



ULTIMATE CNG, LLC

3185 Wheatland Farms Drive
Oakton, Virginia, 22124

**Agreement for UCNG Daily Temporary Mobile CNG Fueling
Service for Clearwater Gas in Clearwater, FL**

Service provided by Ultimate CNG LLC (UCNG) to Clearwater Gas: Deliveries at the Fueling Site of compressed natural gas (CNG) by UCNG employees eleven (11) hours per day, five (5) days per week, from 6:30 a.m. until 5:30 p.m. Monday through Friday (herein after, the Work Day). UCNG shall deploy the UCNG FuelMule™ each Work Day for use during this Engagement to augment the use of the Clearwater Gas on-site ANGI compressor. The UCNG FuelMule™ compressor shall be utilized for as many as eight hours each Work Day during the Term of this Engagement. Additionally, UCNG shall provide a Gas Transport Module for use at the Site during the Engagement Period which will commence on Saturday, August 18, 2018 and continue through Friday, October 12, 2018.

Fueling Site: The Clearwater Gas Fueling Site located at 1020 Hercules Avenue, Clearwater Florida. Clearwater Gas shall provide no-cost access to the Fueling Site for UCNG to fulfill its obligations under this Agreement, including parking for UCNG equipment throughout the term of this Agreement.

Source of CNG: UCNG is dependent upon Clearwater Gas as a natural gas source at the Fueling Site referred to above. This Site is the exclusive source of natural gas required for use in the UCNG FuelMule™ under this Agreement. UCNG shall acquire natural gas from this site and Clearwater Gas acknowledges that UCNG shall have no obligation to deliver more CNG than it is able to obtain, using commercially reasonable efforts, and no damages shall accrue because of such inability.

UCNG's Mobile CNG Fueling Service during the Temporary Mobile CNG Fueling Period: The Temporary Mobile CNG Fueling Period (herein after; the Engagement Period) for this Project will be for a minimum of twenty-three (23) Calendar days and seventeen (17) Business Days. The UCNG Service Offering in this Purchase Order Proposal is expected to commence on Saturday, August 18, 2018 and continue through Friday, October 12, 2018. The anticipated cost is approximately **\$197,600.**

The mobile CNG fueling services provided to Clearwater Gas by UCNG during this Engagement Period shall consist of three cost components.

- The first cost component is the dedicated use of the UCNG FuelMule™ and a qualified UCNG employee FuelMule™ Operator during all Work Days throughout the Engagement Period. Compression from the FuelMule™ will be available throughout each day and shall be used in compression mode for up to eight hours of compression time during each Work Day.
- The second cost component is the use of a primary UCNG Gas Transport Module (GTM) on-site to assist with CNG fueling of the City of Clearwater Trucks and other large commercial vehicles that come to the Station. A second GTM will also be made available to Clearwater Gas and if so needed can also be utilized on-site during the Engagement Period as well.



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- The third cost component is a full-time UCNG GTM Operator/Fueling Technician on-site during all Work Day hours each week to assist vehicles that enter the Clearwater CNG Station with CNG fueling.
- The fourth and final cost component is the Mobilization Fee for transporting the UCNG FuelMule™ and the UCNG GTM from Fort Worth, TX to Clearwater, FL.

a) The first cost component is a FuelMule™ Operation and Usage Fee of \$18,500 per Week. The Weekly FuelMule™ Operation and Usage Fee includes:

- Dedicated use of the UCNG FuelMule™ as well as an UCNG employee FuelMule™ Operator each Work Day from 6:30 a.m. until 5:30 p.m. The FuelMule™ will be available for gas compression for up to eight hours per Work Day. All compression hours required beyond eight hours per Work Day shall be Invoiced at \$295.00 per hour.

b) The second cost component is a GTM Usage Fee of \$4,200 per Week. The Weekly GTM Usage Fee includes:

- Dedicated use of a UCNG GTM. This Fee does not include the salary and benefits for a weekly UCNG employee Fueling Technician/GTM Operator each Work Day from 6:30 a.m. until 5:30 p.m. The GTM will be available for dispensing high pressure natural gas throughout each Work Day. An additional GTM can be made available for another fee of \$2,100 per week.

c) The third cost component is for a UCNG GTM Operator/Fueling Technician of \$2,000 per Week.

