

**COMPRESSED NATURAL GAS
VEHICLE FUELING STATION UPGRADE AGREEMENT**

THIS COMPRESSED NATURAL GAS VEHICLE FUELING STATION UPGRADE AGREEMENT (the “Agreement”) is made and entered into as of _____, 2020 (“Effective Date”) by and between LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, an Urban County Government organized by KRS 67A (“Customer”) and CLEAN ENERGY, a California corporation registered to do business in Kentucky as Clean Energy Corp. Customer and CE, as defined below, are sometimes referred to in this Agreement individually as a “Party” or jointly as the “Parties.”

In consideration of the mutual promises, covenants, and agreements herein contained, the sufficiency of which is hereby agreed to by the Parties, the Parties hereto agree as follows:

**ARTICLE 1
SCOPE OF AGREEMENT AND DEFINITIONS**

1.1 Intent. This Agreement expresses the terms and conditions pursuant to which Customer authorizes CE to perform upgrades to a compressed natural gas fueling station on property owned by Customer located at 675 Byrd Thurman Drive, Lexington, KY 40510.

1.2 Definitions. As used in this Agreement, the following terms and expressions shall have the indicated meanings:

“Agreement” means this document and any and all exhibits attached hereto.

“CE” means Clean Energy acting by and through its employees and officers.

“CNG” means pipeline quality natural gas, compressed for vehicle use.

“CNG Vehicle(s)” means motor vehicles powered by internal combustion engines using CNG as a primary fuel.

“Customer-Caused Delay” means any delay in the performance of the Station Upgrades necessitated by Customer or requested in writing by Customer, including, but not limited to orders to stop work, pursuant to Sections 2.5 and 3.5.

“Final Completion” means the stage in the progress of Station Upgrade construction where the Station Upgrade equipment has been commissioned, start up testing has been completed, and the Station (including the Station Upgrade) is ready to commence fueling CNG Vehicles.

“Premises” means that portion of the real property owned by Customer and located at 675 Byrd Thurman Drive, Lexington, KY 40510 upon which the Station Upgrades will be performed as more fully described in Exhibit II.

“Station” means the facility for refueling CNG Vehicles located on the Premises.

“Station Upgrade” means the upgrades to the Station to be performed by CE as more fully described in Exhibits I and II.

“Substantial Completion” means the stage in the progress of construction of the Station Upgrade where the Station Upgrade is ready for commissioning.

ARTICLE 2 RESPONSIBILITIES OF CE

2.1 Station Upgrade. CE shall perform the Station Upgrades on the Premises; however, Customer shall be responsible for, at Customer’s expense, obtaining all permits and approvals required for the performance of the Station Upgrades, including, without limitation the building permit and Fire Marshall approval. To the extent that this Agreement contemplates the construction of a work of improvement or any related activity for which a Kentucky contractor’s license is required, all such work may be performed by a contractor holding such license.

2.2 Compliance with Law. In performing its obligations under this Agreement, CE shall comply in all material respects with all applicable federal, state, and local laws, regulations, ordinances and rulings, including (but not limited to) those pertaining to health, safety, employment, and environmental matters.

2.3 CE’s Costs. Except as specified in this Agreement, or as may be separately agreed to in writing and signed by the authorized representatives of Customer and CE, CE shall not charge Customer for other costs incurred in providing the services described in this Article.

2.4 Subsurface Due Diligence. The Parties acknowledge and agree that: (a) Customer will provide a survey and/or other documentation to CE which indicates the placement of all subsurface utility lines, wires, cables and/or piping on the Premises (collectively, the “Subsurface Documents”); (b) CE will rely on the Subsurface Documents during its design and construction of the Station Upgrade; and (c) if required by applicable law or regulation, prior to digging on the Premises, CE, or its contractor, shall contact the Subsurface Agency, if any and if applicable, so it can locate and mark underground utilities on surrounding public property, if any. “Subsurface Agency” means the applicable local or state agency, if any, which has responsibility for locating and marking underground utilities on surrounding public property.

