

1 AGREEMENT FOR SALE OF FUEL

2 **29611**

3 THIS AGREEMENT is made and entered, in duplicate, as of May 9, 2006
4 for reference purposes only, pursuant to a minute order adopted by the City Council of
5 the City of Long Beach at its meeting on May 9, 2006, by and between LONG BEACH
6 TRANSPORTATION COMPANY, a California corporation ("Transit") and the CITY OF
7 LONG BEACH, a municipal corporation ("City").

8 WHEREAS, Transit needs a source to purchase unleaded gasoline for its
9 buses while it builds a larger fuel facility and requested that the City sell fuel to it until
10 construction is completed; and

11 WHEREAS, the City is willing to sell the fuel to Transit on the terms and
12 conditions in this Agreement;

13 NOW, THEREFORE, in consideration of the mutual terms and conditions
14 in this Agreement, the parties agree as follows:

15 1. TERM AND TERMINATION. The term of this Agreement shall begin
16 on March 1, 2006 and shall end on December 31, 2006. The City shall have the right to
17 terminate this Agreement for any or no reason by giving at least thirty (30) days prior
18 notice to Transit.

19 Within three (3) business days following expiration or termination of this
20 Agreement, Transit shall deliver to the City all keys that enable Transit to operate the
21 fueling site.

22 2. SALE OF FUEL. The City agrees to sell to Transit unleaded gasoline
23 that is excess to the City's needs for the sole purpose of fueling Transit's buses and for
24 no other purpose. Transit may purchase this fuel only at the City's fueling site located
25 at 2400 E. Spring Street in the City of Long Beach ("fueling site"). The City does not
26 guarantee that the fueling site will be available to Transit or that City will have fuel
27 available to sell fuel to Transit when Transit's buses arrive at the fueling site and, by
28 signing this Agreement, Transit acknowledges that the City is not making any

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1 guarantees about the availability of fuel or the availability of the fueling site.

2 The City makes no warranties, express or implied, with respect to the
3 quality of the fuel or any other aspect of the fuel.

4 Transit shall use fuel obtained at the fueling site only for use in its hybrid
5 buses.

6 3. COST AND PAYMENT. Transit shall pay to the City for all fuel that it
7 obtains from the fueling site an amount equal to the cost of the fuel plus an
8 administrative charge in the amount of \$0.383 per gallon. The City will submit a
9 monthly invoice to Transit, in arrears, and Transit shall pay this invoice within thirty (30)
10 days. Transit acknowledges that the cost of fuel is volatile and that the price of fuel
11 may vary during any week. Any invoice not paid when due shall bear interest at the
12 maximum rate allowed by law, until paid.

13 City shall provide for Transit's use a key fuel management system that will
14 enable Transit to extract fuel from the fueling site and shall provide keys for use at the
15 fueling site. Transit shall pay the sum of \$10.00 for each key that City provides (even to
16 replace a lost or damaged key or for any other reason). Transit shall provide to City a
17 list of employees of Transit who are authorized to use a key.

18 4. ACCESS TO FUELING SITE. Transit may access the fueling site
19 twenty-four hours per day, seven days per week. In accessing the fueling site and
20 obtaining fuel at the fueling site, Transit shall comply with all applicable laws,
21 ordinances, rules, regulations and orders of all federal, state and local governmental
22 authorities having jurisdiction over the sale of fuel and use of the fueling site.

23 5. LEAKS, DAMAGE OR OTHER PROBLEMS. If Transit observes or
24 causes any leaks, damage or other problems at a fueling site, then Transit shall
25 immediately report them to the City by calling Frank Neely, Fleet Services Supervisor
26 at (562) 570-5457. If there is no answer at that telephone number, then Transit shall
27 leave a message with a name and call-back telephone number or shall call Tom Martin
28 at (562) 254-6758.

1 6. NO ASSIGNMENT. Transit shall not assign this Agreement or any
2 interest in it or allow the transfer of this Agreement (by operation of law or otherwise) or
3 allow any other person or entity to obtain fuel at the fueling site. Any attempted
4 assignment or transfer shall be void and shall not confer any right or interest of any kind
5 in an assignee or transferee.

6 7. WAIVER OF CLAIMS. City shall not be liable for and Transit hereby
7 waives all claims against the City for loss or damage to Transit's buses or business or
8 for injury to or death of persons, including workers' compensation, arising from Transit's
9 use of the fueling site except to the extent caused by City's active negligence or willful
10 misconduct.

11 8. INSURANCE.

12 9. NOTICE. All notices shall be in writing and personally delivered or
13 deposited in the U.S. Postal Service, first class, postage prepaid, to Transit at 1963 E.
14 Anaheim Street, Long Beach, CA 90813 Attn: General Manager and to the City at 333
15 W. Ocean Boulevard, Long Beach, CA 90802 Attn: City Manager. Notice shall be
16 deemed given on the date of personal delivery or forty-eight hours after deposit in the
17 mail, whichever occurs first. Notice of change of address shall be given in the same
18 manner as other notices.

19 10. INDEMNITY. Transit shall indemnify and hold harmless the City, its
20 Boards, Commissions, and their officials, employees and agents (collectively in this
21 Section "City") from and against any and all liability, claims, demands, damage, causes
22 of action, proceedings, penalties, loss, costs, and expenses (including attorney's fees,
23 court costs, and expert and witness fees) (collectively "Claims" or individually "Claim").
24 Claims include allegations and include by way of example but are not limited to: Claims
25 for property damage, personal injury or death arising in whole or in part from any
26 negligent act or omission of Transit, its officers, employees, agents, or anyone under
27 Transit's control (collectively "Indemnitor"); Transit's breach of this Agreement;
28 misrepresentation; willful misconduct; and Claims by any employee of Indemnitor

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1 relating in any way to worker's compensation. Independent of the duty to indemnify and
2 as a free-standing duty on the part of Transit, Transit shall defend City and shall
3 continue such defense until the Claim is resolved, whether by settlement, judgment or
4 otherwise. Transit shall notify the City of any claim within ten (10) days. Likewise, City
5 shall notify Transit of any claim, shall tender the defense of such claim to Transit, and
6 shall assist Transit, as may be reasonably requested, in such defense.

7 11. MISCELLANEOUS. A. The acceptance of any payment by the City
8 shall not operate as a waiver of any part of this Agreement or of any right to indemnity.
9 Any waiver of a part of this Agreement, if given, shall be in writing and shall not
10 constitute a waiver of any other or subsequent failure to comply with this Agreement.

11 B. Expiration or termination of this Agreement shall not terminate rights or
12 liabilities which accrued prior to expiration or termination.

13 IN WITNESS WHEREOF, the parties have caused this document to be
14 duly executed with all formalities required by law as of the date first stated above.

15 LONG BEACH TRANSPORTATION COMPANY, a
16 California corporation

16 5/25, 2006

17 By [Signature]

18 Title President

19 "Transit"

20 CITY OF LONG BEACH, a municipal corporation

21 6/15, 2006

22 By [Signature]
23 City Manager

24 "City"

25 APPROVED AS TO FORM

26 6/6, 2006
27 ROBERT E. SHANNON, City Attorney

28 BY [Signature]
SENIOR DEPUTY CITY ATTORNEY