Agreement shall mark the commencement of the first day of the first Anniversary Year.

1.4 Business Day
Means any calendar day except a Saturday, Sunday, and any day observed as a legal holiday by the City of San Jose.

1.5 City
Means the City of San Jose, a municipal corporation of the State of California.

1.6 Commencement Date
Means the date upon which the City directs Operator to commence services under this Agreement by written notice.

1.7 CNG Fueling Station or Station
Means the CNG Fueling Station owned by the City and located at 2151 Airport Boulevard as illustrated on Exhibit B (also sometimes referred to as the “Premises” or the “Site”).

1.8 CNG Fueling Fees or Fueling Fees
Means the sum total of all monthly gas consumption fees and charges which are due, reportable and payable to City, for the privilege of using the CNG Fueling Station.

1.9 Day
Means any calendar day, unless a Business Day is specified. The time in which an act is to be performed shall be computed by excluding the first day and including the last.

1.10 Director
Means the person designated the Director of Aviation by City, or such other person, division, department, bureau, or agency as may exercise from time to time functions equivalent or similar to those now exercised by the Director. The term includes any person expressly designated to exercise functions with respect to rights and obligations of the Director under this Agreement.

1.11 Effective Date
Means the date of execution of this Agreement by the City.

1.12 Environmental Health & Safety Laws
Means and includes all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or
performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super lien or environmental clean-up statutes.

1.13 Fuel Dispensing and Data Management System

Means the Operator’s designed and City-owned computerized Fuel Dispensing and Data Management System (the FD&DM System) capable of performing automated information collection, verification and recording subject to Airport requirements. The FD&DM System shall also accommodate credit/debit card use for non-Airport vehicles such as taxicabs, to maintain proper billing and payment. The FD&DM System shall establish accounts for providing monthly reports on each type of vehicle and user. Reporting shall differentiate fuel usage as a function of each user entity (e.g., shuttle buses, each taxi service, airport fleets, hotel door-to-door vans and others as determined by Airport. The FD&DM System shall function on a twenty-four (24) hour operational day from 12:00 a.m. to 11:59 p.m.

1.14 Hazardous Materials

Means any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational safety, public health, and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

1.15 Improvements

Means any addition, alteration, betterment, construction, or improvement to any and all buildings, curbing, drainage, fencing, fixtures, landscaping, lighting, paving, piping, and walls now or hereafter located in, on, or about the Airport, or any part thereof.

1.16 Laws

Means all present and future applicable judicial decisions, statutes, laws, ordinances, regulations, building codes, Airport rules and regulations adopted from time to time, regulations, orders and requirements and policies of all governmental authorities including without limitation city, state, municipal, county, federal agencies or the federal government and the FAA, and their departments, boards, bureaus, commissions and officials and such other authority as may have jurisdiction including, without limitation, any regulation or order of a quasi-official entity or body.
1.17 Notice of Violation
Means any formal notice of violation (NOV) to any federal state or local law, regulation or code regarding the operation of the CNG station. Includes any violation to all applicable Airport plans, policies and procedures.

1.18 Operator
Means Pinnacle CNG Company, a corporation authorized to do business in the State of California.

1.19 Original Equipment Manufacturer
Original equipment manufacturer (OEM) means the manufacturer of all major CNG components including the dryer, compressors, tanks and storage vessels, dispensers, flow meters and other instrumentation, valves, motors and blowers, etc.

1.20 Person
Means an individual, a corporation, a partnership, a joint venture, and any other form of business association.

1.21 Police
Means the San Jose Police Department, Airport Division.

1.22 Programmable Logic Controllers (PLC)
Means computerized systems providing all monitoring, control, alarm, status and reporting functions on all major CNG Fueling Station components as well as an overall CNG Fueling Station system PLC for providing the necessary data required by the City. The PLC shall download this data into Microsoft access database report formats acceptable by the City.

2 TERM

2.1 General
The term of this Agreement is for three (3) years, commencing at 12:00 A.M. on the Commencement Date, subject to the earlier termination of this Agreement, unless the Agreement is extended in accordance with the provisions of Article 2.2. No provision is made for the automatic extension or renewal of the term.

2.2 Option to Extend Term.
City reserves the right to extend the term for successive periods of one (1) year each for no more than three (3) one-year terms, subject to the earlier termination of this Agreement by City. City shall provide Operator with no less than sixty (60) days’ prior written notice of its intention to exercise its option to secure the CNG Fueling Station Operation and Maintenance Services from Operator during any extension period.
2.3 Termination

2.3.1 Termination for Convenience
City shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days written notice of termination.

2.3.2 Termination for Default
If operator fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice, pursuant to the terms of Article 23.2.3.

2.3.3 Termination Authority
The Director of Finance is empowered to terminate this Agreement on behalf of the City.

2.3.4 Consequences of Termination
In the event of termination for any reason under this Agreement, Operator shall deliver to City copies of all reports, documents, City-owned equipment and materials and other work performed by Operator. All fees collected by Operator are to be deposited to City’s account per the terms and conditions under this Agreement. Upon receipt thereof, City shall pay Operator for services performed and reimbursable expenses incurred to the date of termination; provided, however, that City may withhold therefrom such amounts as City may deem reasonably necessary to satisfy unresolved good faith disputes, pending resolution of such disputes.

3 CNG FUELING STATION SERVICES
Operator agrees to use reasonable efforts and to exercise the highest professional competence in operating and managing the CNG Fueling Station so as to provide the Airport with the highest standard of professional, courteous, efficient and safe services. Operator shall furnish all labor, supervision, materials, supplies, equipment, transportation, tools, taxes, permits, insurance and services necessary to operate, manage and maintain the CNG Fueling Station.

3.1 Operation and Maintenance of CNG Fueling Station

3.1.1 Quality of Operator Services
The Operator shall provide all necessary professional services and qualified personnel to operate and maintain the Station in a manner that provides the highest quality, most cost-effective, safe, and durable and reliable of fueling station services.

3.1.2 Hours of Operation
The CNG Fueling Station shall be operated twenty-four (24) hours per day, seven (7) days per week, including holidays. The City, acting through the Director, reserves the right to approve and change the hours of operation. The 24-hour operational day runs from 12:00 a.m. to 11:59 p.m.
3.1.3 CNG Fueling Station Sign

In order to assist CNG Fueling Station users in locating the Station, Operator shall post an appropriate sign, the location, size and wording of which shall be as specified from time to time by the Director.

3.1.4 General Operating and Maintenance Services

In consideration for the Monthly Operation and Maintenance Fee to be paid by City under Article 6 of this Agreement, Operator shall provide the following operation and maintenance services in connection with the operation of the CNG Fueling Station at the Airport:

3.1.4.1 Operate and maintain the CNG system in a cost-effective and efficient manner to meet or exceed all OEM standards and all design, performance and safety requirements of this Agreement.

3.1.4.2 Track station performance, address customer complaints, and provide the City with all necessary reports and data as specified herein.

3.1.4.3 Make all necessary, modifications and repairs to the Station to maintain performance and safety standards subject to City and Airport procedures.

3.1.4.4 Train representatives of all major fleets who use the CNG Fueling Station, in the proper procedures for fueling a vehicle.

3.1.4.5 Maintain complete and accurate lists of all Airport fueling users who have been issued card keys for use at the CNG Fueling Station.

3.1.4.6 Coordinate and perform all user fuel tracking, reporting and payment activities through the use of a card-lock, debit/credit card system.

3.1.4.7 As required by the Director, activate and deactivate individual card keys, and maintain an inventory of unused card keys.

3.1.4.8 Handle and report on all user and customer complaints and correspondence.

3.1.4.9 Provide monthly reports to the Director of all card keys issued to Airport fueling users for tracking and fuel reconciliation purposes. Monthly reports shall be submitted to Director by the 10th of the following month.

3.1.4.10 Maintain compliance with all applicable laws, regulations and codes, and comply with all applicable permit conditions.

3.1.4.11 Notify the Airport and respond in a timely manner and provide all appropriate corrective action to all notice of violations (NOVs) issued by any Federal, State or Regional agency, or the City or Airport authority.

3.1.5 Minimum Operation and Maintenance Requirements

3.1.5.1 Operational Certification

Operator shall provide on a monthly basis or at other intervals required by the Airport certified documentation that all Station systems continue to meet all required OEM and operating performance standards. Operator shall identify each OEM and
performance standard and certify that it has been met or exceeded during Station
operation. Monthly process performance reports will be the basis of this
demonstration. These reports shall be derived from data downloaded from the PLCs
into Microsoft access database reports prepared in a format acceptable to the Airport.

3.1.5.2 Minimum Maintenance Services

In consideration for the Monthly Operation and Maintenance Fee to be paid by City
under Article 6 of this Agreement, Operator will be responsible for all scheduled and
preventative maintenance of the CNG Fueling Station. Operator’s maintenance
services shall include all requirements of the OEM O & M manuals for the CNG
Fueling Station. Operator’s maintenance schedule shall be subject to review and
approval by the Director and is attached as Exhibit C.

3.1.5.3 On Call Maintenance Services

In addition to the Minimum Maintenance Services provided in Section 3.1.5.2 above,
Operator shall provide on call maintenance services for all elements of the CNG
Fueling Station upon written authorization from the Director or the Director’s
designee. Any such on call services provided by Operator shall be charged at the labor
rates and percentage of markup for parts, materials and equipment as provided in
Section 6.2 below.

3.1.5.4 Spare Parts

Operator shall maintain a full supply of spare parts integral to the operation and
maintenance of the CNG Fueling Station and which shall be kept within the fenced
CNG equipment area to deal with equipment malfunctions. An alternative to on-site
storage of spare parts is local storage at a nearby warehouse, provided the Operator
can ensure quick delivery and response for any repairs. This pertains especially to
rods, pistons, belts, filters, bearings, gears, lubricants, pipe fittings, valves, gauges and
switches, transmitters and transducers, other critical electrical and instrumentation
controls, computer boards, and spare PLCs as a minimum. No later than ten (10) days
after City's execution of this Agreement, Operator shall prepare and submit to City a
proposed Spare Parts Inventory List. Upon City's review and approval of the Spare
Parts Inventory List, Operator shall maintain an inventory of Spare Parts at the Airport
in the quantities specified in the Spare Parts Inventory List. At any time during the
term of this Agreement upon thirty (30) days written notice to Operator, City shall
have the right to increase or decrease by not more than twenty percent (20%) the
quantities of Spare Parts required to be maintained under the Spare Parts Inventory
List. Operator shall use the Spare Parts for the maintenance and repair of the CNG
Fueling Station. Operator shall reorder Spare Parts within fifteen (15) days after
Operator's inventory of any Spare Part reaches Operator's reorder point for that Spare
Part. Each month, Operator shall submit to City, as an attachment to Operator's invoice
submitted under Article 7, a Monthly Spare Parts Inventory as of the invoice date.
Spare parts will be paid for by City when they are used for repairs authorized by the
Director.
3.1.5.5 Fuel Quality

Natural gas to the compressor and the dispensers shall not contain more than 0.5 pounds of oil per million standard cubic feet (mm SCF) of gas, and less than 1.0 pounds of water per mm SCF.

3.1.5.6 Oil/Dew Point Measurement

Operator shall provide automatic controls and a qualified service technician to measure residual oil in the gas and dew points at the dryer and compressor inlet and outlet to prove proper dryer and compressor oil residues and dew point functions.

3.1.5.7 Computerized Fuel Dispensing & Data Management System

The Operator shall operate and maintain continuously the computerized fuel dispensing and data management ("FD&DM") System capable of performing automated information collection, verification and recording of all authorized users of the FD&DM System subject to the City's requirements. The information to be reported to the City will include as a minimum monthly gas consumption as a function of each user entity to be cross referenced to vehicle identifications numbers or equivalent (e.g., for shuttle buses, each taxi cab, airport fleet vehicles and others as determined by the City). The FD&DM System will be integrated in the overall system PLC; hence, the PLC shall be inspected and diagnosed to ensure proper operation of the Station at all times to the maximum extent practical.

3.1.5.8 Downtime/Disruption of Service

The Station must be in full operation for 99% of the time. No more than 90 hours of down time in any given year will be allowed. Further, down time during peak fueling (12 midnight to 5:00 AM) will be limited to no more than 1 hour per occasion, and no more than 2 hours per occasion during non-peak fueling, but in no event shall the total down time exceed 90 hours in any given year. The Airport must also be immediately notified of any planned disruption of services. In the event that downtime exceeds these specifications, liquidated damages shall be assessed against the Operator pursuant to Article 24.2 of this Agreement.

Operator's Disruption of Service Plan shall detail how Operator will deal with situations where equipment breakdowns result in the inability of the Airport and its fueling users to receive fuel and what measures the Operator will take to maintain the availability of fuel. Operator's Disruption of Service Plan, as previously provided in Operator's Proposal, is attached to this Agreement as Exhibit D.

3.1.5.9 Emergency Repairs or Conditions

The Operator shall provide all necessary qualified and badged personnel to respond and correct problems associated with all emergency services on a 24-hour, 7-day a week basis. Emergency telephones must be posted at visual locations on the Station, and the dial-in modem phones must be in proper operation continuously.

In the event of an emergency that pertains to any condition that results in an unsafe operation of the Station, the compressors, storage tanks and dispensers as a minimum
must be shut down automatically, and the Operator shall respond immediately and notify the Airport Director immediately. In the event the emergency shut down ("ESD") buttons were activated, and fueling was terminated during peak fueling, the Operator must also respond immediately. In the event the condition is due to a fault in one of the Station components, such as a compressor failure or shutdown, the system must be properly maintained to automatically switch over to bypass, redundant or back-up systems. Under this scenario, the Operator must verify proper operation of all necessary bypass, redundant or back-up systems within one (1) hour of receipt of notice of the ESD. All other emergency repairs must be corrected within 2 hours of notification. The Operator shall maintain records of all emergency responses, repairs, and provide the nature and status of these responses and repairs in a report format acceptable to the Airport. The Operator shall submit these reports with their monthly invoices or at other intervals mandated by the Airport. All emergency repair services provided by Operator must be approved by the Airport Director or their appointee and shall be charged at the labor rates and percentage of markup for parts, materials and equipment as provided in Section 6.2 below.

3.1.5.10 Provision for Auxiliary Fuel

The Operator shall provide an auxiliary fueling source capable of providing any necessary additional fuel in the event of insufficient natural gas supply or in the event of excess Station downtime. The auxiliary fuel may be supplied by a mobile re-fueler or from some other source or system. The Operator shall indicate in its proposal the scope of the auxiliary source. In cases where an auxiliary fueling source is employed, any additional cost for this source or system shall be the sole responsibility of the Operator. The Operator shall plan for auxiliary fuel to cover a minimum allowable downtime of at least 1 hour in any given day during peak fueling hours (i.e., 12:00 AM to 5:00 AM) and in the event compressors and primary back-up storage supply fails. If the Station is unable to provide fuel to Station users, the Operator shall provide the necessary auxiliary fuel until Station is fully operational at no cost to the City. Failure to comply with this condition shall result in the assignment of liquidated damages to the Operator pursuant to Article 24.2 of this Agreement.

3.1.5.11 Auxiliary Power Supply

The Operator shall operate, maintain and provide fuel for the auxiliary power supply generator to provide back-up power to the CNG fueling station in the event of loss of commercial power including but not limited to the following: engine equipped with low noise mufflers, hour meter, factory controls, normal operating instruments, status lights and alarms. The Operator shall ensure that the engine meets or exceed all applicable California Air Resources Board ("CARB") emissions standards. The Operator shall ensure that the engine is operated automatically in the event of loss of power, and be under the influence of the system PLC.

