

Memorandum of Understanding and Irrevocable License  
between the  
City of Lemoore  
and  
Lemoore Union High School District,  
Lemoore Union Elementary School District,  
Island School District, and  
Central Union Elementary School District

This Memorandum of Understanding and Irrevocable License (collectively, the “MOU”) is entered into between the City of Lemoore (herein referred to as “City”) and Lemoore Union High School District, Lemoore Union Elementary School District, Island School District, and Central Union Elementary School District (a majority of the members and co-tenants of the Property of an association of school districts collectively referred to herein as Lemoore Area Schools Transportation or “LAST”) (City and LAST are referred to as the “Parties”).

Section 1. Scope of MOU

This MOU is an agreement setting forth the rights, duties, and obligations between the City and LAST on the construction, operation, maintenance, and other issues related to a Compressed Natural Gas (CNG) fueling station (the “Facility”) to be located on property owned in co-tenancy in various percentages by the school districts collectively named herein as LAST, who have a majority interest in the property located at 857 W. Iona Avenue, Lemoore, CA (the “Property”). The Facility is intended for the use and benefit of the City, LAST and, on the Facility’s expansion after initial construction, the general public.

Section 2. Term of MOU

This MOU shall be effective on \_\_\_\_\_, 2010 and shall be for a period of 30 years terminating on \_\_\_\_\_, 2040 unless further extended as set forth below. The MOU may be renewed thereafter in ten year increments upon agreement of the City and a majority of the co-tenancy interest of the school districts owning the Property. The Parties shall commence negotiations for the first ten year extension not later than five years prior to the end of this MOU. The Parties further agree to begin negotiations of future and subsequent extensions of the MOU not later than five years before the ending date of the MOU term as extended from time to time.

Section 3. Grant of Irrevocable License to City; Recordation

Notwithstanding the term of the MOU, LAST hereby grants an irrevocable license in the Property to the City as to that portion of the Property bearing a legal description as described in Exhibit A and depicted in Exhibit B (the “License”) for a period of 50 years from the effective date of the MOU as set forth in Section 2. The irrevocable license shall also be a covenant running with the land. Either Party shall have the right to record a memorandum of license, or the MOU, in order to provide notice, as a matter of record, of the existence of the License and to perfect the covenant running with the land with respect to the Property.

Section 4. Initial CNG Fueling Station Construction

- 4-1. Available Funds for Initial Construction. The City will dedicate \$424,724 given to the City by Leprino Foods as a NOx mitigation effort and \$200,000 awarded to the City through an AB118 grant (the “budgeted amount”) to the initial design and construction of the Facility. As of the date of this MOU, the City represents it has signed a contract with Ron Smith of Adrianus Resources for consulting services for overseeing construction of the Facility in the amount of \$25,000. The contribution from Leprino Foods and the AB118 grant money shall serve as the maximum cost, unless otherwise agreed in writing between the Parties, for the Facility. Facility construction shall include the design and initial construction of the time-fill and public access fast-fill portions of the CNG Facility. Other voluntary funding sources may augment the budgeted amount for both the time-fill and the fast-fill portions of the CNG Facility, including grants, direct contributions, and in-kind contributions. As of the date of this MOU, neither Party has budgeted any additional funding other than the budgeted amount.
- 4-2. Design and Initial Construction. The City and LAST shall agree on the design and initial construction of the Facility.
- 4-3. Initial Construction of Facility. Lemoore Union High School District (“LUHSD”) shall have the responsibility and authority to bid and award construction of the Facility to the extent required by law. The City shall reimburse LUHSD for the construction costs of the Facility not to exceed the amount as set forth in section 4-1. LUHSD shall meet and confer with the City regarding any potential cost overruns or change orders which threaten to exceed the available funds described in section 4-1. If costs exceed the available funds, the Parties shall negotiate and agree in writing to the extent costs exceed available funds.

