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**CONTRACT DOCUMENTS
STARTRAN**

**CITY OF LINCOLN
NEBRASKA**

**Annual Supply of
Compressed Natural Gas (CNG)
Vehicle Fuel - StarTran
Bid No. 14-159**

**StirkCNG
5000 Central Park Dr.
Lincoln, NE 68504
308-991-3811**

**CITY OF LINCOLN
STARTRAN
CONTRACT AGREEMENT**

THIS CONTRACT, made and entered into by and between StirkCNG, 5000 Central Park Dr., Lincoln, NE 68504, hereinafter called "Contractor", and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called "City".

WHEREAS, the City has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit:

For providing Annual Supply of Compressed Natural Gas (CNG) Vehicle Fuel - StarTran, Bid No. 14-159 and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal/Supplier Response in accordance with the terms of said advertisement; and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals/Supplier Responses submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal/Supplier Responses, a copy thereof being attached to and made a part of this Contract;

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the mutual covenants herein contained, the Contractor and the City has agreed and hereby agree as follows:

1. The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents; and (d) execute and complete all Work included in and covered by the City's award of this Contract to the Contractor, such award being based on the acceptance by the City of the Contractor's Proposal, or part thereof, as follows:

Agreement per Attachment A - Price Option 1 and using Sapp Bros Fleet Card. Price at pump includes all State and Federal Taxes.

2. The City agrees to pay to the Contractor for the performance of the Work embraced in this Contract, the Contractor agrees to accept as full compensation therefore, the following sums and prices for all Work covered by and included in the Contract award and designated above, payment thereof to be made in the manner provided by the City:

The City will pay for products/service, according to the proposal, a copy thereof being attached to and made a part of this Contract. The City shall order on an as-needed basis for the duration of the contract. The total cost of products or services for City departments shall not exceed \$146,000.00 during the contract term without approval.

3. Equal Employment Opportunity. In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

4. E-Verify. In accordance with Neb. Rev. Stat. 4-108 through 4-114, the contractor agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A 1324b. The contractor shall require any subcontractor to comply with the provisions of this section.
5. Termination. This Contract may be terminated by the following:
 - 5.1) Termination for Convenience. Either party may terminate this Contract upon thirty (30) days written notice to the other party for any reason without penalty.
 - 5.2) Termination for Cause. The City may terminate the Contract for cause if the Contractor:
 - 5.2.1) Refuses or fails to supply the proper labor, materials and equipment necessary to provide services and/or commodities.
 - 5.2.2) Disregards Federal, State or local laws, ordinances, regulations, resolutions or orders.
 - 5.2.3) Otherwise commits a substantial breach or default of any provision of the Contract Document. In the event of a substantial breach or default the City will provide the Contractor written notice of said breach or default and allow the Contractor ten (10) days from the date of the written notice to cure such breach or default. If said breach or default is not cured within ten (10) days from the date of notice, then the contract shall terminate.
 - 5.3) Termination for Lack of Funding. The City may terminate this Agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of City. In the event of unavailability of funds to pay any amounts due under this Agreement, City shall immediately notify the Program Provider and this Agreement shall terminate without penalty or expense to City. Upon termination, the City shall pay Program Provider for any approved and documented services completed up to the date of termination, but not to exceed the maximum amount allowed by this Agreement.
6. Independent Contractor. It is the express intent of the parties that this contract shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the City and employees of the City shall not be deemed to be employees of the Contractor. The Contractor and the City shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City's employees shall be entitled to any salary, wages, or benefits from the other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.
7. Contract Term. This Contract shall be effective upon execution by both parties. The term of the Contract shall be a one (1) year term upon contract execution by both parties with an option to renew for three (3) additional one (1) year periods.
8. Non-Discrimination Clause. StarTran shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation

of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the (Recipient) of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

9. Indemnification. To the fullest extent permitted by law, Service Provider shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of Service Provider, or anyone for whose acts any of them may be liable. This section will not require Service Provider to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

10. The Contract Documents comprise the Contract, and consist of the following:
 1. Contract Agreement
 2. Accepted Proposal/Response
 3. Attachment A
 3. Addendums No. 1 and 2
 4. Specifications
 5. Federal Requirements
 6. Instructions to Bidders
 7. Insurance Requirements
 8. Express Card Application
 9. Lease Agreement
 10. Sales Tax Exemption Form 13

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and they are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this contract.

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

Teresa J. Meier
City Clerk



CITY OF LINCOLN, NEBRASKA

Chris Brown
Mayor

Approved by Executive No. 87391

dated Aug. 7, 2014

EXECUTION BY CONTRACTOR

IF A CORPORATION:

ATTEST:

Secretary (SEAL)

Name of Corporation

(Address)

By: _____
Duly Authorized Official

Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

J & J Compression LLC dba StirkCGN
Name of Organization

Limited Liability Company
Type of Organization

5000 Central Park Suite 201 Lincoln NE 68504
(Address)

By: Kirk McDymond
Member

By: Kirk McDymond
Member

IF AN INDIVIDUAL:

Name

Address

Signature



Stirk Compressed Natural Gas | 5000 Central Park Dr. Suite 204
Lincoln, Nebraska | 855.36.GOCNG | www.stirkcng.com

364-6264

Bob Walla
Assistant Purchasing Agent
City of Lincoln

Bob,

J&J Compression dba Stirk CNG is providing this letter as confirmation of the discussions we have had concerning StarTran's desire to establish a cap price for their Compressed Natural Gas (CNG) purchases for two different periods. They have the option of capping a price for a twelve-month period beginning Aug 1st 2014 through July 31st 2015 or opting to cap a price November 1st 2014 through March 31st 2015. The price will be capped for the volumes stated in the contract between Stirk CNG and StarTran.

The contracted price for StarTran is 5 cents per Gas Gallon Equivalent (GGE) below the current posted price at StirkCNG's station located at Sapp Bros. Travel Center at 6001 Cornhusker Highway Lincoln, NE for the day the purchase is made.

The cap pricing options are as follows:

Price Option 1:

August 1st 2014 thru July 31st 2015	\$2.04 per GGE
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Price Option 2:

November 1st 2014 thru March 31st 2015	\$2.06 per GGE
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The cap pricing is only used if the then posted price at Stirk CNG's station minus the 5 cent contract price ever exceeds the cap price quoted. If that is the case, StarTran will pay the cap price. If the then posted price minus the 5 cent contract price is below the cap price quoted then StarTran pays the lower price. For example, if the posted price is \$2.25 per GGE and StarTran did NOT have cap pricing in effect their price would be \$2.20 or 5 cents under the posted price. However with the cap pricing is in place they would pay the \$2.04 under Pricing Option 1 detailed above. If however, the posted price at Stirk CNG's station would fall to \$1.95 then StarTran would pay \$1.90 or 5 cents below the posted price per the contract.

StarTran can select one of the options above and insert it in the contract being drafted.

J&J Compression, LLC dba Stirk CNG