In the event, during the design and/or construction of the Station Upgrades, CE incurs any costs and/or expenses based on its reliance on the Subsurface Documents, CE will provide Customer with written notice of such additional costs and/or expenses and Customer will reimburse CE for such costs and/or expenses within fifteen (15) days of the day CE transmits the written notice(s) to Customer. Further, Customer agrees to defend, indemnify and hold CE and its employees, directors, officers and contractors harmless and free from any and all claims, actions, suits, liabilities, damages, fines, penalties, costs and/or expenses which arise based on CE’s, its employees and/or contractors reliance on the Subsurface Documents. Notwithstanding anything to the contrary in this Agreement, CE shall not be legally or financially responsible for the removal of any subsurface structures or any repair of any damage to subsurface structures. As used in this paragraph, subsurface structures includes, without limitation, subsurface utility lines, wires, cables, conduit cables, and/or piping.

2.5 Hazardous Conditions. If CE discovers any underground hazards, soil contaminants, or soil conditions that either (a) require removal, replacement, and disposal of soils or materials, (b) require remediation, or (c) deem the site unsuitable for the performance of the Station

Upgrade, CE shall immediately cease all work and notify Customer. Continuation of the work shall then be subject to Section 3.5 below.

2.6 CE Supervision and Control. CE shall supervise, direct, and administer the work performed by it hereunder. CE shall be responsible for the acts and omissions of all of its employees, agents, and contractors, and for all other persons performing the work under a contract with, or otherwise at the request of, CE.

2.7 Completion.

2.7.1 Substantial Completion.

(a) When CE considers the Station Upgrade to be Substantially Complete, CE shall prepare and submit a written notice to Customer which indicates that, in CE's opinion, the Station Upgrade is Substantially Complete (the "Substantial Completion Notice") and CE shall commence the performance of commissioning and start-up of the Station Upgrade. The day CE transmits the Substantial Completion Notice to Customer shall be deemed the "Date of Substantial Completion". Upon Customer's receipt of the Substantial Completion Notice, CE and Customer shall work together to determine the list of Station Upgrade related items which still need to be completed by CE prior to Final Completion (the "Punch List Items") and such Punch List Items shall be memorialized in a writing which is agreed to by Customer and CE (email to suffice).

2.7.2 Final Completion.

(a) Upon CE's completion of the Punch List Items and when the Station Upgrade is deemed to have reached Final Completion by CE, CE shall provide a written notice to Customer (the "Final Completion Notice"). The day CE transmits the Final Completion Notice to Customer shall be deemed the "Date of Final Completion".

2.7.3 In the event, after the Date of Substantial Completion but prior to the Date of Final Completion, Punch List Item Completion or Final Completion by CE is materially delayed, and such delay is beyond the reasonable control of CE, CE may, at a time reasonably determined by CE, invoice Customer for all work and services performed and/or equipment ordered by CE pursuant to this Agreement, notwithstanding anything to the contrary in Section 3.6, Contract Sum, below and Customer shall pay such invoices in accordance with Section 3.3 below.

2.8 Warranty. CE warrants to Customer that the Station Upgrades shall be free from defects in material and workmanship. The foregoing warranty shall not apply to any part of the Station Upgrades that are not manufactured by CE, as to which (a) CE hereby assigns to Customer, to the extent assignable, any warranties made to CE and (b) CE shall have no other liability to Customer under warranty, tort or any other legal theory. If Customer gives CE prompt written notice of breach of this warranty within one (1) year from the Date of Substantial Completion (the "Warranty Period"), CE shall, at its sole option and as Customer's sole remedy, provide replacement parts to Customer, repair (Customer to provide CE with unencumbered access to the equipment), or refund the purchase price therefore. If CE repairs or replaces the defective part(s), the Warranty Period described in this Section shall extend, as to that part only, for a period of time equal to the number of days during which Customer was unable to use the part and/or operate the Station Upgrades based on the defective part.

If CE determines that any claimed breach is not, in fact, covered by this warranty, Customer shall pay CE its then customary charges for any repair or replacement made by CE, or in the event CE refunded Customer the purchase price, Customer shall promptly return such refund to CE. CE's warranty is conditioned on Customer (a) operating and maintaining the Station Upgrades in accordance with CE's instructions, (b) not making any unauthorized repairs or alterations, and (c) not being in default of any payment obligation to CE. CE's warranty does not cover damage caused by chemical action or abrasive material, misuse, or improper installation (unless installed by CE). THE WARRANTIES SET FORTH IN THIS SECTION ARE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTIES. CE MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

2.9 Premises. CE shall keep the Premises and surrounding area free from accumulation of waste materials or rubbish caused by its work under this Agreement.