## Section 5. CNG Station Management and Operation

- 5-1. Ownership of Facility. Subject to the City’s irrevocable license, LAST shall have sole ownership of the Facility.
- 5-2. Administration of Finances. LAST, through LUHSD, will be responsible for the administration of the finances for the CNG Fueling Station, including paying the electricity, natural gas, and maintenance bills and payments from the set-aside fund for major (capital) major maintenance and repairs (the “set-aside fund.”) The City agrees to reimburse LAST its proportionate share of all expenses (cost of natural gas, electricity, contracted maintenance, and contribution to the maintenance set-aside fund) as described in Section 6-1.
- 5-3. Access to Facility; Parking Spaces. The City and LAST shall have 24 hour access to the Facility. The Facility shall be operational 24 hours a day except for unforeseen circumstances which render the Facility inoperable. LAST will provide as many parking spaces for the vehicles of City employees as there are filling posts on the City’s time-fill line.
- 5-4. Facility Repairs. Both the City and LAST will notify the each other no more than 24 hours after either is placed on notice that the Facility is not operating and shall call the maintenance company under contract in order to make the necessary repairs. Both LAST and the City shall have the authority to direct repairs to the Facility.
- 5-5. Gas and Electricity Meters. All gas and electricity meters for the CNG Fueling Station shall be separate from any other uses on the Property.

- 5-6. Facility Upgrades. Nothing herein shall prevent either the City or LAST from constructing Facility upgrades on the Property subject to the License; provided, however, that such Party shall seek the concurrence of the other Party regarding the Facility upgrade and such Party shall bear the cost of construction for such Facility upgrade. Any Facility upgrades shall be compatible with the existing use and construction of the Facility. Both Parties acknowledge their intention to construct upgrades to the Facility at some future date after execution and approval of the MOU.
- 5-7. Primary Contact Persons. LAST and the City shall designate a primary contact person or persons to address matters relating to the MOU and operation of the Facility.

## Section 6. Rate Schedule and Billing

- 6-1. Payment of Gas and Electric Bills. The City and LAST shall pay their proportionate share of CNG bills and electric bills. The proportion shall be determined by taking the per therm of CNG used by each Party, as determined by the meters at the line of time-fill hoses, as the numerator of each Party's share over the denominator which shall be the sum of total usage by City and LAST. The proportion shall exclude any usage of the fast-fill component, if applicable. This proportion of costs, determined monthly, will then be applied to the gas and electric bills and each Party will pay its proportionate share. LAST will bill the City for each of the above mentioned components monthly based on the previous month's usage. The City agrees to remit payment to LAST within 30 days of receipt of invoice. LAST shall make available, upon request by the City, all invoices, usage records, and any other documentation relating to the pricing of the CNG and calculation of the bills invoiced to the City.
- 6-2. Maintenance Contract. A monthly maintenance contract for the Facility will be paid (split) 50% by the City and 50% by LAST for the first 5 years of the MOU. The CNG cost for public access and use of the fast-fill station will include a maintenance charge component. This maintenance charge, to the extent paid and available, shall be used and credited against the cost of the monthly maintenance contract. The shared cost between the City and LAST will be split after deduction of this credit. Thereafter, the percentage of payment between the Parties will be reviewed annually and based on the annual usage of each user from the prior year and shall take into account the maintenance charge credit from public use as described above. Any maintenance costs incurred due to employee negligence will be paid by the appropriate Party.
- 6-3. Set-Aside Fund. The Parties shall meet, confer, and agree on an appropriate flat rate per therm to be contributed to the set-aside fund for major (capital) maintenance repairs. Any and all cash rebates associated with CNG usage will be added to this set-aside fund. Any revenue in excess of direct costs attributable to and resulting from the public access and use of the fast-fill station shall also be added to this set-aside fund. This set-aside fund will be capped at \$50,000. City and LAST will make contributions, as necessary, to maintain the fund at the \$50,000 cap. The amount of the set-aside fund cap may be changed upon the written agreement of the Parties.
- 6-4. Price Determination of CNG for Public Use. At such time that a public access fast-fill station is constructed, the City and LAST will meet and agree as to the appropriate price per therm of CNG to charge the public. The price of CNG dispensed at the fast-fill station will account for electricity costs, natural gas costs, station maintenance costs, a minimum contribution to the set-aside fund, and a pre-determined mark-up for its associated fast-fill usage. There will be a lesser rate, to be agreed upon, charged to City and LAST vehicles which use the fast-fill station.