3.1.5.12 Inspections

Operator shall conduct routine physical inspection on all structural, mechanical, electrical, and utility services to the CNG Fueling Station. Operator’s inspections shall also include assessment for fueling leaks, equipment failures, breaches in structural integrity, and system malfunction. In addition, the inspections shall include...
as a minimum, testing and calibrating of the gas detection system, the ESD system, the fire detection and suppression systems, and the FD&DM system. Operator’s Inspection Plan, including the frequency of inspection and corrective action plan on any repairs, correction of any violations or problems discovered during the inspection is subject to the Director’s approval and is attached to this Agreement as Exhibit C.

3.1.5.13 Vapor Monitoring/Fire Detection/Suppression Systems
Operator shall maintain vapor monitoring, fire detection, and fire suppression systems to provide for automatic response to hazardous conditions such as natural gas release or fire.

3.1.5.14 Custodial Services

3.1.5.14.1 Standards
Operator shall provide, at its own expense, adequate custodial personnel and supplies to maintain in a “clean and attractive” state the CNG Fueling Station, indoor and outdoor. A “clean and attractive” state shall include, but not be limited to: maintaining parking surfaces free of dirt, debris and liquids (other than accumulated water from precipitation) by sweeping and vacuuming a minimum of twice per week, unless otherwise specified by the Director; cleaning floors, walls, ceilings, pavement, equipment and all other surfaces including pedestrian areas; keeping the CNG Fueling Station free of accumulated trash; and maintaining all fixtures and appurtenances to the CNG Fueling Station in a clean condition as required by and to the satisfaction of the Director.

3.1.5.14.2 Removal and Recycling of Waste
Operator shall arrange for the storage and disposal, at its own expense, of all waste material in a manner satisfactory to the Director. Operator shall comply with Airport policies on waste recycling.

3.1.5.15 Safety Audits
The Operator shall conduct annual safety audits or at other intervals in accordance with CA OSHA requirements and according to industry standards. Minimum audit requirements for the CNG Fueling Station are included in Exhibit C. The Operator shall submit draft and final safety audit plans to the City and Airport for review, revision, and approval. After City and Airport review of the draft plans, the Operator shall make any revisions to the plans and implement all necessary activities at no extra cost to the City.

3.1.5.16 Permit Renewals
The Operator shall be fully responsible to pay, renew and comply with the terms of all applicable permits. The Operator shall provide clear copies of all the permit renewals to the Airport within 10 days after they have been received from the permitting agency.
3.1.5.17 Storm Water Pollution Prevention

The Operator will be subject to the Airport's Storm Water Pollution Prevention ("SWPP") permit, and all of its terms and conditions. Operator personnel that work at the Station will attend storm water pollution prevention training classes, and will develop and implement best management practices ("BMPs") subject to Airport approval to prevent unauthorized discharges into the Airport's storm drains. Failure to comply with the provisions of the Airport's SWPP permit, policies and procedures may result in civil and criminal penalties.

3.1.5.18 Solid and Hazardous Waste Handling

The Operator shall be fully responsible to characterize all wastes generated from the operation of the Station components, and which may result from Station maintenance so as to properly determine appropriate methods for their management and disposal. The Operator shall comply with Airport policy on waste recycling which places a premium on recycling the wastes to the maximum extent possible as opposed to landfill disposal. This also includes any hazardous waste generated from the operation and maintenance of the compressor, dryer, or any other feature or Station system. The Operator shall be fully responsible to store, containerize, label, protect or otherwise manage the wastes to prevent them from being spilled or released into the environment in accordance with all applicable federal, state, and local laws, regulations and codes. If any spill occurs, the Operator shall notify the Airport immediately. The Operator shall inform the Airport of the scope of the spill and its method of correction, and provide adequate documentation to the Airport that the spill was remedied in an effective and appropriate manner, and that no adverse impacts to Airport property remain from the spill. The Operator shall provide the Airport copies of all hazardous waste manifests within 10 days from the date the waste was removed from the Station. The Operator shall submit draft and final hazardous materials/solid and hazardous waste management plans to the City and Airport for review, revision, and approval. After City and Airport review of the draft plans, the Operator shall make any revisions to the plans and implement all necessary inspections at no extra cost to the City. Failure to comply with the approved provisions of these plans or applicable laws and regulations regarding hazardous materials or solid and hazardous waste may result in the assignment of liquidated damages to the Operator pursuant to Article 24.2 of this Agreement. These requirements are in addition to provisions pursuant to Article 25.

3.1.5.19 Noise, Odors, Vibrations

The Operator shall conduct its operation in an orderly and proper manner so as not to commit any nuisance on the Station premises or annoy, disturb, or be offensive to others at the Airport, and shall take all reasonable measures, using the latest known and practical means and devices, to eliminate any unusual, nauseous, or objectionable noise, vapors, odors, lights and vibrations. Maximum sound emission shall remain less than 75 decibels at the compressor enclosure area. Maximum sound levels at the Station property line boundaries shall not exceed Airport standards.
3.1.5.20 Airport/Agency Inspections/Notice of Violations/Corrective Action

Periodically, applicable City and regional agencies and Airport personnel shall inspect the Station for compliance with applicable laws and regulations, compliance with Airport policies, as well as applicable contractual and Station performance requirements. If any regulatory agency issues the Operator any notice of violation ("NOV"), the Operator must notify the Airport within 24 hours, and provide the Airport copies of the NOV. If either the agencies or Airport issue any NOVs, the Operator shall formally respond how it intends to implement appropriate corrective action. The correction action plan shall be reviewed by agency and/or Airport personnel, and once agreed to by all parties, the Operator shall implement the corrective action at once at no cost to the City or agency within an agreed upon time frame. If corrective action is not implemented in manner considered satisfactory to the Airport or the agencies, the Airport may withhold sufficient funds from the Operator’s monthly invoices until corrective action is completed by the Operator to the satisfaction of the Airport, or the Airport will use the retained funds to complete the corrective action, and reduce payment accordingly. Notwithstanding the generality of the foregoing, in the event the corrective action is necessitated by a change in Laws occurring after the Effective Date, City will reimburse Operator for the cost of such corrective action.

3.1.6 Fueling Use, Charges, and Payments

3.1.6.1 General

3.1.6.1.1 Fueling Rates

Operator shall monitor and report fuel consumption from all users utilizing the CNG Fueling Station. Operator shall charge and collect from designated and authorized users of the CNG Fueling Station the appropriate Fueling Fee. Motor vehicle Fueling Fees will be determined by the Director and will be subject to change at the sole discretion of the City.

3.1.6.1.2 Property of Airport

All Fueling Fees from the operation of the CNG Fueling Station shall become, immediately upon collection and receipt thereof, the property of the Airport.

3.1.6.1.3 Protection

Operator shall be responsible for accounting of all Fueling Fees and shall take every precaution to protect same and to insure that all sums due and owed to the Airport from users of the CNG Fueling Station operated by Operator are properly assessed, collected, and accounted for.

3.1.6.2 Payment by Credit/Debit Card

Operator shall be responsible for installing and maintaining a credit/debit card system compatible with the FD&DM System. The credit/debit card system as installed and maintained by Operator must be PCI compliant. Operator shall be responsible for purchase of any upgraded or replacement software and installation costs, telephone
line charges, supplies and other related charges applicable to the credit/debit card system.

All credit card remittances paid to Operator shall be accepted by Operator on behalf of Airport. Operator may be required to maintain or modify the FD&DM System to accept the use of credit/debit cards currently in use in Northern California for the limited and sole purpose of payment of Airport CNG Fueling Fees in lieu of cash. The Director may, from time to time, add or delete credit cards acceptable for payment. Operator may deduct the usual customary and reasonable standard rate service charge(s), if any, of the bank(s) processing such authorized credit card transactions from the CNG Fueling Fee received and reported by Operator. Operator shall provide written evidence acceptable to the Director, prior to commencement date of the Agreement, which adequately verifies the amount of any such charges. Operator shall promptly notify the Director of any increases or other changes to the amount of any such charges during the terms of this Agreement.

Operator may only accept major credit/debit cards which are approved pursuant to the Agreement and only for the amount which is due from the tenderer for payment of CNG Fueling Fees at the CNG Fueling Station. Operator shall accept credit/debit card transactions only in full compliance with all recommended procedures published by the bank issuing the particular credit card involved. Under no circumstances is Operator permitted to return cash from Airport monies to any person in any transaction involving the tendering of a credit/debit card.

3.1.6.3 Accountability of Fueling Consumption

Operator shall be responsible for verifying that all applicable charges resulting from fuel dispensed to designated and authorized users have been transferred into the Airport’s accounts.

All CNG Fueling Fees (less applicable service charges as described in Article 3.1.6.2 above) shall be deposited by Operator with a financial institution approved by City within 72 hours of Operator’s receipt. The CNG Fueling Fees shall be deposited in an account held in the name of the City. In the event Operator fails to timely deposit CNG Fueling Fees in accordance with this provision, such non-deposited Fees shall accrue interest from 72 hours of Operator’s receipt until deposit of such Fees in the City’s account, at the rate of one percent (1%) per month. City shall deduct any such interest due from the compensation otherwise payable to Operator.

The Operator shall provide reports to the Airport to reconcile all fuel dispensed by users including those possessing credit/debit cards equal the amount of fuel dispensed to the users by the prevailing fuel rate for the reporting periods. The Operator shall be responsible for any loss of revenue as determined by City’s audit.

3.1.6.4 Operator’s Liability for Revenue Losses

Operator shall be fully and strictly liable to Airport for any loss(es) of revenue to Airport as a result of Operator’s acceptance of credit/debit card(s) or check(s) in any manner which is inconsistent with any provision of applicable law, or according to procedures as may be specified to Operator from time to time in writing by the Director, or the following procedures to the extent that such procedures are not
inconsistent with any provision of applicable law. Airport may deduct the full amount of any such loss(es) of revenue upon notice to Operator from Airport’s monthly payment of compensation otherwise due to Operator pursuant to the Agreement.

Operator shall be responsible for losses of revenue to the Airport as a result of Operator’s charging CNG Fueling Station users less than the amount due as determined by the difference between the amount of revenue recorded by the Fuel Dispensing and Data Management System and the actual amount collected and reported by Operator. Operator shall prepare and submit to the Airport on a monthly basis a listing of such under collected transactions showing the date, time and transaction involved.

Operator shall be responsible and liable to City for all losses resulting from Operator’s failure to collect the Fueling Fees as a result of Operator’s undercharges, and/or errors in collection of funds, including, without limitation, all losses resulting from employee dishonesty, forgery, alteration, theft, disappearance, destruction, robbery and/or burglary. The entire amount of such uncollected Fueling Fees shall be deducted from the compensation otherwise payable to Operator. Any losses, undercharges and overcharges shall be reconciled and determined according to the difference between the amount of revenue recorded by the Revenue Control System and the amount of Fueling Fees remitted by Operator. All overcharges accrue to the benefit of City and shall not be offset against any undercharges.

If, upon audit, it is determined that Operator has failed to collect and/or remit the Fueling Fees which are due and payable to City for any daily, weekly, monthly or annual period, Operator shall pay promptly upon receipt of City’s demand the amount of such uncollected Fueling Fees. In addition, the Operator will pay any and all audit costs incurred by City, together with interest at the rate of one percent (1%) per month, if the amount not collected and/or remitted is in excess of one-half of one percent (0.5%) of the amount due for any daily, weekly, monthly or annual period.

3.1.7. Handling of CNG Fueling Station User Claims and Disputes

3.1.7.1 Procedures

Unless otherwise specified by the Director, Operator shall address and administer CNG Fueling Station user claims and disputes as follows:

3.1.7.1.1 All claims against Operator for personal injury or property damage will be sent within twenty-four (24) hours to its insurance carrier for adjustment.

3.1.7.1.2 San Jose Police will be immediately called upon to prepare a report of such personal injury or property damage.

3.1.7.1.3 All damages caused by a CNG Fueling Station user’s vehicle will be reported immediately to ACC and San Jose Police. Operator will provide the Director the following information within 24 hours: Police report number, hose number and PSI, all pertinent information regarding the last card swiped at the damaged hose (e.g. date, begin and end time, name of card holder, amount of GGE dispensed, etc.) all pertinent information regarding the first card swiped after repairs are complete (e.g. date, begin and end time, name of card holder, amount of GGE dispensed, etc.).
3.1.7.1.4 Whenever Operator's personnel observe a CNG Fueling Station user's vehicle damaging another vehicle parked in the CNG Fueling Station, Operator shall immediately notify San Jose Police for the purpose of preparing a report of such accident. Operator shall refer parties to the San Jose Police.

3.1.7.1.5 Disputes relating to Fueling Fees shall be promptly referred to the Director for resolution. Any and all refunds shall be subject to the approval of the Director or the Director's designee.

3.1.7.2 CNG Fueling Station User Correspondence

Unless otherwise directed by the Director, Operator shall handle CNG Fueling Station user correspondence as follows:

3.1.7.2.1 All CNG Fueling Station user complaints, where there is an express or implied request for response, shall be answered in writing in an expeditious manner and in no event later than two (2) business days following receipt.

3.1.7.2.2 Copies of all CNG Fueling Station user correspondence and Operator's response thereto shall be promptly forwarded to the Director for the Director's information within two (2) business days.

3.2 Operator Staffing

3.2.1 General

Operator shall provide, at Operator's own expense, all the necessary qualified personnel at the CNG Fueling Station trained and certified to meet the requirements of their duties and to meet the terms and conditions of this Agreement, and shall use reasonable skill and diligence in the conduct of Operator's business in the CNG Fueling Station. Operator shall be responsible for all training required by Operator staff to operate and maintain the CNG Fueling Station. All employees of Operator shall be courteous and helpful to the CNG Fueling Station users. All employees shall be able to effectively communicate orally and in writing in the English language.

3.2.2 CNG Fueling Station Manager

Operator shall select and appoint, subject to the approval of the Director, a general manager for its operation of the CNG Fueling Station. In the event there is a change of personnel in the future, the Operator shall submit the qualifications and experience for the replacement of the Manager for Director's approval. Such person must be a fully qualified and experienced manager of CNG fueling stations, charged with the responsibility and authority by Operator in respect to the method, manner, and conduct of the operation. The Manager or his or her designee shall be available to the Airport during normal business hours.

Operator shall provide a contact that will be available 24 hours per day to respond to alarms at the station and/or downtime events. Operator shall be available to respond within 1 hour with acknowledgement of a notice by the City of any alarm or event. Operator shall be available to respond within 2 hours of notice by the City of any alarm or event with repair services.
3.2.3 Employee Conduct

Operator shall control the conduct, demeanor, and appearance of its officers, agents, and employees. Such officers, agents and employees shall be trained by Operator to render a high degree of courteous and efficient service, and it shall be the responsibility of Operator to maintain close supervision over such persons to ensure the continuation of the highest standard of service. If, in the opinion of the Director, any such officer, agent or employee of Operator fails to conform to such standard of service, Operator shall remove such officer, agent or employee from the provision of service at the Airport.

3.2.4 Training

Operator shall be responsible for all training required to operate and maintain the Station. Liability resulting from equipment failure or failure to maintain operations shall be the sole responsibility of the Operator. The Operator shall also be responsible for training representatives from all major fleets using the Station, as to the proper procedures for fueling a vehicle. The Operator shall submit a training plan to the City and Airport for review and comment. In addition, the Operator shall provide copies of training certifications to the Airport and update all training certificates annually for all Operator personnel performing operation and maintenance duties at the station. The training certificates shall be in a format acceptable to the Airport.

3.3 Utility Services

3.3.1 Telephone

Operator shall pay the cost of all telephone services (local and long distance) required for the operation of the CNG Fueling Station.

3.3.2 Natural Gas

The City will pay for all natural gas supplied to the site that is eventually dispensed to the vehicles. All other natural gas supplied to the site that is consumed by other uses such as engine-driven backup generators or other equipment shall be the responsibility of the Operator. In cases where fueling supply and fueling dispensing discrepancy reports indicate loss of fuel through the Station, and such loss is due to the negligence of the Operator, its employees, agents or contractors or other failure of Operator to properly perform its duties under this Agreement, the Operator shall be responsible for the lost fuel and shall compensate the City for that loss.