ARTICLE 3 CUSTOMER'S RESPONSIBILITIES

3.1 Utilities. If applicable, Customer shall responsible for bringing all utility service lines, including, without limitation, natural gas (including, without limitation, the installation of a high pressure gas line extension to the Station (if applicable)), electric and phone/data lines, to the locations indicated by CE and Customer shall pay all connection or installation costs and/or fees associated with installing such utility service for the Station Upgrade. In addition, Customer shall be responsible for payment of all utility service charges for utility service consumed at the Station (including, without limitation, by the Station Upgrade) including, without limitation, electricity, water, waste disposal, refuse collection, and other utility-type services furnished to CE or the Station except for telephone utility service for which CE is the account holder but Customer is responsible for reimbursing CE for all costs related thereto. Customer shall be solely responsible for granting any land rights necessary for the installation of any utilities. Notwithstanding anything to the contrary herein, CE makes no representation or warranty regarding the quality, specification, or content of natural gas dispensed from the Station.

3.2 Compliance with Law. In performing its obligations under this Agreement, Customer shall comply in all material respects with all applicable federal, state and local laws, regulations, ordinances, and rulings, including, but not limited to, those pertaining to health, safety, employment, and environmental matters.

3.3 Payment of CE Billings.

3.3.1 Customer shall pay each invoice submitted by CE within fifteen (15) days of the date the invoice is received by Customer. For purposes of this section, receipt shall be defined as three (3) days after the invoice is mailed by CE. Any payments not made when due shall accrue interest on the unpaid amount at a rate of eighteen percent (18%) per annum, calculated from the date payment is due to and including the date payment is received by CE. **IF PERMITTED BY LAW, CE SHALL PASS THROUGH TO CUSTOMER ANY SURCHARGES INCURRED BY CE RELATED TO CUSTOMER'S PAYMENT OF ITS INVOICES THROUGH USE OF A CREDIT CARD.**

3.3.2 In the event Customer disputes the amount of an invoice or an amount included in an invoice, it shall send CE a written notice which describes the disputed amount and details the specific grounds for Customer's dispute of such charges (the "Invoice Dispute Notice") within five (5) days of Customer's receipt of such invoice (the "Dispute Period"). Customer's failure to provide the

Invoice Dispute Notice within the Dispute Period shall constitute acceptance of the total amount owed by Customer to CE pursuant to the invoice.

If Customer, in good faith, provides the Invoice Dispute Notice during the Dispute Period, Customer shall pay all undisputed amounts in accordance with Section 3.3.1 above and the Parties shall work together to resolve the dispute. In the event the disputed amount(s) are determined to have been owed to CE by Customer, interest will be deemed to have begun accruing when such amount became past due. If the Parties are unable to resolve the dispute, CE may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

3.4 Customer Costs.

3.4.1 Except as specified in this Agreement, or as may be separately agreed to in writing by Customer and CE, Customer shall not charge CE for the materials or labor utilized in providing the services provided in this Article. Customer shall be responsible for all taxes (including, without limitation, any real property taxes and assessments) relating to the Premises.

3.4.2 In the event that Customer desires to modify the Station Upgrade in any manner that deviates from Exhibit I or any of the other terms herein, Customer shall submit a written Change Order Request (“COR”), signed by the authorized Customer representative, to CE detailing its requested changes. CE shall provide Customer with a written estimate of the costs for executing the changes requested in the COR (“COR Estimate”). If Customer elects to have CE proceed with the work detailed in the COR, the authorized Customer representative shall sign and return the COR Estimate to CE. Upon receipt of the signed COR Estimate, CE shall proceed and execute the changes to completion. CE shall notify Customer if the costs for executing the work in the COR exceed the COR Estimate by more than 10%, and shall not incur costs more than 10% above the COR Estimate without the prior written consent of Customer. Customer shall pay invoices, in accordance with Section 3.3, for all amounts due pursuant to this Section 3.4.2, including, but not limited to all amounts in any COR Estimate that has been signed by Customer, any costs for executing the work that exceed the signed COR Estimate by up to ten percent (10%) of the COR Estimate and any costs that have been pre-approved, in writing by Customer for CE’s execution of work that exceeds the signed COR Estimate by over ten percent (10%).