## Section 7. Insurance and Liability

- 7-1. Indemnity. The City and LAST assume their separate risk relating to their separate operations and fueling of their respective motor vehicles at the Facility. Each Party agrees to hold the other Party, its agents, officers, and employees harmless from any and all damages or injuries resulting directly or indirectly from ingress, egress, fueling, or any other use of the Facility to the extent caused by the actions or inactions of the other Party. The co-tenants of LAST may agree, apart from this MOU, regarding their indemnity and liability among themselves regarding their individual school district use of the Facility.
- 7-2. Liability Insurance. City and LAST shall each maintain comprehensive General Liability Insurance in the amount of One Million Dollars (\$1,000,000) combined single limit to protect City and LAST, their officers, agents, and employees against claims for bodily injury and property damage arising from City's or LAST's use of the facility. The form of such insurance shall be satisfactory to City and LAST and may include self-insurance at levels acceptable to the Parties. Each Party's policy or policies shall name the other party (City or LAST) as additional insureds. The policies shall also contain a notice of cancellation provision in order to notify a lapse in insurance to the additionally insured Party.
- 7-3. Third Party Liability. Any additional damage or cost of insurance resulting from public access (third parties) and use of the Facility shall be shared equally between the City and LAST. However, City and LAST reserve their right to be indemnified as to each other with respect to any liability arising from the negligence caused by the other Party and giving rise to the liability with respect to such third parties.

## Section 8. Dispute Resolution

Any dispute arising out of the MOU will be resolved by an alternative dispute resolution ("ADR") process as follows:

- 8-1. Written Dispute: If informal discussions do not resolve the dispute, both Parties shall describe the dispute in writing. If the City and LAST cannot agree on the exact language, each Party shall specify in a separate writing the basis for the dispute.
- 8-2. City Manager/Superintendent Resolution: The written dispute shall be presented to the City Manager for City and the LAST Designated Superintendent who shall meet and attempt to resolve the dispute within five (5) business days or as soon thereafter as possible.
- 8-3. Mediation; Binding Arbitration: Mediation is, by definition, a voluntary and non-binding process. If the Parties agree, the dispute will be referred to a mediation service as determined by the Parties to attempt to resolve the dispute. If either Party elects not to proceed to mediation, the dispute shall be submitted to binding arbitration pursuant to the rules of the American Arbitration Association ("AAA") or to an arbitration service agreed to by the Parties. Any costs incurred and charged by the mediation or arbitration service shall be equally shared by the Parties. However, the Parties shall incur their own costs and fees apart from the costs charged by the mediation or arbitration service.

## Section 9. General Provisions

- 9-1. Modification. This MOU may only be modified in writing and executed by the Parties.
- 9-2. Binding Effect. This MOU is binding on the successors and assigns of the Parties. After execution and approval of the MOU by LAST, any additional or successor school districts of LAST and any additional or successor co-tenants of the Property shall be bound by the MOU. Any co-tenant and current school district member of LAST which does not execute the MOU prior to the effective date as set forth in Section 2 shall not be entitled to the benefits of the MOU or access to the Facility.
- 9-3. Execution in Counterpart. The Parties, including the school district members of LAST as a Party, may sign the MOU on separate signature pages. Copies of signatures may be relied upon as if original signatures for all purposes. Signatures shall constitute an acknowledgment that the MOU was ratified by the City and the co-tenants and the school district members of LAST named herein.

WHEREFORE, the Parties hereto, by their signatures hereinbelow, enter into this MOU effective as set forth in Section 2 above.

**LAST:**

**LEMOORE UNION HIGH SCHOOL DISTRICT**

Date: \_\_\_\_\_

\_\_\_\_\_  
 Superintendent, Lemoore Union High School District  
 Dwight M. Miller

**LEMOORE UNION ELEMENTARY SCHOOL DISTRICT**

Date: \_\_\_\_\_

\_\_\_\_\_  
 Superintendent, Lemoore Union Elementary School District  
 Richard Rayburn

**ISLAND SCHOOL DISTRICT**

Date: \_\_\_\_\_

\_\_\_\_\_  
 Superintendent, Island School District  
 Robin Jones

**CENTRAL UNION SCHOOL DISTRICT**

Date: \_\_\_\_\_

\_\_\_\_\_  
 Superintendent, Central Union School District  
 Ron Seaver

**CITY:**

**CITY OF LEMOORE**

Date: \_\_\_\_\_

\_\_\_\_\_  
City Manager  
Jeff Britz

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**EXHIBIT A**

**Legal Description of Irrevocable License**

**EXHIBIT B**

**Diagram of License Area**