3.3.3 Electricity

City shall pay utility payments for all electricity necessary to operate the CNG Fueling Station.
3.3.4 No City Liability

City shall not be liable for any losses or damages resulting from City's failure to furnish, or City's delay in furnishing, any utility service. A temporary disruption of any utility service shall not be deemed or construed as an interference with the performance of Operator's Services, and such failure shall not relieve Operator of its duty to observe and perform all of the terms and conditions of this Agreement.

3.4 Use of Proprietary Equipment

The City discourages the use of any proprietary equipment in the operation of the CNG Fueling Station. However, in the event the Operator decides to use any proprietary equipment, the Operator shall provide the City an exclusive licensing agreement such that the City will have complete and timely access to all necessary spare parts and components, and the Operator shall provide a sufficient level of training as determined by the City to non-Operator personnel in the event the City decides to operate the Station with personnel other than the Operator. Further, if proprietary equipment or processes are used by the Operator, the computerized fueling management system must be designed to allow the City to make changes to fueling prices via simple software changes only; no hardware changes will be allowed.

3.5 Reports

3.5.1 General

Throughout the entire term of the Agreement, Operator shall submit its daily, monthly and annual reports in a format acceptable to the Director from its operation of the CNG Fueling Station.

Operator shall provide, at Operator's own expense, the report forms which Operator is required to use for reporting purposes. Forms may be changed, amended, abandoned, or supplemented by new forms at any time as directed by the Director. The reports shall be capable of being transmitted both in electronic and hard copy format.

3.5.2 Scope of Reporting

As a minimum, the Operator shall provide the following information, data or reports whose scope and formats will be those acceptable to the Airport. As the station becomes fully operational, the Airport reserves the right to amend these requirements at no additional cost to the City.

a) Monthly certified operational performance reports,
b) Monthly reports on the results of inspections,
c) Monthly reports on the maintenance performed,
d) Monthly emergency repairs/response reports,
e) Monthly fuel consumption/reconciliation reports,
f) Monthly customer complaint reports with corrective action,
g) Equipment warranty service reports,
h) Monthly downtime reports with any auxiliary fuel requirements,
i) Copies of permit renewals,
j) Results of safety audits,
k) Copies of waste manifests,
l) Copies of Notices of Violations (NOV),
m) NOV corrective action reports,
n) Breaches to security with corrective action,
o) Annual personnel training certificates,
p) Revised O&M, as-builts, and plans associated with any changes, modifications or Station updates.
q) Third party damage reports

3.5.3 Daily Reports

Operator shall, at request of the Director (and only upon such request), furnish to Airport a daily report summarizing activities from the operation of the CNG Fueling Station, including but not limited to fuel dispensed, total fuel charges, necessary maintenance work, and other data as required by the Director. The daily reports shall be provided to the Airport within forty-eight (48) hours after the end of each operating day (i.e., 12:00 a.m. to 11:59 p.m.). The City shall pay Operator for each daily report requested per the labor rates described in Section 6.2.

3.5.4 Monthly Reports

On or before the tenth (10th) day of each month, the Operator shall provide to the Airport all of the monthly reports as specified in Article 3.5.2. Operator’s monthly fuel consumption/reconciliation report shall differentiate fuel usage as a function of each user entity (e.g., shuttle buses, each taxi service, Airport fleets, hotel door-to-door vans and others as determined by Director). Upon filing of said report, Operator shall submit to Airport invoices in duplicate for payment of amounts due as compensation for its operation of the CNG Fueling Station. This report shall be certified by Operator.

Along with the above monthly report, Operator shall also submit to Airport a monthly management report on the operation and maintenance of the CNG Fueling Station in a format to be approved by the Airport, and all other monthly reports as specified in Article 3.5.2.

3.5.5 Annual Reports

Within thirty (30) days after the end of each twelve (12) month period during the term of the Agreement, a report is to be submitted to the Airport by Operator certifying that the Fueling Fees reported to the Airport were accounted for in accordance with the terms of the Agreement. Each annual report shall be certified by an outside, independent Public Accountant and paid for at Operator’s expense.

3.5.6 Other Reports and Documentation

Operator shall supply Airport such other reports or documentation as specified in Article 3.5.2 and as Airport may require during the term of the Agreement.

3.5.7 Failure to Provide Reports and Documentation

Should Operator fail to provide the reports as specified in Article 3.5.2 to the satisfaction of the Director and in the time prescribed by this Agreement, Operator shall pay liquidated damages in Accordance with Article 24 of this Agreement. City assessment of
the liquidated damages shall be in addition to any other remedies City may have in law or equity, including termination and revocation of this Agreement.

4 RESTRICTIONS ON OPERATOR

4.1 Limitations on Uses

Operator agrees to use the Premises, the CNG Fueling Station and the Airport in providing Services only for the purposes described below:

4.1.1 In general

The entry upon, use of, and exit from, the Airport and its common areas and facilities, including the CNG Fueling Station.

4.1.2 Prohibited uses

Operator shall not do or permit anything to be done in, on, or about the Premises, the CNG Fueling Station or the Airport, nor bring or keep or permit to be brought or kept therein, anything which is prohibited by or will in any way conflict with any Laws now in force or which may hereafter be enacted or promulgated, or which is prohibited by a standard form of fire insurance policy or will in any way increase or affect the then existing rate of any fire or other insurance required to be carried upon the Airport, the Premises or the CNG Fueling Station and any of their contents, or which will cause a cancellation of any insurance policy covering the Premises, the Airport or the CNG Fueling Station, and any part thereof or any of their contents. Unattended vehicles are prohibited and overnight parking is not allowed.

4.1.3 Damages

Operator shall not commit, cause, maintain or permit, or allow to be committed, caused, maintained, or permitted, any damage to the Premises, the CNG Fueling Station or the Airport, nor any public or private nuisance, nor any other act or thing which may disturb the quiet enjoyment of any tenant, licensee, invitee, or person using or occupying any portion of the Airport.

4.1.4 Unauthorized business

Neither Operator nor its agents, employees, or officers shall engage in the business of selling any emergency supplies, products or services, such as jumper service or tire repair, of any kind, at retail or wholesale, in, on, or about the CNG Fueling Station or the Airport.

4.1.5 No unauthorized signage

Operator shall not install, erect, affix, paint, or place or permit the installation, erection, affixation, painting, or placement of any sign or lettering in, on, or about the Airport or the CNG Fueling Station or any portion thereof, except as otherwise provided herein or approved by the Director.

4.1.6 No unauthorized improvements

Operator shall not make any improvements or alterations to the Airport or the CNG Fueling Station without the prior written consent of the Director.
5 CONTINUOUS OPERATIONS

As a material inducement to City to enter into this Agreement, Operator covenants to continuously provide Services during the term of this Agreement, and the failure of Operator to do so shall constitute a breach by Operator.

6 COMPENSATION TO OPERATOR

6.1 Monthly Operation and Maintenance Fee

In consideration of the services rendered, and other obligations performed by Operator under this Agreement, City agrees to pay to Operator a monthly operation and maintenance fee. The monthly operation and maintenance fee shall be as follows:

<table>
<thead>
<tr>
<th>TERM: (Initial 3 Years of Agreement)</th>
<th>MONTHLY COST</th>
<th>TOTAL 3 YEAR AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/01/10 – 6/30/13</td>
<td>$16,968.00*</td>
<td>$610,848.00</td>
</tr>
</tbody>
</table>

*Flat monthly fee as stated above is based on CNG Fueling Station dispensing up to 1 million therms in any given Anniversary Year. Monthly fees for fuel dispensed in any given Anniversary Year exceeding 1 million therms will be per the cost template below. Unless otherwise agreed between the parties, monthly payments during each Anniversary Year shall be based upon the assumption that annual therms will not exceed 1 million. In the first invoice following the beginning of each new Anniversary Year, in the event actual therms dispensed in the immediately past Anniversary Year exceeded 1 million therms, the monthly payments made in the immediately past Anniversary Year shall be reconciled to reflect actual therms dispensed.

<table>
<thead>
<tr>
<th>Annual Therms</th>
<th>1M</th>
<th>1.1M</th>
<th>1.250M</th>
<th>1.5M</th>
<th>1.750M</th>
<th>2M</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly Therms</td>
<td>83,333</td>
<td>91,667</td>
<td>104,167</td>
<td>125,000</td>
<td>145,833</td>
<td>166,667</td>
</tr>
<tr>
<td>Monthly Fee</td>
<td>$16,968</td>
<td>$18,664</td>
<td>$21,210</td>
<td>$25,452</td>
<td>$29,694</td>
<td>$33,936</td>
</tr>
</tbody>
</table>

The monthly operation and maintenance fee shall be a uniform payment throughout the year and shall be subject to change only during the Option Years, if exercised, and shall be governed by the Consumer Price Index as described in Article 7.3.1 below. Except for any charges authorized pursuant to Section 3.1.5.3, 3.1.5.9 or 3.5.3 above and payable under Section 6.2 below, and any reimbursements authorized pursuant to Section 3.1.5.20 or 9.5, the monthly operation and maintenance fee shall be full compensation by City to Operator for all services provided by Operator under this Agreement.

6.2 On Call and Emergency Maintenance Charges

Where additional services are authorized by the Director under this Agreement, unless otherwise agreed by Operator and City such additional services shall be provided at the labor rates and cost plus percentage of markup for parts, materials and equipment illustrated in the template below:

DRAFT—Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
6.3 Option to Renew the Agreement

The City in its sole discretion retains the right to exercise three (3) one-year options to renew the Agreement. Increases in compensation will be governed by the Consumer Price Index for Urban Wage Earners and Clerical Workers, published by the U.S. Department of Labor, Bureau of Labor Statistics. The formula for increases in compensation is designated in Article 6.3.1 below.

6.3.1 CPI Adjustment

The Operator's compensation rates shall be subject to adjustment by using the CPI Adjustment at the beginning of each Option Period. The adjustment to compensation rates shall be calculated as follows:

A. The base for computing the adjustment shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (with a base year of 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor Statistics ("Index"), which is published most immediately preceding the commencement of the applicable Option Period ("Extension Index"), and shall be compared with the Index published most immediately preceding the commencement date of the then expiring term ("Beginning Index"). If the Extension Index published has increased over or decreased under the Beginning Index, the monthly compensation rates for the extension term shall be set by multiplying the then expiring term's monthly compensation rate by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. Upon adjustment of the monthly compensation rates, the parties shall immediately execute a written amendment to the Agreement setting forth the new monthly compensation rates, and attach the same as a revised exhibit to the Agreement.

B. If the Index is changed so that the base year differs from that used as of the month immediately preceding the Agreement's commencement date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of the Agreement such other government index or computation with...
which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued of revised.

C. The preceding provision of this Article notwithstanding, the adjustment of any monthly compensation rate for any extension term shall not exceed 5% of the previous term's monthly compensation rate.

D. For the purpose of illustration only, if a Beginning Index is 115 and the Extension Index is 124, the monthly compensation rate to be paid during the extension term shall $X (the then expiring term's monthly compensation rate) multiplied by 124/115.

6.4 Labor Compliance

This Agreement is subject to the City's Prevailing/Living Wage Ordinance for the Airport and the applicable implementing regulations (collectively, the "Ordinance"). Operator shall comply with the provisions of the attached Labor Compliance Addendum (Exhibit H), which sets forth Operator's obligations under this Ordinance.

6.5 No unauthorized reimbursements

Operator shall not be reimbursed for any costs or expenses incurred by Operator in the performance of this Agreement, except as expressly provided herein.

6.6 Invoicing

The Monthly Operation and Maintenance Fee and any On Call and Emergency Maintenance Charges shall be due and payable in arrears following receipt by City of an acceptable detailed invoice, in duplicate, reflecting monthly gas consumption figures and Operator's Monthly Report in accordance with Article 3.5 of this Agreement. Said fee is to be paid within thirty (30) days of receipt of said invoice.

7 SUBCONTRACTING

Operator shall not subcontract any of its rights or obligations under this Agreement without the prior written consent of the Director.

8 RIGHTS AND OBLIGATIONS OF CITY

8.1 Right of City

At all times during the term of this Agreement and without notice to Operator, City and its agents, contractors, employees and officers shall have the right to perform the following:

8.1.1 Install, construct, maintain, repair, replace, and use any and all public utility lines and pipes, including, without limitation, all sewer, drainage, water, irrigation, electrical and fuel lines, and any appurtenances thereto, either on, above, or below the surface of any part of the Airport;

8.1.2 Inspect, alter, or repair any part of the Airport that the Director may deem expedient or desirable for the proper enforcement of the terms and conditions of this Agreement or for the operation of the Airport;
8.1.3 Engage in any other action which the Director deems reasonably necessary to administer the obligations of City under this Agreement or by law, including operating the CNG Fueling Station if Operator fails to do so.

8.2 Limitation on City’s Liability
City shall not be liable for, and Operator waives all claims and causes of action for, any liability, loss, or damage resulting, in whole or in part, directly or indirectly, from the installation of any City Improvements or equipment or from the interruption of use of Operator’s personal property in connection with City’s provision of any services.

9 TAXES, CHARGES AND ASSESSMENTS

9.1 Taxes, Fees and Other Charges
Operator shall pay before delinquency and without notice or demand any tax, fee, lien or charge which is levied, imposed or assessed against Operator, Operator’s personal property, Operator’s interest in the CNG Fueling Station management operations, or for which Operator may become liable under the provisions of this Agreement. Any such payment made under this Article shall not reduce the amount of any sum or sums collected that is required to be paid by Operator to City under the provisions of this Agreement.

9.2 Contest of Tax
In the event that Operator desires in good faith to contest or review by appropriate legal or administrative proceedings any tax, fee, lien or other charge specified under the provisions of this Article, Operator shall give City prompt written notice of its intention to do so prior to the delinquency of any City tax, fee, lien or charge, or within the applicable time period allowed by law as to any other tax, fee, lien or charge. Operator may withhold payment of the tax being contested if, but only if, nonpayment is permitted during the pendency of such proceedings without the foreclosure of any lien or the imposition of any fine or penalty. The contest shall be prosecuted to completion, whether or not this Agreement has expired or terminated in the interim, without delay. Within ten (10) days or the applicable time period allowed by law after the final determination of the amount due from Operator with respect to any contested tax, fee, line or other charge, whichever is sooner, Operator shall pay the amount so determined to be due, together with all costs, expenses and interest, whether or not this Agreement has then expired or terminated. The failure to pay any tax, fee, lien or charge under this Article shall constitute a Default under this Agreement, and the obligation to pay the same shall survive the termination of this Agreement.
9.3 Tax Indemnification
Operator agrees to protect, defend, indemnify and hold harmless City from and against any expense or damage resulting in whole or in part, directly or indirectly, from any such contest or proceeding described in Article 9.2. Operator further agrees to protect, defend, indemnify and hold harmless city and the Airport and any City Improvements thereon, from and against any liability, loss, or damage resulting in whole or in part, directly or indirectly, from any tax, fee, lien or charge required to be paid by Operator, from any other sums imposed thereon, and from any proceedings to enforce the collection of any tax lien or charge for which Operator may be liable.

9.4 Payment by City
If Operator fails to pay any tax, fee, lien or charge required by this Article to be paid by Operator, City may, but is not obligated to, on five (5) days’ prior written notice to Operator, pay, discharge, or adjust such tax, fee, lien or charge for Operator’s benefit. In such event, Operator, on receipt of written demand of City, shall reimburse City promptly for the full amount paid by City in paying, discharging, or adjusting such tax, fee, lien or charge, together with interest thereon from its due date at the maximum interest rate then allowed by law until paid. Any receipt showing payment by City shall be prima facie evidence that the amount of such payment was necessary and reasonable and made by City on Operator’s behalf.