3.4.3 In the event that CE reasonably incurs costs (“Additional Costs”) in connection with the performance of the Station Upgrade due to: (a) any Force Majeure event; (b) any delay (including, without limitation, demobilization and re-mobilization costs) in construction associated with either pre-existing or migratory contamination or hazardous materials on the Premises; (c) permitting requirements related to the Premises which are not standard requirements in the CNG station construction industry; (d) Customer review of any drawings for the Station Upgrade takes longer than five (5) business days; (e) Receipt of applicable construction permits for the Station Upgrade takes longer than four (4) weeks; (f) any storm water management requirements; (g) changed site requirements; (h) Customer-Caused Delay; (i) unknown or unseen Premises conditions, including, but not limited to, underground obstructions, active or abandoned lines, pipes, conduit and/or electrical wires/cables; (j) requirements of the applicable utility related to electric service limitations; or (k) the Authority Having Jurisdiction (“AHJ”) requiring CE to modify the Station Upgrade, or the Premises, in any manner that deviates from Exhibit I or any of the other terms herein, including, without limitation, modifications related to landscaping, decorative fencing, fence slats, paving in lieu of gravel, offsite improvements and sidewalks; Customer shall reimburse CE for all such reasonable, substantiated Additional Costs, which shall be billed in accordance with CE’s Time and Materials Rates as described in Appendix 1, which is attached hereto and incorporated herein by reference. CE shall furnish Customer with reasonable written evidence of such Additional Costs. Customer

shall pay invoices, in accordance with Section 3.3, for all amounts due pursuant to this Section.

3.4.4 In the event that CE incurs costs in connection with: (a) the installation of utilities (including, but not limited to, natural gas, electric, and phone/data lines services) adjacent to the Premises or any other requirements of any provider of utility service; or (b) the utility point of interconnection changes; Customer shall reimburse CE for all such costs, which shall be billed in accordance with CE's Time and Materials Rates as described in Appendix 1, which is attached hereto and incorporated herein by reference. Customer shall pay invoices, in accordance with Section 3.3, for all amounts due pursuant to this Section.

3.5 Premises Conditions. In addition to allowing CE to conduct environmental testing at the Premises, Customer shall provide CE with access to the Premises, and any records, surveys, and other materials in the possession of Customer, to allow CE to determine if the Premises is clear of pre-existing underground hazards, soil contaminants, or soil conditions that would impact the performance of the Station Upgrades.

If, at any time during the Term of this Agreement, it is determined that underground hazards, soil contaminants or soil conditions exist (including, without limitation, migratory pollution or other migratory conditions) that either (a) require removal, replacement, and disposal of soils or materials, (b) require remediation, or (c) require unanticipated soil or foundation preparation work, CE shall not be financially and/or legally responsible for such underground hazards, soil contaminants, and/or soil conditions and any required remediation, removal, replacement preparation work, and/or disposal. CE shall notify Customer in writing, whereupon Customer may, at its sole option and expense, either (x) terminate this Agreement upon written notice to CE, whereupon Customer shall pay CE for any and all work completed up to the date of termination and any and all reasonable costs related to the performance of the Station Upgrade, paid or irrevocably committed to by CE prior to such termination, or (y) suspend this Agreement in order to undertake such remediation, removal, replacement, and/or disposal.

If Customer does not terminate this Agreement and does not commence, within thirty (30) days after discovery of any such underground hazard or soil contaminant or soil condition, and thereafter, diligently prosecute to completion the correction of such condition, CE may, without further obligation or penalty, terminate this Agreement for cause by written notice to Customer and Customer shall pay CE for any and all work completed up to the date of termination and all costs related to the performance and/or removal of the Station Upgrades paid or committed to by CE prior to the effective date of termination. This Section shall survive termination of this Agreement.

3.6 Contract Sum. Customer shall pay CE, for CE's performance of this Agreement, the total amount of **ONE HUNDRED EIGHTY ONE THOUSAND SIX HUNDRED SEVENTY TWO DOLLARS (\$181,672)**.

