

Base Contract for Retail Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: December 11, 2013, and such additional terms and conditions as agreed to by Supplier and Customer and set forth in an Addendum hereto. The parties to this Base Contract are:

Supplier: GHI Energy, LLC
 800 Bering Dr, #301, Houston, TX 77057
 D-U-N-S® Number: 078523794
 Contract Number: SCG0004
 U.S. Federal Tax ID Number: 90-0888513

and Customer: City of Riverside, California
 3900 Main Street, Riverside, CA, 92522
 D-U-N-S® Number:
 Contract Number:
 U.S. Federal Tax ID Number:

Notices:

Attn: John Greene
 Phone: 281-761-7835 Fax: 832-415-9724

Attn: Martin L. Bowman, Fleet Operations Manager
 Phone: (951) 351-6199 Fax: (951) 351-6143

Confirmations:

Attn: John Greene
 Phone: 281-761-7835 Fax: 832-415-9724

Attn: Martin L. Bowman, Fleet Operations Manager
 Phone: (951) 351-6199 Fax: (951) 351-6143

Invoices and Payments:

Attn: John Greene
 Phone: Fax:

Attn: Christine Pulley, Sr. Acct Clerk
 Phone: (951) 351-6030 Fax: (951) 351-6143

Wire Transfer or ACH Numbers (if applicable):

BANK:
 ABA:
 ACCT:
 Other Details:

BANK:
 ABA:
 ACCT:
 Other Details:

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Retail Sale and Purchase of Natural Gas or Electricity published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select only one box from each section:

Section 1.2 ☒ Written (default) Transaction ☐ Oral Procedure	Section 7.3 ☒ Other agreement setoffs apply (default) Other agreement ☐ Other agreement setoffs do not apply set-offs
Section 2.6 ☒ 2 Business Days after receipt (default) Confirm ☐ _____ Business Days after receipt Deadline	Section 9 ☒ Customer Pays At and After Delivery Taxes ☐ Point (default) ☐ Supplier Pays Before and At Delivery Point
Section 2.7 ☒ Supplier (default) Confirming ☐ Customer Party ☐ _____	Section 12.2 ☐ Confidentiality applies (default) Confidentiality ☒ Confidentiality does not apply
Section 3.2 ☒ Cover Standard (default) Performance ☐ Spot Price Standard Obligation Note: The following Spot Price Publication applies to both of the immediately preceding. Spot Price Publication _____	Section 12.4 ☐ Alternate Dispute Resolution Alternate Dispute ☒ No Alternate Dispute Resolution Resolution (default)
Section 7.1 ☒ Early Termination Damages Apply Early (default) Termination ☐ Early Termination Damages Do Not Damages Apply	Section 12.6 Choice of Law California
☐ Special Provisions Number of sheets attached: ☒ Addendum(a): Addendum 1: Amendments to Base Contract (4 pages) Addendum 2: Additional Terms and Conditions Addendum 3: Exhibit A – Scope of Services	

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IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

GHI Energy, LLC

City of Riverside, California

Supplier Name

Customer Name

By

By

Name:

Name:

Date: 1-13-14

Title:

Title: Assistant City Manager

12-11-13

Attest:

City Clerk

APPROVED AS TO FORM

Supervising Deputy City Attorney
SUPERVISING DEPUTY CITY ATTORNEY

GENERAL TERMS AND CONDITIONS

SECTION 1. PURPOSE AND PROCEDURES

- 1.1 These General Terms and Conditions are intended to facilitate retail purchase and sale transactions of either Gas or Electricity that will result in physical delivery thereof. The entire agreement between the parties shall be the Contract as defined in Section 2.8.

The parties have selected either the "Written Transaction Procedure" or the "Oral Transaction Procedure" as indicated on the Base Contract.

Written Transaction Procedure:

- 1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, UET or mutually agreeable electronic means, to the other party by the close of the second Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of non-conflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

Oral Transaction Procedure:

- 1.2. The parties will use the following Transaction Confirmation procedure. Any purchase and sale transaction may be effectuated in a UET transmission or telephone conversation. The parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, UET or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure). Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, Delivery Point, period of delivery and/or transportation/transmission conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

- 1.3 If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, UET or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.
- 1.4 The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meanings ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

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- 2.1 "Account"** means, for each Facility, each account at such Facility to be included in a Transaction Confirmation and identified by a specific account designation number.
- 2.2 "Addendum"** means each supplement to this Contract mutually agreed in writing by the parties.
- 2.3 "Affiliate"** means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.
- 2.4 "Base Contract"** means a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required on the Base Contract and includes Special Provisions and Addendum(s), if any, as identified on the Base Contract.
- 2.5 "Business Day"** is as defined in the Governing Documents.
- 2.6 "Confirm Deadline"** means 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.7 "Confirming Party"** means the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.8 "Contract"** means the legally-binding relationship established by the Base Contract and (i) any and all binding Transaction Confirmations or (ii) the Oral Transaction Procedure in Section 1.2 of the Base Contract, all of which shall form a single integrated agreement between the parties.
- 2.9 "Contract Quantity"** means the quantity of Gas or Electricity estimated to be delivered and taken as agreed to by the parties in a transaction.
- 2.10 "Coordination Services"** means services that permit the interface and coordination between Electricity generation or Gas Suppliers and Distribution Companies in connection with the delivery of Electricity or Gas to serve Customers located within the Distribution Company's service or control area, including certain scheduling-related functions and reconciliation.
- 2.11 "Cover Standard"**, as referred to in Section 3.2, means that if there is an unexcused failure to take or deliver any of the Contract Quantity pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Customer is the performing party, obtain Gas or Electricity, (or an alternate energy source if elected by Customer and replacement Gas or Electricity is not available) or (ii) if Supplier is the performing party, sell Gas or Electricity, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Customer's Gas or Electricity consumption needs or Supplier's Gas or Electricity sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.12 "Credit Support Obligation(s)"** shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.13 "Customer"** means any entity that takes gas and/or electric service for its own consumption.
- 2.14 "Day"** means a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Distribution Company or Distribution Company in a particular transaction.
- 2.15 "Delivery Period"** shall be the period from the service start month/year to the service end month/year during which deliveries are to be made as agreed to by the parties in a Transaction Confirmation, consistent with Section 4.2.
- 2.16 "Delivery Point(s)"** shall mean such point(s) as are agreed to by the parties in a Transaction Confirmation.
- 2.17 "Distribution Company"** means a regulated entity which provides distribution services and may provide energy and/or transmission/transportation services in a given area.
- 2.18 "Distribution Company Charges"** means all appropriate regulated Distribution Company costs, charges, and fees for Coordination Services, as defined by the applicable Distribution Company's Tariff, billed by the Distribution Company to the Account(s).