9.5 Payment of Possessory Interest Tax
Although this Agreement is for the provision of CNG Fueling Station operation and maintenance services, this Agreement may, but is not intended to, create a possessory interest at the Airport which may be subject to property taxation. If Operator receives any notice or claim that its interest in this Agreement, is subject to assessment for a possessory interest or other ad valorem tax, Operator shall promptly notify City of the payment of same. City agrees to reimburse Operator for any lawfully imposed possessory interest or other ad valorem tax imposed on its interest in this Agreement. In consideration of City reimbursing Operator for Operator’s payment of any such possessory interest or other ad valorem tax, Operator agrees to comply with any written direction by City with respect to such taxes, including, but not limited to, protesting same, petitioning for equalization and litigating the amount or legal validity of any such taxes, and to nominate City’s City Attorney as its attorney and legal representative with respect to such directions and such taxes. All expenses associated with or related to any directions so given by City, or said representation, with respect to such taxes shall be borne by City. Notwithstanding anything to the contrary contained in this Article, Operator shall promptly pay before delinquency any and all possessory interest or ad valorem taxes assessed upon any personal property owned or possessed by Operator with respect to its performance of the Services, and not be entitled or claim any reimbursement or compensation therefore from City.

9.6 Taxes on CNG Fuel
Any fuel taxes levied by any local, state or federal government on the sale of CNG fuel shall be paid to the applicable taxing authority by the City.
10 INSURANCE

Operator shall procure and maintain for the duration of this Agreement (or for such longer periods as are specified in Article 11.5, below), at its sole cost and expense, insurance to protect against claims which may arise from, or in connection with, the performance of the services hereunder by or on behalf of Operator.

10.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

10.1.1 The coverage provided by Insurance Services Office Form Number CG 0001 covering Commercial General Liability (occurrence); and

10.1.2 The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall also include all owned, non-owned and hired automobiles; and

10.1.3 Workers' Compensation insurance as required by the California Labor Code Employers Liability insurance; and

10.1.4 Combination Crime Coverage including “Insuring Agreement 1-B Clients’ Fidelity coverage; and

10.1.5 Pollution Legal Liability insurance, including coverage for all operations, completed operations and professional services.

10.1.6 There shall be no endorsement reducing the scope of coverage required above unless approved by the City’s Risk Manager.

10.2 Minimum Limits of Insurance

Operator shall maintain limits no less than:

10.2.1 Commercial General Liability: Five Million Dollars ($5,000,000) per occurrence for bodily injury, personal injury and property damage. If form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit, One Hundred Thousand Dollars ($100,000) Fire Legal Liability and

10.2.2 Automobile Liability: One Million Dollars ($1,000,000) combined single limit per accident for bodily injury and property damage; and

10.2.3 Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of One Million Dollars ($1,000,000) per accident.

10.2.4 A Combination Crime policy with minimum limits not less than One Million Dollars ($1,000,000) for each form including “Insuring Agreement 1-B Clients’ Fidelity coverage:

Form A Employee Dishonesty;
Form B Forgery or Alteration;
Form C Theft, Disappearance, Destruction Inside/Outside Premises
Form D Robbery and Safe Burglary Inside/Outside Premises

DRAFT—Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
10.2.5 Pollution Legal Liability: Two Million Dollars ($2,000,000) each occurrence/aggregate limit.

10.3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, City's Risk Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Operator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

10.4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

10.4.1 Commercial General Liability, Automobile Liability and Pollution Legal Liability Coverage.

10.4.1.1 The City, its officers, employees, agents and contractors are to be covered as additional insured as respects: Liability arising out of activities performed by, or on behalf of, the Operator; products and completed operations of Operator; premises owned, leased or used by Operator; or automobiles owned, leased, hired or borrowed by Operator. In no event shall such coverage be limited to the vicarious liability of City, its officials, employees, agents and contractors.

10.4.1.2 Operator's insurance coverage shall be primary insurance as respects the City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Operator's insurance and shall not contribute with it.

10.4.1.3 Any failure to comply with reporting provisions of the policies by Operator shall not affect coverage provided City, its officers, employees, agents, or contractors.

10.4.1.4 Coverage shall state that Operator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

10.4.1.5 Coverage shall contain waiver of subrogation in favor of the City, its officers, employees, agents and contractors.

10.4.2 Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City, its officers, employees, agents and contractors.

10.4.3 Pollution Legal Liability with coverage for:

a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;

b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
c. defense, including costs, charges and expenses incurred in the investigation, adjustment of defense of claims for such compensatory damages.

Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury, property damage or cleanup costs.

10.5 All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits or coverage except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

10.6 Duration

10.6.1 Commercial General Liability and Pollution Liability coverage shall be maintained continuously for a minimum of five (5) years after completion of services under this Agreement.

10.6.2 If any of such are written on a claims-made basis, the following requirements apply:

10.6.3 The policy retroactive date must precede the date work commenced under this Agreement.

10.6.4 If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, Operator must purchase an extended reporting period equal to or greater than five (5) years after completion of services under this Agreement.

10.7 Acceptability of Insurers

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

10.8 Verification of Coverage

Prior to commencement of services under this Agreement, Operator shall furnish the City with certificates of insurance and with endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Human Resources
c/o Risk Management
200 East Santa Clara St., 2nd Floor Wing San Jose, CA 95113-1905

City reserves the right to require complete copies of all required insurance policies at any time.
All policies, endorsements and certificates, shall be subject to review and approval by the City’s Risk Manager as to form and content; however, the failure to do so shall not operate as a waiver of these insurance requirements.

These insurance requirements are subject to amendment or waiver if so approved in writing by the city’s Risk Manager.

10.9 Subcontractors

Operator shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

10.10 City Review

The City reserves the right to review the foregoing insurance requirements from time to time and to require Operator to provide additional or different coverage, and Operator agrees to provide the same within thirty (30) days of receiving written notice from City.

11 INDEMNIFICATION

11.1 Operator’s Indemnification

Operator, for and on behalf of its agents, contractors, directors, employees, officers, and representatives, agrees to protect, indemnify, defend and hold harmless City, its agents, contractors, employees, and officers from and against any and all claims, demands, liabilities, losses, costs, expenses, penalties, suits, judgments, or damages, which arise in whole or in part, directly or indirectly, at any time from any injury or death to person or damage to property as a result of the willful or negligent act or omission of Operator, its agents, contractors, directors, employees, officers, and representatives, or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Premises, the CNG Fueling Station, or any part thereof, or which arises from Operator’s failure to do anything required under the Agreement or for doing anything which Operator is required not to do under the Agreement, except as may arise from the negligence or the willful misconduct of City, its agents, contractors, employees, and officers. The indemnification shall extend to all claims, demands, or liens made or filed by reason of any construction, renovation, or remodeling by Operator at any time during the term of this Agreement, or arising thereafter.

11.2 Operator’s Assumption of Risk

Operator agrees to voluntarily assume any and all risk of loss, damage, or injury to the person or property of Operator, its agents, contractors, directors, employees, officers, and representatives, which may occur in, on, or about the Premises, the CNG Fueling Station or the Airport at any time and in any manner, except such loss, injury, or damage as may be caused by the negligence or the willful misconduct of City, its agents, contractors, employees, and officers.

11.3 Damage by Operator

If Operator’s employees cause any injury, damage or loss at the Premises, the CNG Fueling Station or anywhere else at the Airport, Operator shall repair, at its sole cost and expense, such injury, damage or loss at City’s direction and upon City’s prior approval. City reserves
the right to perform such repairs, and bill Operator for such reasonable costs and deduct such costs from any compensation then due and owing to Operator. The rights of City as set forth in this Article are not derogation of any right of City to be indemnified by Operator for any such injury, damage or loss.

12 WAIVER

12.1 Waiver by City

The waiver by City of any breach of any provision of this Agreement shall not be deemed to be a waiver or continuing waiver of any subsequent breach of the same or any other provision. Nor shall any custom or practice which may arise between the parties in the administration of any part of the provisions of this Agreement be construed to waive or to lessen the right of City to insist upon the performance by Operator in strict accordance with the provisions of this Agreement.

12.2 Waiver by Operator

12.2.1 Personal Injury, Death and Property Damage

As a material part of the consideration to be rendered by Operator to City under this Agreement, Operator waives any and all claims or causes of action against City, its agents, contractors, employees, and officers which Operator may, now or hereafter have at any time for damage to Operator's personal property located in, on, or about the Premises, the CNG Fueling Station or the Airport, and for injury to or death of any person occurring in, on or about the Premises, the CNG Fueling Station or Airport from any cause arising at any time, except as may arise from the active negligence or the willful misconduct of City, its agents, contractors, employees, and officers.

12.2.2 Other Injury or Damages

In addition to the foregoing, save and except as arises out of the negligence or the willful misconduct of City, its agents, contractors, employees, or officers, Operator specifically waives any and all claims or causes or action which it may now or hereafter have against City, its agents, contractors, employees and officers:

12.2.2.1 For loss, injury or damage sustained by reason of any deficiency, impairment, or interruption of any water, electrical, gas, plumbing, telephone, or drainage, sewer service or system serving any portion of the Premises, the CNG Fueling Station or the Airport, whether or not installed by City;

12.2.2.2 For any loss, injury or damage arising or resulting from any act or omission of any tenant, licensee, sub-licensee, concessionaire, or other occupant of any portion of the Airport, or any person who uses any portion of the Airport with or without the authorization or permission of City; or

12.2.2.3 For any loss or damage to the property of, or injury or damage to, Operator, its agents, contractors, directors, employees, officers, or representative or any other person, from any cause or condition arising at any time on account of Operator’s use or occupancy of the Premises, the Airport or the CNG Fueling Station, or Operator’s operations on any part thereon.
12.3.3 Breach

City shall deliver to Operator written notice of any breach of this Agreement by Operator. If Operator fails to cure said breach within ten (10) days after the City delivers such notice, City may, but shall have no obligation to, upon condition that City shall act for the account and at the expense of Operator and without a waiver of such breach, perform any act which, if performed by Operator, would otherwise cure the breach. If, in so doing, City is required or elects to pay any money or do any act which will require the payment of any money or the incurrence of any cost or expense, Operator shall reimburse City the sum or sums of money so paid or incurred by City, together with interest at the maximum interest rate then allowed by law, plus costs and damages, within three (3) days after the first day of the calendar month following City’s payment of same.

13 SECURITY DEPOSIT

13.1 Operator shall deposit and maintain with City upon execution of this Agreement a security deposit in a form as determined by Director, against which City may deduct any delinquent or unpaid fees, costs or charges (including but not limited to employee parking and badging fees any late payment fees and the charges stated in this Agreement) resulting from Operator’s operations at the Airport, to ensure prompt payment of required fees and charges. The initial amount of the security deposit shall be the equivalent of two months of operations and maintenance fees or $33,936.00. The Director may adjust such deposit requirement from time to time so that the Security Deposit shall not be less than $33,396.00. The Director may require a Security Deposit in excess of $33,396.00, upon determination that such additional amount is warranted to protect the City and the Airport.

13.2 If City adjusts the amount of the Security Deposit or deducts any delinquent or unpaid fees, costs or charges (including late payments) from the Security Deposit, Operator shall promptly replenish the Security Deposit to the full amount required by Director within thirty (30) days of a written demand by the Director. Operator’s failure to so replenish the Security Deposit shall constitute an event of default which entitles the City to terminate this Agreement, as provided in Article 23 of this Agreement. City shall not be required to keep the Security Deposit separate from its funds, and Operator shall not be entitled to interest on the Security Deposit. Any amounts remaining from the Security Deposit (after deductions for delinquent or unpaid fees, costs, or charges as specified above) at the expiration or earlier termination of this Agreement (as it may be extended or renewed) shall be returned to Operator, without interest, after a determination by the Director that all amounts owed to City under this Agreement have either been paid in full or have been deducted from the Security Deposit.

13.3 City’s assessment of the late payment fee shall be in addition to any other remedies City may have in law or in equity, including termination and revocation of this Agreement and all rights and privileges granted herein.
14 GRANT AGREEMENT COVENANTS

Operator acknowledges that City is subject to Federal Grant Agreement obligations as a condition precedent to the granting of federal funds for improvements to the Airport, and, accordingly, Operator agrees to, and agrees to be bound by, the following covenants provided by the Federal Aviation Administration as they may apply to Operator.

14.1 Operator for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on any areas occupied by Operator and described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

14.2 Operator for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities; (2) that in the construction of any improvements on, over, or under any areas occupied by Operator and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (3) that Operator shall use any areas occupied by Operator in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964, and as the Regulations may be amended.

14.3 That in the event of breach of any of the above nondiscrimination covenants, City (through Director) shall have the right to terminate this Agreement and to reenter and repossess the areas occupied by Operator and the facilities thereon, and hold the same as if this Agreement had never been made or issued. This provision does not become effective until the procedures of Title 49 Code of Federal Regulations, Part 21 are followed and completed including expiration of appeal rights.

14.4 Operator shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service. Operator may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

14.5 Without limiting the generality of any other terms or provisions of this Agreement, non-compliance with Provision 15.4 above shall constitute a material breach thereof and in the event of such non-compliance the City (through Director) shall have the right to terminate
this Agreement and the estate hereby created without liability therefore or, at the election of the City or the United States, either or both governments shall have the right to judicially enforce Provisions 15.1, 15.2, 15.3 and 15.4 of this Article.

14.6 Operator agrees that it shall insert the above five (5) Provisions in any agreement by which Operator grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public in the CNG Fueling Station.

14.7 Operator assures that it will comply with pertinent statutes, executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance. This Provision obligates Operator or its transferee for the period during which federal assistance is extended to the Airport, except where federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, this Provision 15.7 obligates Operator or any transferee for the longer of the following periods: (a) the period during which the property is used by City or any transferee for a purpose for which federal assistance is extended, or for any purpose involving the provision of similar services or benefits; or (b) the period during which City or any transferee retains ownership or possession of the property. In the case of contractors, this Provision 15.7 binds the contractors from the bid solicitation period through the completion of the contract.

14.8 City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Operator and without interference or hindrance.

14.9 City reserves the right, but shall not be obligated to Operator, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Operator in this regard.

14.10 This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between City and the United States, relative to the development, operation or maintenance of the Airport.

14.11 There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the CNG Fueling Station herein authorized. This public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the airspace or landing at, taking off from or operation on the Norman Y. Mineta San Jose International Airport.

14.12 Operator agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (FAR) in the event any future structure or building is planned for the location(s) of its activities, or in the event of any planned modification or alteration of any present or future building or structure situated at the Airport.

14.13 Operator by accepting this Agreement expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the Airport to a height above the mean sea level that would exceed
Federal Aviation Regulations Part 77 standards or elevations affecting the Airport navigable airspace. In the event the aforesaid covenants are breached, City reserves the right to enter upon any area utilized by Operator and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of Operator.

14.14 Operator by accepting this Agreement agrees for itself, its successors and assigns that it will not make use of the CNG Fueling Station in any manner which might interfere with the landing and taking off of aircraft from San Jose International Airport or otherwise constitute a hazard. In the event this covenant is breached, City reserves the right to enter upon the CNG Fueling Station and cause the abatement of such interference at the expense of Operator.

14.15 It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right within the meaning of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. Section 1349a).

14.16 This Agreement and its provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during the time of war or national emergency.

15 SUPPORT SECURITY

15.1 Security Plan

The Airport has implemented an Airport Security plan in a form acceptable to the Federal Aviation Administration pursuant to 14 CFR Part 107. The Airport reserves the right to modify that plan from time to time, as it deems necessary to accomplish its purposes. Operator shall at all times comply with the Security Plan.

15.2 Indemnification

Operator agrees to protect, defend, indemnify, and hold harmless City from and against any fine(s) levied by the FAA against City for any breach of federal airport security regulations caused by or attributable to Operator, its agents, contractors, directors, employees or officers. Operator agrees to pay or reimburse City for any such fine(s) assessed to City by the FAA, which are caused by or are attributable to Operator or its agents, contractors, directors, employees or officers. Such fine(s) shall be assessable to Operator by City and shall be payable to City upon receipt of invoice. During the term of this Agreement, Operator agrees to observe and abide by all applicable Laws respecting security at the Airport and by all provisions of the City’s Master Security Plan for the Airport as approved by the FAA.