Throughout the course of this Agreement, but no more frequently than monthly, CE shall draft and submit invoices to Customer for payments which shall be credited against the Contract Sum owed by Customer to CE. The amount of the invoice will be determined based on the percentage of completion of the Station Upgrade which shall be determined by CE based on costs incurred by CE related to the Station Upgrade and payments made by CE related to the Station Upgrade (including, without limitation, any progress payment(s) made for equipment which is not yet delivered to the Premises). On, or within a reasonable period of time after, the Date of Substantial Completion, to the extent such amounts have not already been paid by Customer to CE, CE shall invoice Customer for (i) any amounts due to CE pursuant to Sections 3.4.2, 3.4.3 and 3.4.4, (ii) the difference between ninety-seven percent (97%) of the Contract Sum and the

amount of the Contract Sum already paid by Customer to CE prior to the Date of Substantial Completion, and (iii) any other amounts due to CE pursuant to this Agreement. On, or within a reasonable period of time after, the Date of Final Completion, CE shall invoice Customer for the remaining three percent (3%) of the Contract Sum (the “Retainage”). In the event there are any amounts which are due to CE and accrued on or after the Date of Substantial Completion, CE may invoice Customer for such amounts at any reasonable interval (as determined in CE’s discretion).

ARTICLE 4 USE OF PREMISES

4.1 Permitted Use. To enable CE to fulfill its obligations set forth herein, Customer hereby grants the right of ingress to and egress from the Premises, on a non-exclusive basis, to CE and its employees, agents, servants, customers, vendors, suppliers, patrons, and invitees for the sole purpose contemplated hereby in accordance with the terms and conditions of this Agreement. Customer shall not, and shall not permit others to, levy any rent or charge against CE for the use of the Premises.

4.2 Title. Customer represents that it is the owner of the Premises and has full authority to enter into this Agreement. So long as Customer is not in breach of any term of this Agreement and has timely paid all of CE’s invoices, then CE shall make timely payment to all contractors performing work on behalf of CE and shall, at its expense, cause any lien filed by any contractor performing work on behalf of CE to be canceled or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise within thirty (30) days after CE receives actual notice of the filing of such lien, charge, or order for the payment of money.

ARTICLE 5 TERM AND TERMINATION

5.1 Term. The term of this Agreement shall commence on the Effective Date and end on the date CE receives the Retainage from Customer, or when earlier terminated pursuant to this Agreement (“Term”).

5.2 Notice to Commence Work. Full execution of this Agreement shall be deemed notice from Customer to CE to commence performance of the Station Upgrades.

5.3 Termination. Notwithstanding the above, upon a material breach of this Agreement, the non-breaching Party shall have the right to terminate this Agreement, for cause, upon fifteen (15) days written notice and opportunity to cure to the other Party, provided, however, that where it is not commercially reasonable to fully effect a cure to the non-breaching Party within the fifteen (15) day period set forth above, the Party in breach shall not be deemed to be in default of the Agreement and subject to termination for cause where it commences implementation of the cure within such fifteen (15) day period and thereafter proceeds diligently to cure the breach.

5.4 Payment for Work Completed. In the event of any termination of this Agreement, provided that CE is not in material default of this Agreement, Customer shall pay CE for all work completed up to the date of termination and any and all reasonable costs related to the performance of the Station Upgrades, paid or committed to by CE, prior to such termination. This Section 5.4 shall survive termination of this Agreement.

ARTICLE 6
INDEMNIFICATION, LIMITATION OF LIABILITY AND FORCE MAJEURE

6.1 **Indemnity by Customer.** Except to the extent that liabilities arise from the negligence or willful misconduct of CE, or its officers, directors, employees, agents, contractors or subcontractors, to the extent allowed by law, Customer agrees to indemnify, defend, and protect CE and its officers, directors, employees and agents from and against and hold CE and its officers, directors, employees and agents harmless and free from any and all liability, loss, cost, expense or obligation, including without limitation reasonable attorneys' fees, court costs and other expenses, including without limitation, those of appeal, on account of or arising out of, injury to or death of any person or persons or damage to or loss of use of property, from whatever cause, occurring during the Term related in any way to: (a) the use of the Station, including without limitation, the Station Upgrades by Customer or its officers, directors, employees, agents, contractors or subcontractors; (b) negligence or willful misconduct by Customer or its officers, directors, employees, agents, contractors or subcontractors; (c) pre-existing or migratory contamination on the Premises; or (d) material breach of this Agreement by Customer. This shall not be deemed a waiver of sovereign immunity or any other third party defense available to Customer.