- Dedicated use of a UCNG employee Fueling Technician/GTM Operator each Work Day from 6:30 a.m. until 5:30 p.m. The GTM employee will be available for dispensing high pressure natural gas into awaiting City of Clearwater Trucks and other large commercial vehicles throughout each Work Day.

d) The Parties acknowledge and agree that the fourth cost component for UCNG Equipment Mobilization of \$15,735 from Fort Worth, TX to Clearwater, FL. was incurred under that certain Agreement between the Parties dated August 24, 2018, *nunc pro tunc*, (the term of which was July 26, 2018 through August 17, 2018) (“Agreement #1).

The cost to mobilize one UCNG FuelMule™ and one UCNG GTM, a total of two thousand three hundred fourteen (2314) miles round trip for each Unit from Fort Worth, TX to Clearwater, Florida consisted of a one-time HazMat Mobilization fee of approximately \$3.40 per mile totaling **\$15,735.00** payable to UCNG at the conclusion of this Engagement. The Equipment Mobilization Fee shall be reduced by 50 percent to **\$7,867.50** if this Engagement continues uninterrupted for at least six (6) consecutive weeks. The Mobilization Fee shall be



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eliminated altogether if this Engagement continues uninterrupted for twelve (12) consecutive weeks. Notwithstanding the existence of two consecutive Agreements between the Parties ("Agreement #1 and Agreement #2), the timeframe set forth herein for the Equipment Mobilization fee forgiveness/reduction shall be calculated using the Agreement Terms/timeframe of service of both Agreements cumulatively.

The **\$24,700.00** Weekly Fueling Service Fee included as the first, second and third components listed above will cover ALL costs associated with UCNG's mobile CNG fueling service including:

- Daily use of multiple pieces of UCNG Equipment, including the UCNG FuelMule™ and UCNG GTM.
- Capital depreciation, maintenance and wear and tear on all components of UCNG equipment required to deliver natural gas to City of Clearwater Trucks and other large commercial vehicles at the Fueling Site.
- Salary and Benefits, daily transportation, overnight accommodations, per diem expenses, etc. for two UCNG employees (FuelMule™ Operator and GTM Operator/ Fueling Technician) required to dispense CNG fuel into the City of Clearwater Trucks and other large commercial vehicles each Work Day.
- Insurance and all other associated UCNG mobile fueling costs.

Motor Fuels/Excise Tax: Any taxes associated with the acquisition, dispensing and consumption of CNG pursuant to this agreement (sales, use and/or motor fuels taxes, excise tax, etc., excluding income tax) shall be the responsibility of Clearwater Gas.

Term of the Agreement: The term of this Agreement ("Agreement #2") shall commence on Saturday, August 18, 2018 and shall extend until Friday, October 12, 2018 or longer as necessary and as agreed to by both parties. Clearwater Gas may terminate by providing forty-eight (48)-hours written notice to UCNG.

Payment Terms: Invoices will be prepared on a weekly basis. Payment terms are net 30 days from the date of the Invoice.

Standard Terms that are attached hereto are incorporated as an integral part of this Agreement.

Agreed and accepted this _____ day of September, 2018.



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Agreement for UCNG Daily Temporary Mobile CNG Fueling Service for Clearwater Gas
in Clearwater, FL (Agreement #2)

ULTIMATE CNG, LLC

By: _____
Brian P. Fimian
Chief Operations Officer

CITY OF CLEARWATER, FLORIDA

By: _____
William B. Horne, II
City Manager

Approved as to form:

Attest:

Laura Mahony
Assistant City Attorney

Rosemarie Call
City Clerk



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Standard Terms:

Minimum Term; Take or Pay. The parties agree that Client shall pay the fees set forth for: (i) a minimum Term of 23 days, whether or not Client makes use of any of the fueling services and whether or not it takes delivery of any CNG and (ii) each Weekly Service Fee the during the Term and the UCNG Equipment Mobilization charge, whether or not Client makes use of the fueling services during such delivery period and whether or not it takes delivery of any CNG. In the event fees are payable by Client even though it does not make use of fueling services, the amounts payable are intended to be an estimate of the amount that would be necessary to compensate UCNG for standing ready to provide the services and for the actual damages (including without limitation loss of bargain) it would suffer if this Agreement or the Term were terminated earlier than the end of the minimum Term. The parties acknowledge and agree that the amount set forth above is a reasonable estimate of such actual damages.