15.3 Operator’s Responsibilities

Operator shall maintain the fencing and security gate around the site to the satisfaction of the Airport and the San Jose City Fire and Police Departments. Operator shall provide 24 hour, 7 day a week video surveillance of the CNG station grounds.
16 RULES AND REGULATIONS

16.1 Operator shall faithfully observe and comply with all Airport rules and regulations and all reasonable modifications of and additions thereto that may be promulgated from time to time by City or the Director on City's behalf.

16.2 The City of San Jose has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The requirements of this Program are attached as Exhibit F to this Agreement.

16.3 As provided in the Request for Proposals, City has determined that the level of vulnerability of this Agreement to service or labor disputes is sufficient to warrant that labor peace is essential to the proprietary interest of the City. In order to assure labor peace during the term of this Agreement, Contractor hereby affirms all labor peace assurance in Contractor's Proposal.

16.4 The City has adopted an "Environmentally Preferable Procurement" (EPP) policy. In performance of this Agreement, Operator shall apply the EPP policy where it is feasible to do so.

17 SUBORDINATION TO GRANT AGREEMENTS

If the Federal Aviation Administration requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Agreement, Operator agrees to consent in writing upon the request of City to any such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required to enable City to obtain the FAA funds, provided that in no event shall such changes materially impair the rights of Operator hereunder. A failure by Operator to so consent shall constitute a breach of this Agreement.

18 COMPLIANCE WITH LAWS

Operator shall comply with all Laws now in force or which may hereafter be in force pertaining to the CNG Fueling Station, the Premises, the Airport and/or this Agreement, including, without limitation, Section 6300 et seq. of the California Labor Code. Operator shall comply with the requirements and conditions of any bond or fire underwriters or other similar body now or hereafter constituted, and with the requirements and conditions of any discretionary or occupancy permit issued pursuant to any law of any public official. Operator shall also comply with any and all provisions of all recorded documents affecting the Premises, the Airport or the CNG Fueling Station on the Effective Date, insofar as any are required by reason of use of the Premises, the Airport or the CNG Fueling Station by Operator.

19 NONDISCRIMINATION

Operator certifies that, in dealing with any subcontractors under this Agreement, it has not discriminated or given any preference to any firm based on race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. Operator
shall fully comply with all Federal and State of California laws pertaining to nondiscrimination, and Chapter 4.08 of the San Jose Municipal Code, and shall not discriminate or grant preferential treatment on the basis of age, sex, race, religion, color, creed, disability, ethnicity, sexual orientation, actual or perceived gender identity or national origin in connection with or related to the performance of this Agreement. Operator understands that any such discrimination or preference is in violation of Chapter 4.08 of the San Jose Municipal Code. Operator shall make efforts to include participation from all segments of the community in connection with or related to the performance of this Agreement.

This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Operator agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

Operator agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

20  PRESENTATIONS AND WARRANTIES

Operator represents and warrants with respect to this Agreement, and any amendment hereto:

20.1 That all information submitted by Operator, its agents, contractors, directors, employees, officers, and representatives ("the aforementioned parties") during City’s Airport CNG Fueling Station management services Request for Proposal process, or thereafter, upon request, whether or not submitted by any of the aforementioned parties under a continuing obligation by the terms of this Agreement to do so, was true and correct at the time such information was submitted or made available to City.

20.2 That none of the aforementioned parties has colluded, conspired, or agreed, directly or indirectly, with any person in regard to the terms and conditions of Operator’s response and City’s Airport CNG Fueling Station management services Request for Proposal.

20.3 That Operator has the power and authority to enter into this Agreement with City, that the Board of Director’s of Operator has by corporate resolution approved Operator’s power and authority to enter into this Agreement and bind operator, that this Agreement shall be executed, delivered and performed pursuant to the power and authority conferred by the Board of Directors of Operator and be binding upon Operator, and that the individual executing this Agreement is duly authorized to do so.

20.4 That none of the aforementioned parties has made an attempt to exert undue influence with the Airport CNG Fueling Station Management Services evaluation committee of the Norman Y. Mineta San Jose Airport Department to award the contract to Operator.

20.5 That there are no unresolved claims or disputes between Operator and City.

20.6 That Operator has furnished, and will furnish, true and accurate financial statements of gross receipts, records, reports resolutions, certifications, and other information which may be requested of Operator by City from time to time during the term of this Agreement.
21 ASSIGNMENT

21.1 No Unauthorized Assignment
Operator shall not assign, transfer, lease, license, convey, sell, hypothecate or encumber by deed of trust or mortgage or otherwise, or pledge to any person ("proposed transferee") this Agreement, the Premises or the CNG Fueling Station, or any part thereof, or any rights or obligations of Operator hereunder, whether voluntary or by operation of law. Any assignment, transfer, lease, license, conveyance, sale, subcontract, hypothecation or encumbrance by deed of trust or mortgage or otherwise, or pledge in violation of the provisions of this Article shall be void and shall entitle City, at its option, to terminate this Agreement. The acceptance of operation and maintenance fees by Operator or any other fee or charge by City or the continuation of the use of the CNG Fueling Station, the Airport or Premises by Operator or the proposed transferee shall not be deemed a waiver of City’s right to terminate this Agreement on account of Operator’s violation of this provision.

21.2 Change in Ownership
If Operator is a partnership, a withdrawal or change, whether voluntary or by operation of law, of the partner or partners owning fifty-one percent (51%) or more of the partnership, or the dissolution of the partnership, shall be deemed a voluntary assignment. If Operator is a corporation, any dissolution, merger, consolidation or other reorganization of Operator, or the sale or transfer of a controlling percentage of the capital stock of Operator, or the sale of at least fifty-one percent (51%) of the value of the assets of Operator, shall be deemed a voluntary assignment. This Article shall not apply to corporations whose stocks are traded on national stock exchanges.

21.3 Controlling Percentage
The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Operator’s capital stock issued, outstanding and entitled to vote for the election of directors.

22 DESTRUCTION OF AIRPORT FACILITIES
City shall determine in its sole discretion whether to repair any damage to the common areas and facilities of the Airport. If the CNG Fueling Station is totally or substantially damaged and City cannot complete the repair or restoration of the CNG Fueling Station within six (6) months after the commencement date of repair or restoration, City may, at its option, give Operator notice of its intention to terminate this Agreement on a specified date.

23 DEFAULT AND REMEDIES AND LIQUIDATED DAMAGES

23.1 Default
The occurrence of any of the following shall constitute a "Default" under this Agreement:

23.1.1 Operator’s failure to promptly commence Airport CNG Fueling Station management services at the Airport on the Commencement Date; or
23.1.2 Operator's failure to deposit the Fueling Fees, when due, or failure to perform any obligation requiring the payment of money under the provisions of this Agreement and such failure continues for a period of five (5) days or for a period as otherwise stated herein; or

23.1.3 Operator's failure to maintain the required Security Deposit pursuant to the provisions of Article 14.

23.1.4 Operator's failure to perform any other provision of this Agreement required to be performed by Operator unless such failure to perform is the result of City's default of its obligations hereunder, the City's negligence or willful misconduct, or an event of Force Majeure as defined in Article 29.6 hereof, and, except as otherwise provided in this Agreement, Operator's failure to cure the same within ten (10) days after the City delivers written notice pursuant hereto where such failure could reasonably be cured within ten (10) days of the written notice. Where such failure to perform cannot be reasonably cured within ten (10) days of the written notice, then Operator shall not be in default, unless within the ten (10) days Operator fails to commence and thereafter to continue making diligent and reasonable efforts to cure such failure to perform as soon as practicable. This Article shall not apply to any provision requiring the payment of money; or

23.1.5 Operator's general assignment of its assets for the benefit of Operator's creditors; or

23.1.6 Operator's assignment hereunder in violation of the provisions of this Agreement, whether voluntary or by operation of law; or

23.1.7 Operator's failure to provide Services in a manner satisfactory to City for any period of time and, except as otherwise provided in this Agreement. Operator's failure to cure the same within ten (10) days after the City delivers written notice pursuant hereto where such failure could reasonably be cured within ten (10) days of the written notice; or

23.1.8 A court's entry of any decree or order (i) adjudging Operator to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Operator or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any State thereof, (iii) appointing a receiver, trustee or assignee of Operator in bankruptcy or insolvency or for its property, or (iv) directing the winding up or liquidation of Operator, and such decree or order shall continue for a period of sixty (60) days or Operator shall voluntarily submit to or file a petition seeking any such decree or order; or

23.1.9 The sequestration or attachment of or execution or other levy on Operator's interest in this Agreement or the Airport, the Premises, the CNG Fueling Station or on Operator's Improvements, if any, located thereon occurs and Operator fails to obtain a return or release of such interest or property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or

23.1.10 The Director's determination that there is a reasonable probability that Operator's financial condition is impaired and Operator cannot provide adequate
assurances that any conditions giving rise to the impairment of financial condition can be removed within thirty (30) days of receipt of City’s demand for same.

23.1.11 Any action or inaction of Operator which is expressly made a default under this Agreement and, except as otherwise provided in this Agreement, Operator’s failure to cure the same within ten (10) days after the City delivers written notice pursuant hereto where such default could reasonably be cured within ten (10) days of the written notice.

23.1.12 Any representation or warranty made by Operator hereunder or under any instrument delivered in connection herewith that was false or misleading in any material respect as of the date on which such representation or warranty was made.

23.2 Remedies for Default

23.2.1 Remedies Cumulative

Upon the occurrence of a default under this Agreement, City shall have all the fights and remedies set forth in this Article 23. The City may resort to the fights and remedies set forth in this Article cumulatively or in the alternative. The rights and remedies set forth in this Article shall be in addition to all other rights and remedies provided by Law or equity.

23.2.2 Effectiveness of Agreement

At City’s election, City may keep this Agreement in effect and enforce all of its rights and remedies under this Agreement, including the right to withhold the operation and maintenance fee and other fees as they become due. At City’s option, but without any obligation to do so and without waiving or relieving Operator from any of its obligations under this Agreement, City may make any payment or perform any act to the extent City may deem appropriate as a result of the Operator’s default. Except where otherwise prescribed in this Agreement, all sums so paid by City and all penalties, interest and costs in connection therewith shall be due and payable by Operator to City within ten (10) days of written demand from the Director for payment of same, together with interest thereon from date of advance by City at the maximum interest rate then allowed by law, plus costs as may be awarded by a court of competent jurisdiction.

23.2.3 Termination

At City’s election, City may terminate this Agreement for default by giving Operator written notice of termination, in which event this Agreement shall terminate on the date set forth for termination in such notice. The Director of Finances empowered to terminate this Agreement on behalf of City. Any termination under this paragraph shall not relieve Operator of the obligation to pay any Fueling Fees then due to City or from any claim for damages previously accrued or then accruing against Operator.
23.2.4 City’s Mitigation

If Operator ceases to provide Services to the CNG Fueling Station, this Agreement shall not terminate, unless City gives Operator written notice of its election to terminate this Agreement. No act by or on behalf of City intended to mitigate the adverse effect of such breach shall constitute a termination of Operator’s right to render Services to the CNG Fueling Station, unless City gives Operator written notice of termination.

24 LIQUIDATED DAMAGES FOR PERFORMANCE STANDARD BREACHES

24.1 Liquidated Damages for Failure to Attain Performance Standards

Operator understands and agrees that one of the City’s primary goals in granting this Agreement is to ensure that the CNG Fueling Station service provided is of the highest caliber and consistent with the image that the City and the Airport want to project to their users. Operator further agrees that City will suffer damage if Operator fails to meet these standards and that, due to the nature of certain breaches, the actual damage to the City would be impractical or very difficult to fix.

OPERATOR AND CITY AGREE THAT THE AMOUNTS SET FORTH IN SECTION 24.2, BELOW, SHALL BE PAID TO CITY AS LIQUIDATED DAMAGES IF OPERATOR BREACHES THE PERFORMANCE STANDARDS SPECIFIED IN SUCH SECTION 24.2 FOR ANY REASON OTHER THAN EVENTS OF FORCE MAJEURE AS DEFINED IN ARTICLE 29.6 HEREOF OR AS THE RESULT OF THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, THE AIRPORT, THEIR AGENTS, CONTRACTORS, EMPLOYEES OR OFFICERS OR THEIR BREACH OR DEFAULT UNDER THIS AGREEMENT. OPERATOR AND CITY ACKNOWLEDGE THAT CITY’S ACTUAL DAMAGES IN THE EVENT OF A BREACH OF SUCH PERFORMANCE STANDARDS WOULD BE IMPractical TO DETERMINE. THEREFORE, BY PLACING THEIR SIGNATURES BELOW, CITY AND OPERATOR ACKNOWLEDGE THAT THE AMOUNTS SET FORTH IN SECTION 24.2 HAVE BEEN AGREED UPON AS THE PARTIES’ REASONABLE ESTIMATE OF CITY’S DAMAGES IN THE EVENT OF SUCH BREACH.

CITY: ___________________________ OPERATOR: ___________________________
24.2 Performance Standard Breaches

The following specified items shall be referred to as "Performance Standard Breaches". Operator agrees to pay to the City the amount specified below as liquidated damages for the applicable breach.

<table>
<thead>
<tr>
<th>Breach</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Failure to provide fueling to any shuttle bus during the peak fueling hours of 12 midnight to 5 a.m.</td>
<td>$100 per hour per bus (or portion thereof based on 30 minute increments) that bus is off-Airport for fueling at an auxiliary site provided by Operator, per bus, or $500 per hour per bus if off-Airport fueling at an auxiliary site is not available</td>
</tr>
<tr>
<td>2. Failure to provide fuel quality pursuant to Article 3.1.5.4.</td>
<td>$5,000 per occurrence</td>
</tr>
<tr>
<td>3. Failure to maintain operation of the Station pursuant to Article 3.1.5.</td>
<td>$1,000 per occurrence</td>
</tr>
<tr>
<td>4. Failure to provide emergency repair services pursuant to Article 3.1.5.8.</td>
<td>$1,000 per occurrence</td>
</tr>
<tr>
<td>5. Failure to provide appropriate corrective action to a Notice of Violation (NOV).</td>
<td>$1,000 per NOV per day</td>
</tr>
<tr>
<td>6. Failure to properly maintain the security fencing and gates at the site.</td>
<td>$5,000 per occurrence</td>
</tr>
<tr>
<td>7. Failure to provide reports and record keeping as required by Article 3.5 in a timely manner.</td>
<td>$500 per report per occurrence</td>
</tr>
</tbody>
</table>

24.3 Procedure for Declaring Performance Standard Breaches

The procedures for declaring performance standard breaches shall be as follows:

24.3.1 Upon determining the existence of a Performance Standard Breach, the Director shall issue a written notice to Operator of the occurrence of such breach and the City’s claim for liquidated damages.

24.3.2 The notice of Performance Standard Breach shall become final unless the Director receives from Operator no later than ten (10) calendar days after the date of the notice of Performance Standard Breach, a written statement from Operator, accompanied by Operator’s evidence that the breach did not occur. Director shall review such evidence and determine, in his reasonable discretion, whether Operator has demonstrated that the breach did not occur.

24.3.3 The Director shall review Operator’s evidence as soon as reasonably possible after timely receipt of such evidence.

24.3.4 The Director shall render a decision sustaining or reversing the determination that a breach occurred and the claim for liquidated damages. A written notice of decision shall be delivered to the Operator.

24.3.5 If such written evidence is not received by the Director within ten (10) calendar days of the date of the notice of Performance Standard Breach, the Director’s
determination shall be final and the applicable liquidated damages shall be immediately due and payable.