6.2 **Indemnity by CE.** Except to the extent that liabilities arise from the negligence or willful misconduct of Customer, its officers, directors, employees, agents, contractors, or subcontractors, CE agrees to indemnify, defend, and protect Customer and its officers, directors, employees and agents from and against and hold Customer and its officers, directors, employees and agents harmless and free from any and all liability, loss, cost, expense or obligation, including without limitation reasonable attorneys' fees, court costs and other expenses, including without limitation, those of appeal, on account of or arising out of, injury to or death of any person or persons or damage to or loss of use of property, from whatever cause, occurring during the Term related in any way to (a) the performance of the Station Upgrades by CE (except for any aspect of the Station Upgrades attributable to Customer or its officers, directors, employees, agents, contractors or subcontractors); (b) negligence or willful misconduct by CE or its officers, directors, employees, agents, contractors or subcontractors; (c) contamination of the Premises that was not pre-existing and is caused solely and directly by CE or its employees or agents; or (d) material breach of this Agreement by CE.

6.3 **Indemnification Procedure.** In the event any action is commenced or claim is made or threatened against an indemnified party ("Indemnitee") to which the other party ("Indemnitor") is obligated to indemnify or hold it harmless, Indemnitee shall promptly notify Indemnitor of such event and Indemnitor shall assume the defense of, and may settle, that part of any such claim or action commenced or made against Indemnitee which relates to Indemnitor's indemnification and Indemnitor may take such other steps as may be necessary to protect itself. Indemnitor shall not be liable to Indemnitee on account of any settlement of any such claim or litigation affected without Indemnitor's consent. The right of Indemnitor to assume the defense of any action shall be limited to that part of the action commenced against Indemnitee which relates to Indemnitor's obligation of indemnification and holding harmless.

6.4 **Additional Damages.** Neither Party shall have any liability to the other Party for special, consequential, or incidental damages, except however in connection with a claim made against either Party by a third party, provided that such claim arises out of or results from the negligence or willful misconduct or any other claim within the scope of the indemnity obligations of CE or Customer, as applicable, under this Agreement.

6.5 **Force Majeure.** In the event that CE is prevented from performing its duties and

obligations pursuant to this Agreement by circumstances reasonably beyond its control, including, without limitation, fires, floods, labor disputes, war, acts of terrorism, the interruption of utility services, or Acts of God (hereinafter referred to as “Force Majeure”), then CE shall be excused from performance hereunder during the period of such disability (the “Force Majeure Period”). If CE claims Force Majeure, CE shall promptly notify Customer it learns of the existence of a Force Majeure condition, and will also provide Customer with an estimate, if one can be reasonably made, of the anticipated Force Majeure Period. CE will also promptly notify Customer after the Force Majeure condition has terminated. CE shall agree to use commercially reasonable efforts to correct whatever events or circumstance cause the Force Majeure event. In the event that the Force Majeure condition persists for a period of thirty (30) days or more, CE and/or Customer shall have the right to terminate this Agreement, provided that Customer shall pay CE for any and all work completed up to the date of termination and any and all reasonable costs related to the performance of the Station Upgrades, paid or irrevocably committed to by CE, prior to such termination. In the event any Force Majeure condition causes damage to the Station Upgrades prior to the Date of Final Completion, CE shall, upon Customer’s request, promptly repair any such damage and rebuild the Station Upgrades to the extent the cost of such repairs, including CE’s labor, are covered by insurance proceeds made available to CE. For any such repairs not covered by such insurance proceeds, CE shall submit a COR to Customer for the additional cost of the repairs and all work performed by CE shall be governed by Section 3.4.2.

ARTICLE 7 INSURANCE

Insurance. CE and Customer shall each procure at their respective expenses, and maintain in full force and effect during the term of this Agreement, including any renewals, with insurance carriers rated at least A-VIII or better in A.M. Best’s Insurance Report and admitted to do business in the state where the Station Upgrade is located, the following primary insurance in the minimum amounts specified.