Fueling Site. Client grants to UCNG, at no cost, a non-exclusive license to access and use the fueling site during the Term (i) to supply UCNG's equipment at the fueling site with natural gas, (ii) to use the fueling site as contemplated hereby and in compliance with all applicable environmental, safety, land use, zoning and other laws and regulations and (iii) to store UCNG's GTMs and related delivery equipment, and personal vehicles of UCNG's personnel at the fueling site. Such license shall be irrevocable during the Term. Such license is not gratuitous, but is given in exchange for the UCNG's undertakings in this Agreement. Client shall allow UCNG to limit access to UCNG's equipment and the immediate area surrounding it as reasonably required to ensure the safe and efficient operation of the UCNG's equipment.

Additional Payment Terms. Each invoice shall be deemed accurate in the absence of manifest error. Any amount payable by Client under this Agreement and not paid when due shall bear interest, payable on demand, until such past-due amount is paid in full at the rate of 12% per annum, provided that such rate of interest shall not exceed the maximum rate permitted by applicable law.

Taxes. If any Sales Tax or Excise Tax is applicable to the transactions contemplated hereby, then Client shall (i) pay to UCNG all Sales Taxes and Excise Taxes payable by Client and collectible by UCNG as a result of the services and payments hereunder, (ii) pay directly to the relevant taxing authority when due all Sales Taxes and Excise Taxes payable by it directly to a taxing authority as a result of the services and payments hereunder and (iii) pay or reimburse UCNG promptly on demand for all Sales Taxes and Excise Taxes payable by UCNG as a result of the services and payments hereunder. Such payments shall be in addition to, and without deduction from or otherwise reducing, the compensation payable hereunder. "Sales Tax" means any U.S. or foreign federal, state or local sales, use, value added, transfer or similar tax, assessment or fee which is payable on the purchase and sale of goods generally (with limited exceptions), but not including any Income Tax. "Excise Tax" means any U.S. or foreign federal, state or local tax, assessment or fee which is payable as a result of the purchase, sale, transportation, supply or use of CNG or uncompressed natural gas or the other transactions contemplated hereby, but not including any Sales Tax or Income Tax. "Income Tax" means any U.S. or foreign federal, state or local tax levied upon UCNG's or Client's net income, or levied upon its gross receipts in lieu of a net income tax.



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No Other Use. Client shall not, in any event, resell any compressed natural gas handled by UCNG or use it for any purpose other than as transportation fuel for the vehicle into which it is delivered by UCNG pursuant to this Agreement.

Service Provider Only; Force Majeure. UCNG shall not be responsible for delays, failures or omissions arising out of causes beyond its control and not occasioned by UCNG's fault or negligence, including without limitation: acts of God, war, armed hostilities, riots, fires, floods, storms, freezing weather, earthquakes, serious accidents, expropriation, condemnation or confiscation of property, governmental acts or failure to act (whether or not under legal authority), interruption of natural gas supplies, change in specifications of natural gas purchased by it, strikes or labor troubles or failure or delay in transportation. Delays arising from the foregoing causes may be longer than the period of time such cause (such as a strike, governmental shutdown or riots) existed.

The parties agree that a delay arising out of the causes referred to above will be material or indefinite only if it exceeds one year.

Warranties; Limitations.

Client represents and warrants to UCNG that it has selected (and will select) all the vehicles that it seeks to have UCNG refuel without any involvement on the part of UCNG, and that Client has determined that the design, function, performance and specifications of such vehicles, their engines and their fuel storage and delivery systems are suitable for Client's purposes and consistent with CNG that meets the standards and specifications set forth in this Agreement.

The parties agree that, in determining the foreseeability of any loss or damage arising out of any breach of this Agreement, each will be charged only with such knowledge of the other's business, requirements and intended use of vehicles as has been formally disclosed to the other party in writing before making this Agreement.

Amendment; No Waivers. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by each party hereto or, in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Integration. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, both written and oral, among any of the parties with respect to the subject matter of this Agreement.

Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. If a dispute between or among the parties relating to this Agreement becomes the subject of litigation, the prevailing party in such dispute (as determined by the court) shall be entitled to recover reasonable attorneys' fees, costs and expenses incurred in connection therewith from the other party.



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HOLD HARMLESS/INDEMNIFICATION: UCNG shall defend, indemnify, save and hold the City harmless from any and all claims, suits, judgements and liability for death, personal injury, bodily injury, or property damage arising directly from its negligent performance under the Agreement, or a subsequent purchase order entered into by City and UCNG, its employees, subcontractors, or assigns, including legal fees, court costs, or other legal expenses. UCNG acknowledges that it is solely responsible for complying with the terms of the Agreement or a purchase order arising out of the agreement.

Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.