24.3.6 Upon expiration of the period to deliver evidence or upon Director’s determination that a breach occurred after reviewing Operator’s evidence as provided above, City will apply liquidated damages amounts as an adjustment to the monthly operation and maintenance fee calculation. Operator further agrees that Director may, at his option, deduct the amount of such liquidated damages from any deposit or performance guarantee provided by Operator, without further notice to Operator.

25 HAZARDOUS MATERIALS

Disposal of Hazardous Materials on the Airport is strictly prohibited. Storage and use of Hazardous Materials on the Airport is prohibited, except: Operator may store and use Hazardous Materials on the Premises in a safe and prudent manner and in accordance with the requirements of all applicable Environmental Laws those kinds and quantities of Hazardous Materials that are normally used in conducting the activities permitted under this Lease. Operator shall provide Director with a copy of any application for a permit for use or storage of Hazardous Materials on the Premises from any regulatory agency responsible for enforcement of Environmental Laws, and shall also provide a copy of any permit received from such agency.

Operator shall at all times comply with the provisions of this Agreement, including those provisions of Exhibit G, regarding Hazardous Materials.

26 BOOKS AND RECORDS

26.1 Maintenance of Records

Operator shall keep and maintain at its own expense separate and independent records in a separate set of books devoted exclusively to its operations at the Airport. Said books (i.e., ledgers, journals, accounts, supporting documents and other records) shall be maintained in accordance with generally accepted accounting principles and shall contain all entries reflecting all of the business operations of Operator’s original transaction under this Agreement. All of such books shall be open for examination and audit by the Director during ordinary business hours without prior notice. Operator shall keep each year’s books for four (4) years after the end of each such year.

26.2 Inspection

26.2.1 Availability

Upon Director’s written request, Operator shall make available within twenty-four (24) hours at the Airport for inspection any and all books records and accounts pertaining to its operations under this Agreement and shall fully cooperate with Airport in conduct of such inspection. Operator shall keep and maintain records which will enable Airport and City Auditor to ascertain, determine and audit, if so desired by City, clearly and accurately, any feature of the operation and maintenance of the CNG Station.
26.2.2 Underpayment

Should any examination, inspection, and audit of Operator’s books and records by City disclose an under collection by Operator in excess of one-half of one percent (0.5%) of the Fueling Fees due for any particular test, audit or reporting period, Operator shall promptly pay the City the amount of such underpayment and shall reimburse the City for all costs incurred in the conduct of such examination, inspection, and audit.

26.3 Custody of Materials

Where City has reason to believe that any of Operator's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Operator's business, City may, by written request by any of the above-named officers, require that custody of the Operator's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Operator's documents to any party authorized by Operator, Operator's representative, or Operator's successor-in-interest.

27 Notices

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder given by either party to the other, shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by United States certified mail, postage prepaid, (3) sent by express delivery service, or (4) in the case of a facsimile, if sent to the telephone number(s) set forth below during normal business hours of the receiving party and followed within forty-eight (48) hours by delivery of hard copy of the material sent by facsimile, in accordance with (1), (2), or (3) above. Personal service shall include, without limitation, service by delivery service and service by facsimile transmission. Delivery of notices properly addressed shall be deemed complete when the notice is physically delivered to the Director or Operator’s manager.

If to City, the same shall be addressed to:

(1) Attn: Director of Finance
    City of San Jose
    200 East Santa Clara St.
    13th Floor, Tower
    San Jose, CA 95113

with a copy to:

(2) Norman Y. Mineta San Jose International Airport
    1732 North First Street, Suite 600
    San Jose, CA 95112-4538
    Attention: Kathy Hausler, Landside Operations
    FAX: (408) 392-1144
or to such other place as City may designate in writing.

If to Operator, the same shall be addressed to:

(1) Pinnacle CNG Company
    300 N. Marienfeld, Suite 360
    Midland, TX 79701-4334
    Attn: Drew Diggins, Operations Manager

28 APPROPRIATION OF CITY FUNDS

City’s funding of the Agreement shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. Operator acknowledges that City, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement. Accordingly, the parties agree that the initial term of this Agreement and the exercise of any option years thereto is contingent upon the appropriation of funds by the City. This Agreement will terminate immediately if the funds necessary to continue the Agreement are not appropriated.

29 MISCELLANEOUS

29.1 Authorization of Operator
Contemporaneously with the execution and delivery of this Agreement, Operator shall submit to City a certificate of officer, good standing certificate(s) and such other documents as City may require, each in form and substance satisfactory to City, regarding the authorization of Operator to enter into this Agreement.

29.2 Bailee Disclaimer
The parties understand and agree that City does not purport to be Operator’s bailee, and is therefore not responsible in any way for any damage to Operator’s personal property or the property of Operator’s agents, Operators, employees, directors, officers, or representatives.

29.3 Consent
Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.

29.4 Controlling Law
Except as federal law may apply, the parties agree that this Agreement shall be governed and construed by and in accordance with the laws of the State of California.
29.5 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

29.6 Force Majeure

Operator shall not be deemed to be in breach of any obligation under this Agreement, other than any obligation requiring the payment of money, to the extent any reasonable delay or failure to perform such obligation is caused by power or natural gas shortages or outages, an Act of God, including, without limitation, earthquakes, tidal waves, weather disturbances, high winds, hailstorms, lightning or other such occurrences of nature, or other cause beyond the reasonable control of Operator or the City.

29.7 Gifts

Operator represents that its agents, directors, Operators, employees, officers, and representatives are familiar with City's prohibition against the acceptance by a City officer or designated employee of gifts prohibited by Chapter 10.36 of the San Jose Municipal Code, and agrees that they, and each of them, will not offer to any City officer or designated employee any gift so prohibited. The offer or giving of any gift prohibited by the Municipal Code shall constitute a Default under this Agreement.

29.8 Headings

The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of the Agreement.

29.9 Incorporation of Exhibits

All exhibits referred to in this Agreement and any addenda, appendices, attachments, exhibits, and schedules which may, from time to time, be referred to in any duly executed amendment here to are by such reference incorporated in this Agreement and shall be deemed to be part of this Agreement.

29.10 Integration

This Agreement constitutes the entire agreement between the parties concerning its subject matter, and there are no other oral or written agreements between the parties not incorporated in this Agreement.

29.11 Modification of Agreement

This Agreement shall not be modified, unless the parties first agree to and approve of such modification in writing.

29.12 Provision

Any agreement, covenant, condition, clause, qualification, restriction, reservation, term, or other stipulation in the Agreement shall define or otherwise control, establish, or limit the performance required or permitted by either party to this Agreement. All provisions, whether covenants or conditions, which are applicable to Operator, shall be deemed to be both covenants and conditions.
29.13 **Responsibility of Operator**

Except as otherwise provided in this Agreement, Operator assumes the risk of and shall be responsible for any loss or damage to any materials, documents or other property delivered to it by City. Operator shall return such property to City in the condition in which it was received, except for reasonable wear and tear, upon the expiration or earlier termination of this Agreement.

29.14 **Severability**

If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the remaining provisions of this Agreement shall remain in effect.

29.15 **Status of Operator**

In exercising its rights and obligations under this Agreement, Operator acts as an independent Operator and not as an agent or employee of City, except as otherwise provided in this Agreement. Neither Operator nor its agents, contractors, employees and representatives are entitled to any rights and benefits accorded or accruing to employees of City, and Operator on behalf of itself and its agents, contractors, directors, employees, and representatives expressly waive any and all claims to such rights and benefits.

29.16 **Successors and Assigns**

The provisions of this Agreement shall, subject to the Assignment provisions, apply to and bind the successors and assigns of the parties hereto.

29.17 **Time of Essence**

Time is of essence of this Agreement and each of its provisions.

29.18 **Venue**

In the event that suit is brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of California in the City of San Jose, County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California in the City of San Jose.
EXECUTED BY THE PARTIES on the date first stated above.

Approved as to form

CITY OF SAN JOSE
a municipal corporation

By: __________________________
Mark Giovannetti
Title: Purchasing Officer

"OPERATOR"

a Texas corporation

By: __________________________
Title: __________________________
CNG FUELING STATION INSPECTION SCHEDULE AND MINIMUM SERVICE

DAILY CHECKS

**Facility:**
Check and monitor equipment, including but not limited to compressors, motors, dryers, storage vessels, and dispensers, for the following:
- Physical damage
- Abnormal noises
- Mechanical failures
- Unusual vibrations
- Fluid leaks
- Unusual odors
- Gas leaks
- Unusual appearance

**Compressor Equipment:**
- Check oil level in Ariel compressor.
- Drain inlet scrubber.
- Check the hydraulic oil level.
- Check for any oil or gas leaks inside the compressor skids.
- Listen for any unusual sounds.
- Inspect all pressure gauges to ensure all are in proper working condition.

**Dispenser:**
- Inspect the hoses for abrasions or punctures.
- Inspect the quick connects.
- Inspect the three-way valves.
- Inspect the proximity switch.
- Inspect the pressure gauge.
- Check to see that the service valve remains open.
- Smell and listen for leaks.

Fill out Daily Inspection Log. Submit 1 copy of each day by the end of the month.

WEEKLY CHECKS

**Facility:**
Check proper operation of equipment, including but not limited to compressors, motors, dryers, storage vessels, valve sequencing, dispensers, card reader, gates, fencing and security systems.

**Compressor Equipment:**
- Log equipment operating hours
- Check pressures and temperatures on compressor (all stages).
- Check equipment oil & fluid levels, as applicable.
- Check instrument set points.
CNG FUELING STATION INSPECTION, MAINTENANCE AND SAFETY

**Dryer Skid:**
Check pressure drop across dryer.

**Dispensers:**
Clean dispensers.
Check the receipt printers.

**Control Panels:**
Check for alarm conditions.
Drain the liquid off of the air compressor.

**Storage and Buffer Vessels:**
Open the drain valves on the buffer vessel and the storage vessel and drain any liquids.

Fill out Weekly Inspection Log and the Compressor Inspection Log. Submit one (1) copy of each week at the end of the month.

**750-HOUR SERVICE INTERVAL CHECKS**

**Facility:**
Confirm proper operation of emergency shutdown safety device.

**Compressor Equipment:**
Log equipment operating hours.
Check compressor pressures and temperatures at all stages and compare with design/operating parameters.
Check electric motors for heat, noise and vibration.
Visually inspect all equipment and piping for problems.
Change particle filters and final coalescer filters.
Change hydraulic oil filters.
Manually dump all scrubbers.
Check all shutdowns.
Check intensifier stroke length.
Change Ariel oil filter.
Clean cooling fins and check fan, and cooling pump.

**Dispensers:**
Inspect operation and safety of dispensing units.
Inspect and maintain dispensers
Check control systems and card readers.
Collect a gas sample.

**Dryer Skid:**
Change the dryer discharge particle filter.
Check the dryer desiccant level and add tablets if needed.
Fill out and submit two (2) copies of the 750-hour Inspection Log, the Compressor Inspection Log, and the Safety Audit Log.

1500-HOUR SERVICE INTERVAL CHECKS

Facility:
Check condition of all signage.

Compressor Equipment:
Log equipment operating hours.
Check compressor pressures and temperatures at all stages and compare with design/operating parameters.
Change particle filters and final coalescer filters.
Change hydraulic oil.
Check Ariel inlet and discharge gas valves.
Pull Intensifier valves and inserts, clean and replace as needed.
Calibrate thermocouples and transducers.
Check all shutdowns.
Change Ariel oil filter and oil.
Check all equipment mounting bolts, and piping and tubing clamps to ensure all are tight.
Clear accumulated dirt from electric motor frame and air passages.

Control Panels:
Check all electrical connections in panel.

Dryer Skid:
Change the dryer discharge particle filter.
Check the dryer desiccant level and add tablets if needed.

Dispensers:
Check dispenser meter calibration.

Fill out and submit two (2) copies of the 1500-hour Inspection Log, the Compressor Log and the Safety Audit Log.

ANNUAL SERVICE INTERVAL CHECKS

Compressor Equipment:
Check Ariel rod packing, piston clearances, and shaft run-out.
Check the alignment of the Ariel drive coupling.
Check the condition of the hydraulic pump couplings and the hydraulic circulation pump couplings.
Check the cooling fans for any alignment problems.
Dispensers:
Check the electrical conductivity of (Meg) the fill hoses for proper grounding and record resistance readings. Refer to hose specifications. Replace fill hoses that show wear or do not meet the resistance specifications.

Note: Contractor shall perform all other inspections at intervals specified by OEM
# WEEKLY COMPRESSOR INSPECTION LOG

## COMPRESSOR INSPECTION LOG

**DATE:**

**TIME:**

Ambient Temperature/Weather Conditions:

<table>
<thead>
<tr>
<th>Hour Meter Reading</th>
<th>Ariel Compressor</th>
<th>Hydraulic Intensifier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skid 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Skid 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Booster Skid</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Pressures</th>
<th>Temperatures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skid 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Skid 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Booster Skid</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Station Inlet</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1st Stage Discharge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2nd Stage Discharge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3rd Stage Discharge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4th Stage Discharge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5th Stage Discharge</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Storage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buffer</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Miscellaneous Notes:**

<table>
<thead>
<tr>
<th>Item</th>
<th>Follow-up Action Required</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

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DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
### Example Repair Log

**Date:** 

**Time:** 

**Ambient Temperature/Weather Conditions:** __________________________________________

**Repair to:** (Circle One)

- Gas Dryer
- CNG Compressor
- Ground Storage
- Air Compressor
- Instruments & Controls
- Noise Attention Enclosure
- Card Reader
- Auxiliary Power Supply
- Gas Detection System
- Station Controller
- Valve Sequencing Panel
- Dispenser 1
- Dispenser 2
- Dispenser 3
- Dispenser 4
- Dispenser 5
- Dispenser 6
- Fire Protection Systems

**Regularly Scheduled Maintenance—Specify:**

**Or Specify Nature of Problem if Unscheduled:**

**Is this a Warranty Repair:** Yes [] No [ ]

**Summary of Action Taken (use more sheets if necessary):**

**Technician’s Name:** ____________________________  **Signature:** ____________________________
The following Plan describes Pinnacle's guarantee to provide alternative fueling sources in the event of service disruptions at the Mineta San Jose International Airport's (Airport's) Compressed Natural Gas (CNG) Fueling Station. This Plan applies to both Airport and City fleet vehicles as well as to all Airport third party authorized users. This Plan will be part of the CNG Fueling Station Operation and Maintenance Services Agreement, and will remain in effect as long as the Airport's CNG Fueling Station Operation and Maintenance Services Agreement is in effect with Pinnacle.

Definitions of Terms Used

Airport Fleet Vehicles - vehicles owned by the City of San Jose and operated by the Airport Department

City Fleet Vehicles - vehicles owned and operated by the City of San Jose other than Airport Fleet Vehicles

Planned Service Disruption - a timeframe, which is known in advance, during which the CNG Fueling Station will be unavailable for fueling of vehicles

Third Party Users - vehicles fueling at the CNG Fueling Station other than Airport Fleet and City Fleet Vehicles. Third Party Users are those that require Pinnacle to process a sales transaction.

Unplanned Service Disruption - a timeframe, which is not known in advance, during which the CNG Fueling Station will be unavailable for fueling of vehicles

Unsafe or Emergency Service Disruption - a timeframe, which is not known in advance, during which the event causing the disruption poses a safety or security concern.

Alternative Fueling Procedures and Services

In the event of disruption of service at the Airport's CNG Fueling Station, Airport and City fleet vehicles, and all Airport third party authorized users will be able to dispense CNG fuel at the Specialty Solid Waste & Recycling, Inc. CNG Station, located at 3351 Thomas Road, Santa Clara, California. This Specialty station will act as the primary CNG fuel source due to its close proximity to the Airport, and it will be open 24 hours per day, seven (7) days per week for fueling. The Airport and City Fleet Vehicles (i.e., those not needing credit cards to dispense fuel) and its third party users (i.e., those needing credit cards to dispense fuel) will be pre-approved for CNG sales at this location.