- a. Commercial General Liability Insurance, including coverage at least as broad as the latest version of the Insurance Service Office Commercial General Liability coverage (occurrence form CG 0001) or its equivalent with limits of no less than \$1,000,000. Coverage shall be provided for all operations and premises, completed operations, products liability, property damage, personal injury liability, and contractual liability.
- b. Commercial Automobile Liability Insurance, including owned, non-owned and hired automobiles covering bodily injury and property damage, to a combined single limit of not less than \$1,000,000 with the coverage provided by Insurance Services Office Form Number CA 0001. This coverage is to be provided in the event Customer operates, rents, or owns automobiles in the conduct of its business under this contract.
- c. Workers Compensation in compliance with minimum limits set forth in applicable state and federal laws.
- d. Employers Liability, with limits of not less than \$1,000,000 for bodily injury by accident (each accident) and bodily injury by disease (for each employee, with an aggregate \$1,000,000 limit.).
- e. Excess or Umbrella Liability that provides coverage for the insurance policies stated above in an amount of not less than \$5,000,000.

f. Professional Liability:

a. Per Claim – limits of not less than \$1,000,000 and \$2,000,000 aggregate

g. Pollution Legal Liability, with limits of not less than \$5,000,000 per claim and \$5,000,000 aggregate including coverage for all operations, completed operations and professional services including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; 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; and defense, including costs, charges and expenses incurred in the investigation or adjustment and 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.

Policies issued shall include the following:

1. Intentionally Omitted.
2. A thirty (30) days advance written notice in the event of cancellation for all policies above.
3. Excluding Professional Liability, Transfer of Rights or Waiver of subrogation in favor of the other Party.
4. Separation of insureds (General Liability and Automobile Liability policies only).
5. There shall be no endorsement reducing the scope of coverage required above unless approved in advance by the other Party.

Coverage for Equipment/Property. It is the responsibility of Customer and CE to each provide coverage for its property.

Deductibles and Self-Insured Retentions. Customer and CE are each responsible for paying all deductibles or self-insured retentions under their respective policies required pursuant to this Agreement.

If applicable, limits of insurance for the policies above may be provided through a combination of a primary liability policy and an excess or umbrella liability policy of insurance.

Except as set forth in this Agreement including the waivers of subrogation, the requirements for carrying the foregoing insurance shall not derogate from the provisions of indemnification as set forth in this Agreement. If a Party maintains higher limits than the minimums shown above, the other Party requires and shall be entitled to coverage for the higher limits maintained.

CE shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

Lexington Fayette Urban County Government
200 East Main Street
Lexington, KY 40507

Attn: Division of Central Purchasing
Fax: (859) 258-3194

Customer shall send certificates of insurance evidencing such coverage within thirty (30) days after the date of this Agreement to:

Clean Energy
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
Attn: Barbara Johnson
Fax: (949) 724-1397

ARTICLE 8
DESIGNATED REPRESENTATIVES AND NOTICES

8.1 Representatives. Each Party hereby designates the following as its representative (“Designated Representative”) for the administration of this Agreement:

CE: Chad Lindholm
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
Telephone: (949) 437-1000
Fax: (949) 724-1397

Customer: Department of Law - Commissioner
200 East Main Street
Lexington, KY 40507
Telephone: (859) 258-3500

8.2 Dispute Resolution. In the event a dispute occurs pursuant to this Agreement, the Designated Representatives of each Party shall meet and attempt to resolve any such dispute in good faith.

8.3 Notices. Notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal delivery, facsimile, or by overnight delivery carrier and shall be deemed to be delivered upon receipt. The addresses set forth below shall be the addresses used for notice purposes unless written notice of a change of address is given:

CE: Clean Energy
4675 MacArthur Court, Suite 800
Newport Beach, CA 92660
Attn: Chad Lindholm
With a Copy to: SVP, Corporate Transactions and CLO
Fax: (949) 724-1397

Customer: Lexington Fayette Urban County Government
Division of Waste Management
675 Byrd Thurman Drive
Lexington, KY 40510
Attn: Ms. Tracy Thurman, Director of Waste Management
Fax: (859) 258-3910

ARTICLE 9
MISCELLANEOUS

9.1 Assignment. Neither Party shall have the right to assign its rights or obligations hereunder, in whole or in part, without obtaining the prior written consent of the other Party and any attempted assignment without such prior written consent shall be void. Permitted assigns shall have the benefit of, and shall be bound by, all terms and conditions of this Agreement.