In the event of disruption of service at the Airport's CNG Fueling Station, Airport and City Fleet Vehicles, and all Airport third party authorized users will be able to dispense CNG fuel at a secondary back-up station available from the San Jose Unified School District CNG Station, located at 2230 Unified Way, San Jose, California in event of service interruptions. The Airport
and City Fleet Vehicles and third party users will be pre-approved for CNG sales at this location. Note: this station will have restricted access. Airport and City Fleet Vehicles will not be able to fuel between the hours of 5:30 a.m. to 7:30 a.m. and between 4:00 p.m. and 7:30 a.m. (Monday through Friday) due to San Jose Unified School District vehicle fueling.

Terms of Payment

The following will apply regardless of where alternative fueling occurs. Fuel dispensed from either the primary or back-up stations during disruptions in service at the Airport's CNG Fueling Station will be sold to third party fuelers at the same price rates as if it were fuel dispensed from the Airport's CNG Fueling Station. Fuel dispensed from either the primary or back-up stations during disruptions in service at the Airport's CNG Fueling Station will be sold to Airport and City fuelers at a price rate to cover the actual costs of the natural gas, electricity, and fuel taxes. Any fuel surcharges due to Specialty Solid Waste & Recycling, Inc. or the San Jose United School District for fuel dispensed from their stations will be paid to them by Pinnacle CNG Company on behalf of the Mineta San Jose International Airport.

Notification of Service Disruptions

The following procedures will be followed in the case of service disruptions at the Mineta San Jose International Airport CNG Fueling Station:

- Planned Service Disruptions shall require 24 hour minimum prior notification to the Airport. Contact:
  - Airport Operations Manager-Landside (408-277-4705), and
  - Airport CNG O&M Contract Manager: Kathy Hausler (408-392-3515)

- Unplanned Service Disruptions that are anticipated to last more than one hour shall require immediate notification to the Airport. Contact:
  - During Regular Business Hours (8:00 a.m. – 5:00 p.m.):
    - Airport Operations Manager-Landside (408-277-4705), and
    - Airport CNG O&M Contract Manager: Kathy Hausler (408-392-3515), or
  - During Non-Regular Business Hours (5:01 p.m. - 7:59 a.m.):
    - Airport Operations Manager-On-Duty (MOD) (408-277-5100)

- Unsafe or Emergency Service Disruption shall require immediate response and immediate notification of the Airport.
  - Emergency Services (Police and/or Fire, as appropriate), and
  - During Regular Business Hours (8:00 a.m. - 5:00 p.m.):
    - Airport Operations Manager-Landside (408-277-4105), and
    - Airport CNG O&M Contract Manager: Kathy Hausler (408-392-3515), or
  - During Non-Regular Business Hours (5:01 p.m. - 7:59 a.m.):
    - Airport Operations Manager-On-Duty (MOD) (408-277-5100)
Reporting

Pinnacle shall provide the following reports to the Airport in accordance with Section 3.5, "Reports", of the Operation and Maintenance Services Agreement:

1. Downtime or Disruption of Service Report. Summarize causes and necessary corrective action for any disruption of service at the Mineta San Jose International Airport CNG Fueling Station resulting in vehicles using an alternate fueling site. Include in the report the time when disruption commenced, required time to correct the disruption, and the time when service resumed.

2. Emergency Repair/Response Report. Summarize causes and necessary corrective action for any unsafe or emergency disruption of service at the Mineta San Jose International Airport CNG Fueling station. Include in the report the time when emergency commenced, required time to correct the disruption, the emergency services that were notified (including date and time), the details of the events, and the time when services resumed.

3. Fueling Report. Summarize all fuel consumption by Airport and City Fleet vehicles and authorized Airport third party users at alternative fueling station sites. Submit reports to the Airport no later than 48 hours after the fueling.
THIS EXHIBIT IS MARKED AS UNUSED.
EXHIBIT F
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)

1. POLICY STATEMENT

The City of San Jose has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) Program in accordance with regulations of the U. S. Department of Transportation (DOT), 49 CFR Part 23. A copy of the ACDBE Program is available from the Office of Equality Assurance, 200 East Santa Clara Street, Fifth Floor, San Jose, CA 95113, 408-535-8455. The City receives federal financial assistance from the DOT, and as a condition of receiving this assistance, the City assures that it will comply with 49 CFR Part 23.

It is the policy of the City of San Jose to ensure that Disadvantaged Business Enterprises (ACDBEs), as defined in Part 23, have an equal opportunity to receive and participate in Airport Concessions. It is also our Policy to:

- Ensure nondiscrimination in the award and administration of Airport Concessions;
- Create a level playing field on which ACDBEs can compete fairly for Airport Concessions;
- Ensure that the ACDBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 23 eligibility standards are permitted to participate as ACDBEs;
- Help remove barriers to the participation of ACDBEs in Airport Concessions; and
- Assist the development of firms that can compete successfully in the marketplace outside the ACDBE Program.

The City's Director of the Office of Equality Assurance has been delegated as the ACDBE Liaison Officer. In that capacity, the Director is responsible for implementing all aspects of the ACDBE Program. Implementation of the ACDBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

2. DEFINITION OF TERMS

The terms used in the Program have the meanings defined in 49 CFR Section 23.3 and Section 26.5 and are as follows:

2.1 Disadvantaged Business Enterprise

Means a for-profit small business concern that is:

1) At least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and

3) Whose personal net worth does not exceed $750,000.
2.2 Small Business Concern

In order to qualify as an ACDBE, a firm must qualify as a small business concern. As a general rule, the ACDBE regulations treat a firm as a small business concern eligible to be certified as an ACDBE if its gross receipts, averaged over the firm’s previous three fiscal years, do not exceed $30 million.1

2.3 Socially and Economically Disadvantaged Individual

Means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who meets one or more of the following conditions:

- Any individual determined to be a socially and economically disadvantaged individual on a case-by-case basis;
- Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - Women;
  - Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

2.4 Personal Net Worth

Means the net value of the assets of an individual remaining after total liabilities are deducted.

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1 The following types of businesses have size standards that differ from the standard set forth above:
- Banks and financial institutions: $275 million in assets
- Car rental companies: $40 million average annual gross receipts over the firm’s three previous fiscal years.
- Pay telephones: 1,500 employees.
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An individual's personal net worth does not include:

1) The individual's ownership interest in an applicant or participating ACDBE firm, or;
2) The individual's equity in his or her primary place of residence.

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

The imposition of a personal net worth cap of $750,000 means that regardless of race, gender or size of their business, any individual whose personal net worth exceeds $750,000 is not considered economically disadvantaged and is not eligible for the ACDBE Program.

2.5 NON-DISCRIMINATION

As a recipient of DOT financial assistance, the City will meet the non-discrimination requirements provided in Part 26, §26.7, with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by part 23.

The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex or national origin.

In administering its ACDBE Program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the ACDBE Program with respect to individuals of a particular race, color, sex or national origin.

The City acknowledges these representations are also in accordance with obligations contained in its Civil Rights, ACDBE and ACDBE Airport grant assurances.

2.6 QUOTAS

The City will not use quotas in any way in the administration of its ACDBE Program.

2.7 ACDBE LIAISON OFFICER (ACDBELO)

The City has designated the following individual as its ACDBE Liaison Officer:
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Nina S. Grayson
Director, Office of Equality Assurance
City of San Jose
200 East Santa Clara Street, 5th Floor
San Jose, CA 95113

Telephone: 408.535.8455
Fax: 408.292.6270
E-Mail: nina.grayson@sanjoseca.gov

In this capacity, the Director is responsible for implementing all aspects of the ACDBE Program and ensuring that the City complies with all provisions of 49 CFR Part 23.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE Program in coordination with other appropriate officials. Duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by FAA or DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
- Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
- Analyzes the City's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the CEO/governing body on ACDBE matters and achievement.
- Provides ACDBEs with information and assistance in preparing bids, obtaining bonding, financing, and insurance; acts as a liaison to the OSDBU-Minority Resource Center (MRC).
- Plans and participates in ACDBE training seminars.
- Acts as liaison to the Uniform Certification Process in the State of California.
- Provides outreach to ACDBEs and community organizations to advise them of opportunities.

2.8 DIRECTORY

The directory identifying all firms eligible to participate as ACDBEs is available at www.dot.ca.gov or by contacting the California Department of Transportation/Unified Certification Program at 1-916-324-0780.
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2.9 REQUIRED CONTRACT CLAUSES

Contract Assurance:

The City will ensure that the following paragraphs are placed in every Airport Concession contract and subcontract:

- This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The Concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

- The Concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

2.10 REPORTING, COMPLIANCE AND ENFORCEMENT PROCEDURES

The City will retain sufficient basic information about its ACDBE Program implementation, ACDBE certification, and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of three years following the end of the concession agreement or other covered contract.

It is the Concessionaire's or contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement is also extended to any certified ACDBE.

Beginning March 1, 2006 we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

Confidentiality: The City will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal law and the California Public Records Act, Government Code §§6250-6276.48. The California Public Records Act provides for disclosure of public documents when a request is made unless they fall within specified exceptions. There are numerous exceptions which may or may not apply depending on the type of documents.

Except as otherwise required pursuant to federal, state or local law, we will not release personal financial information submitted by an ACDBE in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

The City will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

At the Norman Y. Mineta San Jose International Airport, the Airport Property Section monitors ACDBE sales. ACDBE sales are tracked as a percentage of overall concession revenue. The Airport maintains these statistics and graphs the results on a monthly basis to ensure that work committed to ACDBEs at contract award is actually performed by the ACDBEs.
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On a daily basis, Airport staff monitors the ongoing operation of the concession related contracts consistent with the requirements of Part 23 and this Program. The City may impose such contract remedies as are available under the contract and under federal, state and local law and regulations for non-compliance. Failure to carry out the City's ACDBE Policy and goals and obligations set forth above shall constitute a breach of contract that may result in termination of the Concession Agreement, or such other remedy as deemed appropriate by the City.

The following monitoring and enforcement provisions are included in the City's concession agreements and management contracts:

2.10.1 **Compliance:** Failure to carry out the ACDBE Policy and obligations set forth above shall constitute a breach of contract that may result in termination of the Agreement, or such other remedy as deemed appropriate by the City.

2.10.2 **Audits:** The City may also perform interim audits of contract payments to ACDBE management firms or subcontractors. The audit will review payments to ACDBE subcontractors and gross receipts earned by or payments for goods and services and management agreements to ACDBEs to ensure that the actual amount equals or exceeds the dollar amounts stated in the report of proposed ACDBE participation.

2.10.3 **Replacement/Substitutions of ACDBEs:** For concession contracts that include concession-specific ACDBE goals, Concessionaire will be required to have a valid arrangement with the ACDBE(s) designated by Concessionaire to fulfill the contract goal. For any such concession contracts that include concession-specific ACDBE goals, Concessionaire will be allowed to substitute the originally designated ACDBE(s) only if it is demonstrated to the City that the ACDBE(s) is unwilling or unable to perform. For any such concession contracts that include concession-specific ACDBE goals, Concessionaire's ability to negotiate a more advantageous contract with another ACDBE firm will not be considered a valid basis for substitution. For any such concession contracts that include concession-specific ACDBE goals, if an ACDBE is unwilling or unable to perform, Concessionaire shall inform the City in writing and include documentation to justify the substitution, including a statement from the ACDBE to be replaced acknowledging the substitution. In any such instance, Concessionaire will identify a replacement ACDBE or document good faith efforts to replace the ACDBE with another ACDBE. For any such concession contracts that include concession-specific ACDBE goals, if Concessionaire or a non-ACDBE firm performs the work originally committed to an ACDBE, the Concessionaire shall submit a revised ACDBE plan to the City detailing how the ACDBE goal will be met or will supply documentation detailing good faith efforts which have been made to meet the goal.

2.10.4 **ACDBE Reports:** Concessionaire shall submit, in the format required by the City, a monthly report of ACDBE utilization. The City reviews the monthly reports that are required to be submitted to the City by concessionaires to ensure that the ACDBE participation levels remain in compliance with any contract requirements and to verify...
that the work committed to ACDBEs is actually performed by ACDBEs. This information will also be used to provide the statistical data for the achievement reports to the FAA. If the City determines that any concessionaire is not complying with any contract requirements regarding this Program, the City will implement the contract remedies specified above.

2.10.5 Notices to DOT: The City will also notify the U.S. Department of Transportation of any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR Section 26.107.

2.11 CONTRACT GOALS

The City will use concession specific goals to meet any portion of the overall goals the City does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

2.12 GOOD FAITH EFFORTS

To be eligible to be awarded a concession that has a concession specific goal, competitors must make good faith efforts to meet the goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Part 26.51-3, regarding contract goals apply to the City's concession specific goals. Specifically;

2.12.1 Demonstration of good faith efforts (26.53(a) & (c))

The Airport Managers are responsible for determining whether a concessionaire who has not met the concession specific goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is complete and accurate and adequately documents the concessionaire's good faith efforts before we commit to the concession agreement with the bidder/offeror.

2.12.2 Information to be submitted (26.53(b))

For concessions that have a concession specific goal, the City treats concessionaire's compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a concession specific goal has been established will require the concessionaires to submit the following information:

- The names and addresses of ACDBE firms or ACDBE suppliers of goods and services that will participate in the concession;
- A description of the work that each ACDBE will perform;
- The dollar amount of the participation of each ACDBE firm/supplier participating;
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Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal;

Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire’s commitment and

If the contract goal is not met, evidence of good faith efforts.

2.12.3 Administrative reconsideration (26.53(d))

Within three (3) days of being informed by the City that it is not responsible because it has not documented sufficient good faith efforts, a proposer may request administrative reconsideration. Contractor should make this request in writing to the City Manager, 200 East Santa Clara Street, San Jose, California 95113. The reconsideration official will not have played any role in the original determination that the proposer did not document sufficient good faith efforts.

As part of this reconsideration, the proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The proposer will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the proposer a written decision on reconsideration, explaining the basis for finding that the proposer did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appeal able to the DOT.

For concessions that have a concession specific goal, any business that fails to demonstrate that it achieved the concession-specific ACDBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall be deemed “non-responsive” and, therefore, shall be ineligible for award of the concession contract.

2.13 Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

For concessions that have a concession specific goal, the City will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBE Liaison officer immediately of the ACDBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the concessionaire to obtain our prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the concessionaire fails or refuses to comply in the time specified, our contracting office will give notice and opportunity to cure until satisfactory action has been taken. If the concessionaire still fails to comply, the contracting officer may issue a termination for default proceeding.

When a concession specific goal is established pursuant to the City’s ACDBE Program, the following specification will be used to notify concession firms of the requirements to make good faith efforts:

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
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The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of San José to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concessions firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of 0 percent (0%) of annual gross receipts; value of leases and/or purchases of goods and services) has been established for this concession. The concession firm shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment, and (6) If the contract goal is not met, evidence of good faith efforts.

2.14 COUNTING ACDBE PARTICIPATION FOR CAR RENTALS

The City will count ACDBE participation toward overall and contract goals for car rentals as provided in 49 CFR Part 23.5e.

2.15 COUNTING ACDBE PARTICIPATION FOR CONCESSIONS OTHER THAN CAR RENTALS

The City will count ACDBE participation toward overall and contract goals for concessions other than car rentals as provided in 49 CFR Part 23.55.

2.16 ACDBE CERTIFICATION

The City will use the procedures and standards of 49 CFR Part 26, except as provided in 49 CFR Section 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.

For information about the certification process or to apply for certification firms should contact:

California Department of Transportation
Civil Rights – MS 79
1823 14th Street
Sacramento, CA 95814
Phone: 916-324-0790
Fax: 916-324-1862
Website: <www.dot.ca.gov>

The City is a member of the California UCP, which has established four Regional DBE Certification Clusters throughout the State to effectively facilitate statewide DBE certification.
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activities. Completed certification packets are to be mailed to one of the agencies serving
the county where the firm has its principal place of business.

The California UCP will not process a new application for DBE certification from a firm
having its principal place of business in another state, unless the firm has already been
certified in that state.

Certification decisions for ACDBEs to participate in the City's concession program are made
by the California Unified Certification Program (CUCP).

All firms certified by the CUCP on behalf of the City and included in the CUCP directory will
be reviewed and recertified by the CUCP based on the submittal of the information required
for certification to determine their ACDBE eligibility. These reviews will be completed as
soon as possible, but not later than April 21, 2006 or three years from the anniversary date
of each firm's most recent certification, whichever is later. The City will insure that only firms
certified as eligible ACDBEs participate as ACDBEs in its concession program.

All owners of all certified ACDBEs will be required to submit, on the anniversary date of their
certification, a "no change" affidavit meeting the requirements of 26.83(i), including any
change in their circumstances affecting their ability to meet size, disadvantaged status,
personal net worth, ownership or control criteria or of any material changes in the
information provided with the application for certification. A copy of the renewal serves as
the City's and CUCP's no change affidavit.

The California UCP handles all decertification decisions on behalf of the City with respect to
the Airport's concession program.

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross
receipts, averaged over the firm's previous three fiscal years do not exceed $30 million. The
size standard for banks and other financial institutions is $275 million in assets, for car rental
companies it is $40 million, and for pay telephone companies the standard is 1,500
employees. (23.33) The personal net worth standard used in determining eligibility for
purposes of part 23 is $750,000 and any person who
has a personal net worth exceeding this amount is not a socially and economically
disadvantaged individual, even if a member of a group is otherwise presumed to be
disadvantaged. (23.35).

We will presume that a firm that is certified as a DBE under part 26 is eligible to participate
as an ACDBE. However, before certifying such a firm, we will ensure that the disadvantaged
owners of a DBE certified under part 26 are able to control the firm with respect to its activity
in our concessions program. We are not obligated to certify a part 26 DBE as an ACDBE if
the firm does not do work relevant to our concessions program. (23.37).

We recognize that the provisions of part 26, Sections 26.83(c) (2-6) do not apply to
certifications for purposes of part 23. We will obtain resumes or work histories of the
principal owners of the firm and personally interview these individuals. We will analyze the
ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial
capacity of the firm. We will determine the work history of the firm, including any concession
contracts or other contracts it may have received. We will compile a list of the licenses of the
firm and its key personnel to perform the concession contracts or other contracts it wishes to
receive. We
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will obtain a statement from the firm of the types of concessions it prefers to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient. We recognize that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 Section 26.73(h). (23.39(c)(d)).

We will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i)).

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, we may continue to count the concessionaire’s participation toward ACDBE goals during the remainder of the current concession agreement. We will not count the concessionaire’s participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e)). Attachment 7 to the ACDBE Program recites the Part 26.87 procedures for removal of an ACDBE’s eligibility.

We will use the Uniform Application Form found in appendix F to part 26 with additional instruction as stated in 23.39(g). A copy of this form is included as Attachment 6 of the ACDBE Program.
In addition to complying with the provisions set forth earlier in this Lease, Operator agrees to the following provisions:

1. **Notification of Release.** Operator shall be solely and fully responsible for notifying the appropriate public agencies of any Hazardous Material release which is caused by or results from the activities of Operator, Operator’s officers, agents, employees, contractors, permittees or invitees on the Airport. Operator shall immediately notify City of any Hazardous Material release which occurs on the Airport and is caused by or results from the activities of Operator, Operator’s officers, agents, employees, contractors, permittees or invitees, regardless of whether the release is in a quantity that would otherwise be reportable to a public agency.

2. **Liability.** Operator shall be solely and fully responsible and liable for:
   
   (a) any use of Hazardous Materials on the Airport, by Operator, Operator’s officers, agents, employees, contractors, permittees or invitees;
   
   (b) any Hazardous Material Release which is caused by or results from the activities of Operator, Operator’s officers, agents, employees, contractors, permittees or invitees on the Airport;

3. **Prevention of Release.** Operator shall take all necessary precautions to prevent its activities from causing any Hazardous Material release to occur on the Airport, including, but not limited to, any release into soil, groundwater, or the City’s sewage or storm drainage system.

4. **Obligation to Investigate and Remediate.** Operator, at Operator’s sole cost and expense, shall promptly investigate and remediate, in accordance with requirements of all applicable Environmental Laws any release or danger of release of Hazardous Material on the Airport, including, but not limited to, into soil or groundwater, or the City’s sewage or storm drainage system, which, was caused, or results, in whole or in part from the activities of Operator, Operator’s officers, agents, employees, contractors, permittees or invitees;

In addition to all other rights and remedies of City hereunder, if Operator does not promptly commence, and diligently pursue to remediate, any such release, or danger of release, of Hazardous Materials, City, in its discretion, may pay, to have same remediated and Operator shall reimburse City within fifteen (15) business days of City’s demand for payment. The failure to commence remediation and provide City with a schedule for diligent completion of the remediation within thirty (30) days after discovery of such release, or danger of release, of Hazardous Material shall constitute *prima facie* evidence of failure to promptly commence remediation. The demand for payment by City shall be *prima facie* evidence that the expense incurred was necessary and reasonable and that such expense was incurred by City on behalf of Operator.
EXHIBIT G
HAZARDOUS MATERIALS

5. **Indemnification.** Operator shall defend, indemnify and hold City harmless from and against all loss, damage, liability (including all foreseeable and unforeseeable consequential damages) and expense (including, without limitation, the cost of any required cleanup and remediation of the Hazardous Materials) which City may sustain as a result of:

   (a) any use of Hazardous Materials on the Airport, by Operator, Operator's officers, agents, employees, contractors, permittees or invitees

   (b) any Hazardous Material release on the Airport, including, but not limited to any release into soil or groundwater, or the City's sewage or storm drainage system, which is caused by or results from the activities of Operator, Operator’s officers, agents, employees, contractors, permittees or invitees.

6. **Release of Claims Against City.** Operator releases, acquits and forever discharges City from any and all claims, actions, causes of action, demands, rights, damages, costs, including but not limited to loss of use, lost profits, or expenses, which Operator may now have, or which may hereafter accrue on account of or in any way growing out of all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage, and the consequences thereof resulting or arising out of the presence or cleanup of any Hazardous Material on the Airport. This release shall not apply to any claims for contribution that Operator may have against City in the event that Operator incurs any cost in undertaking any cleanup of Hazardous Material from the Airport ordered by a governmental agency, to the extent that the cleanup order and costs result from a release of Hazardous Material for which Operator is not responsible and liable under this Agreement. Operator understands and agrees that Operator is hereby waiving all such rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States. Said Section reads as follows:

   “1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

7. (a) **Cessation of Activities.** Operator shall cease its activities on the Airport, to the extent requested by City, if City determines, in its sole discretion, that such cessation is necessary to investigate, cure or remediate any release of Hazardous Materials. Operator shall not recommence its activities on the Airport, until notified by City that such release or danger of release of Hazardous Material has been investigated, cured and remediated in a manner satisfactory to the City.

   (b) **Abatement of Fees and Charges on Airport.** Operator shall not be charged fees or charges for use of the Airport, to the extent that City requests Operator to cease activities on that portion of the Airport due to City’s efforts to investigate, cure or remediate contamination, unless the release is one for which Operator is responsible under this Agreement.
8. Records and Inspections.

(a) Operator shall maintain, during the term of this Agreement and for a period of not less than four (4) years after the expiration or termination of this Agreement, or for any longer period of time required by any applicable law, regulation, policy, order or decree, separate and accurate daily records pertaining to the use, handling and disposal of any Hazardous Material(s) by Operator, Operator's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(b) Upon request by City, Operator shall furnish City with such daily records, and such other documentation or reports as Director, from time to time, and at any time during the term of this Agreement, may reasonably require pertaining to the use, handling and disposal of any Hazardous Material(s) by Operator, Operator's officers, agents, employees, contractors, permittees or invitees on or from the Airport.

(c) After the expiration of four (4) years following the termination of this Agreement, Operator may destroy the records pertaining to the use, handling and disposal of any Hazardous Material(s) by Operator, Operator's officers, agents, employees, contractors, permittees or invitees on or from the Airport, provided, however, that Operator shall notify City no later than sixty (60) days prior to any proposed destruction of any of said records and shall upon request by City within thirty days (30) days after such notice is received, deliver copies of said records to City.

9. No Third Party Beneficiaries

Nothing contained in this Exhibit shall be construed as conferring any benefit on any person not a party to this Agreement, nor as creating any right in any person not a party to this Agreement to enforcement of any obligation created under this Agreement.

10. Survival of Obligations

Operator's obligations under this Agreement shall survive the expiration or earlier revocation or suspension of this Agreement.
EXHIBIT H
WAGE DETERMINATION & LABOR COMPLIANCE ADDENDUM

Contracts governed by both the City of San Jose's Prevailing Wage Policy (Resolution No. 61144) and the Norman Y. Mineta San Jose International Airport Living Wage Ordinance (Ordinance No. 28432) are subject to the Policy with the higher wage requirements. The following descriptions and work classifications are appropriate for the CNG Fuel Station at the Norman Y. Mineta San Jose International Airport.

The following classifications are identified by the California Department of Industrial Relations in Wage Index 2010-1 and Pre-Determined Increase Wage Index 2010-1. Proposers are cautioned that the rates contained in Wage Index 2010-1 are subject to change if the expiration date of determination includes two (2) asterisks (**) following EXPIRATION DATE OF DETERMINATION.

DEPARTMENT OF INDUSTRIAL RELATIONS PREVAILING WAGE CLASSIFICATIONS

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Classification</th>
<th>Base Pay</th>
<th>Benefits</th>
<th>Total Pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pipe, Fuel Pump &amp; Tank Service</td>
<td>PLUMBER: Underground Utility, Pipe fitter</td>
<td>$25.45</td>
<td>$9.35</td>
<td>$34.80</td>
</tr>
<tr>
<td>Expediting Fitting &amp; Valves, Trench-Shoring &amp; Shovel Work</td>
<td>Journeyman</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Install, Remove, Relocate Tank</td>
<td>Operating Engineer (Heavy &amp; Highway Work), Group 4</td>
<td>$33.38</td>
<td>$22.02</td>
<td>$55.40</td>
</tr>
<tr>
<td>Plumbing Hook-Up</td>
<td>Operating Engineer (Heavy &amp; Highway Work), Group 8</td>
<td>$28.51</td>
<td>$22.02</td>
<td>$50.53</td>
</tr>
<tr>
<td>Electrical Installation</td>
<td>ELECTRICIAN: Inside Wireman, Technician</td>
<td>$47.57</td>
<td>$22.99</td>
<td>$70.56</td>
</tr>
</tbody>
</table>

How to Obtain DIR Wage Index

Copies of the DIR Wage Index 2010-1 and Pre-Determined Increases are available from the Office of Equality Assurance, 200 East Santa Clara Street, Fifth Floor, San Jose CA 95113, 408-535-8430
CITY OF SAN JOSE LIVING WAGE CLASSIFICATIONS

<table>
<thead>
<tr>
<th>Scope of Work</th>
<th>Living Wage Rate With Health Benefits</th>
<th>Living Wage Rate Without Health Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Custodial Services</td>
<td>$12.83</td>
<td>$14.08</td>
</tr>
</tbody>
</table>

Living wage rates will be adjusted on the anniversary date of the agreement.

Hours and Days of Work

(Industrial Welfare Commission Order No. 16-2001)

City of San Jose agreements subject to City prevailing wage or living wage policies use the same guidelines for all covered classifications/employees.

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.
LABOR COMPLIANCE ADDENDUM
SAN JOSE LIVING WAGE AND PREVAILING WAGE POLICIES

AGREEMENT TITLE: Agreement for CNG Fueling Station Operation and Maintenance at the
Norman Y. Mineta San Jose International Airport

CONTRACTOR Name and Address:
Pinnacle CNG Company
300 N. Marienfeld, Suite 360
Midland, TX 79702-4334

By executing this Addendum, Contractor acknowledges and agrees that the work performed
pursuant to the above referenced Agreement or Service Order is subject to all applicable
provisions.

Payment of Minimum Compensation to Employees. Contractor shall be obligated to pay not
less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the
attached Exhibit(s) titled Work Classification and/or Living Wage Determination.

A. Prevailing Wage Requirements. California Labor Code and/or Resolutions of the San Jose
City Council require the payment of not less than the general prevailing rate of per diem
wages and rates for holiday and overtime and adherence to all labor standards and
regulations. The General Prevailing Wage Rates may be adjusted throughout the term of
this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall
not be entitled to any adjustment in compensation rates in the event there are adjustments to
the General Prevailing Wage Rates.

B. Living Wage Requirements. Any person employed by Contractor or subcontractor or City
financial recipient or any sub recipient whose compensation is attributable to the City’s
financial assistance, who meets the following requirements is considered a covered
employee. The employee: 1) is not a person who provides volunteer services, that are
uncompensated except for reimbursement of expenses such as meals, parking or
transportation; 2) spends at least half of his or her time on work for the City [4 hours a day
or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the
period of training specified under training standards approved by the City.

C. Reports. Contractor shall file a completed and executed copy of this Addendum with the
Finance Department/Purchasing Division. Upon award the Finance Department/Purchasing
Division shall provide the contractor with compliance documents to be completed and
returned (with supporting documentation) to the Office of Equality Assurance. These
documents must be returned within 10 days of receipt. Contractor shall not perform on
site work on this contract until labor compliance documents are filed. Contractor shall also

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

D. Coexistence with Any Other Employee Rights. These provisions shall not be construed to limit an employee’s ability to bring any legal action for violation of any rights of the employee.

E. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor’s address indicated for receipt of notices in this Contract.

F. Enforcement.

1. General. Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. (“Documentation Provision.”) Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively “Goals”):

a. It protects City job opportunities and stimulates the City’s economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.

a. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.

b. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.

c. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.


a. WITHHOLDING OF PAYMENT: Contractor agrees that the Documentation Provision is critical to the City’s ability to monitor Contractor’s compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional
enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor’s compliance with this Provision, as well as the Wage Requirement, is an express condition of City’s obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED.** Any payment by the City despite Contractor’s failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

b. **RESTITUTION:** Contractor agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City’s administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.

c. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City’s damage would not be remedied by Contractor’s payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City’s damages as a result of Contractor’s breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**
EXHIBIT H
Wage Determination & Labor Compliance Addendum

d. ADDITIONAL REMEDIES: Contractor agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Contractor or subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

City

By ____________________________________________
Name: Mark Giovannetti
Title: Purchasing Officer
Date: ____________________________

Contractor

By ________________________________
Name: ________________________________
Title: ________________________________
Date: ________________________________
CORPORATE SECRETARY CERTIFICATE

This certificate shall be executed by the secretary or assistant secretary of a corporation.

I, ______________________, certify that I am the ____________________________ secretary of the corporation named in the attached agreement; that ____________________________ signed the agreement on behalf of the corporation as the ____________________________ of the corporation; and that the agreement was duly signed for and in behalf of the corporation by authority of its Board of Directors, and is within the scope of its corporate powers.

________________________________________

Date

________________________________________

Corporate Seal
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ____________________________
County of ___________________________
On ___________________________ before me,

Date __________________________ Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared __________________________

Name(s) of Signer(s)

☐ personally known to me – OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: __________________________

Document Date: __________________________ Number of Pages: __________

Signer(s) Other Than Named Above: __________________________

Capacity(ies) Claimed by Signer(s)

Signer’s Name: __________________________

☐ Individual
☐ Corporate Officer
☐ Partner - ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer is Representing: __________________________

☐ Individual
☐ Corporate Officer
☐ Partner - ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

Signer is Representing: __________________________