9.2 Headings. The headings in this Agreement are for convenience and reference only, and shall not affect the interpretation of this Agreement.

9.3 No Joint Venture. CE shall perform its duties herein as an independent contractor. Nothing contained herein shall be considered to create the relationship of employer and employee, partnership, joint venture, or other association between the Parties, except as principal and independent contractor.

9.4 Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or different character. No waiver or modification of this Agreement shall occur as the result of any course of performance or usage of trade.

9.5 Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law, but only if, and to the extent, such enforcement would not materially and adversely alter the Parties' essential objectives as expressed herein.

9.6 Governing Law, Forum, and Venue. This Agreement shall be subject to and construed in accordance with the laws of Commonwealth of Kentucky.

9.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement. Signatures to this Agreement transmitted by facsimile, email, portable document format (or .pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as the physical delivery of the paper document bearing original signature.

9.8 Attorney's Fees. If any action at law or equity is commenced concerning this Agreement or to enforce its terms, the prevailing Party in such matter shall be entitled to the payment of reasonable attorneys' fees and costs as determined by the Court, in addition to any other relief which may

be awarded to that Party.

9.9 Additional Documents. The Parties agree to execute and to deliver to each other any and all other additional documents and to take any additional steps reasonably necessary to complete, to document, and to carry out the business transaction contemplated by this Agreement.

9.10 Negotiated Transaction. The drafting and negotiation of this Agreement has been participated in by all of the Parties. For all purposes, this Agreement shall be deemed to have been drafted jointly by each of the Parties.

9.11 Representation Regarding Authority to Sign Agreement. Each of the representatives of the Parties signing this Agreement warrants and represents to the other that he, she, or it has the actual authority to sign this Agreement on behalf of the Party for whom he, she, or it is purporting to represent.

9.12 Entire Agreement. This Agreement and its exhibits contain the entire agreement between the Parties and it supersedes any prior written or oral agreements between the Parties concerning the subject matter of this Agreement. There are no representations, agreements, or understandings between the Parties relating to the subject matter of this Agreement which are not fully expressed within this Agreement and its exhibits.

9.13 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

9.14 Modification. This Agreement shall not be modified, amended, or changed except in a writing signed by each of the Parties affected by such modification, amendment, or change.

9.15 Further Assurances. All of the Parties to this Agreement agree to perform any and all further acts as are reasonably necessary to carry out the provisions of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives, effective as of the date first set forth above.

**CLEAN ENERGY (registered in
Kentucky as Clean Energy Corp.)**

**LEXINGTON FAYETTE URBAN COUNTY
GOVERNMENT**

By: _____
Name: Chad Lindholm
Title: VP, Sales

By: _____
Name: _____
Title: _____

EXHIBIT I
STATION UPGRADE

For the performance of the Station Upgrade, CE shall:

1. Install, to the existing K-rail, seven (7) dual and one (1) single hose time fill posts (15 fueling points);
2. Three (3) ESD posts; and
3. One (1) coalescing filter.
4. Defueling panel and vent (to be located at maintenance garage).

Exclusions

- Notwithstanding the foregoing, the scope of work for the Station Upgrade does not include the installation of a concrete pad under the K-rail and to the extent this is necessary, such costs will be paid by Customer to CE pursuant to the terms of Section 3.4.3 of the Agreement.

EXHIBIT II
THE PREMISES AND STATION UPGRADE LOCATION

The Station Upgrade work depicted and described in this Agreement is shown for conceptual purposes only below in locations which are approximate and may be modified by CE as described in the Agreement.



APPENDIX I

“TIME AND MATERIALS RATES”

Labor	Unit	Unit Rate	Overtime Rate
Project Manager	Hourly	\$135.00	\$202.50
Project Engineer	Hourly	\$125.00	\$187.50
Project Planner	Hourly	\$115.00	\$172.50
Materials		Cost plus 10%	
Subcontractors		Cost plus 10%	

Customer will be responsible for all applicable taxes, fees and assessments, including, without limitation, sales and use taxes which are imposed on CE or its affiliates or subcontractors related to construction.