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- 2.19 “Distribution Company Operational Manuals”** means documents prepared and published by Distribution Companies that describe, in detail, the operating processes/procedures used to perform retail access functions.
- 2.20 “Distribution Company Tariff”** means the applicable state retail Gas or Electricity tariff setting forth the basic requirements for interactions and coordination between Distribution Companies and retail Suppliers necessary for ensuring the delivery of competitive Gas or Electricity from such Suppliers to their retail Customers.
- 2.21 “Electricity”** means electric energy and the related products and services that are identified in Transaction Confirmations.
- 2.22 “Event of Default”** shall be a material breach of this Contract and as otherwise defined in Special Provisions to this Contract.
- 2.23 “Facility(ies)”** means Customer's physical properties or other business assets, including for example stores, restaurants, offices or other places of business, that will be the consumers of Gas or Electricity as specified in Transaction Confirmations under this Contract.
- 2.24 “Firm”** means that either party may interrupt its performance without liability only to the extent that such performance is prevented by Force Majeure (as defined in Section 8) or any type of curtailment ordered by the Distribution Company or ISO.
- 2.25 “Floating Price”** means the price or a factor of the price agreed to in the transaction as being based upon a specified index. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one, and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.
- 2.26 “Gas”** means any combination of hydrocarbons and noncombustible gases in a gaseous state, primarily consisting of methane, and the related products and services that are identified in Transaction Confirmations.
- 2.27 “Governing Documents”** means documents that determine the interactions among parties, including but not limited to: regulatory documents (e.g., tariffs, rules, regulations), contractual agreements, and Distribution Company Operational Manuals.
- 2.28 “Governmental Authority”** means any federal, state, local, municipal or other government, any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise jurisdiction over the parties or any transaction contemplated herein.
- 2.29 “Imbalance Charges”** means any fees, penalties, costs or charges (in cash or in kind) assessed by the Distribution Company or the ISO for failure to satisfy balancing or nominations requirements at any Delivery Point.
- 2.30 “Interruptible”** means that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure (as defined in Section 8), with no liability.
- 2.31 “ISO”** means any independent system operator, regional transmission operator, "transco," power pool or grid or control area operator established and providing services to the Accounts or other similar entity providing the same basic services as such entities and any successor thereto.
- 2.32 “Kilowatt”** means 1000 watts of Electricity.
- 2.33 “kWh” (kilowatt-hour)** means 1000 watt-hours of Electricity.
- 2.34 “Market Disruption Event”** means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred.
- 2.35 “MMBtu”** means one million British thermal units, which is equivalent to one dekatherm.
- 2.36 “Month”** means the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.
- 2.37 “Off-Peak Hours”** means those hours or other periods defined by contract or other agreements or guides as periods of lower electrical demand.

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- 2.38 "On-Peak Hours"** means those hours or other periods defined by contract or other agreements or guides as periods of higher electrical demand.
- 2.39 "Receiving Distribution Company"** means the Distribution Company receiving Gas or Electricity at a Delivery Point, or absent such receiving Distribution Company, the Distribution Company delivering Gas or Electricity at a Delivery Point.
- 2.40 "Spot Price"**, as referred to in Section 3.2, means the price agreed upon by the parties in the Base Contract or in a Transaction Confirmation.
- 2.41 "Supplier"** means persons engaged in the competitive sale of energy to end-users.
- 2.42 "Transaction Confirmation"** means a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.43 "UET"** (Uniform Electronic Transaction) means standard data arrangements for trading information, making business requests and exchanging other information, encompassing a number of electronic media and utilizing specified transport protocols.

Principles of Interpretation. Unless the context requires otherwise, any reference herein to any document means such document and all schedules, exhibits, and attachments thereto as amended and in effect from time to time. Unless otherwise stated, any reference herein to any person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any person succeeding to its functions and capacities. The words "hereof," "herein" and "hereunder" and words of similar import when used herein shall, unless otherwise expressly specified, refer hereto as a whole and not to any particular provision hereof. The singular shall include the plural and the masculine shall include the feminine and neuter. Whenever the term "including" is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference.

SECTION 3. PERFORMANCE OBLIGATION

- 3.1** In each Month, Supplier agrees to sell and deliver or cause to be delivered, and Customer agrees to take delivery of and purchase, the quantity for a particular transaction for the Facility(ies) as specified in each Transaction Confirmation in accordance with the terms of this Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed by the parties in a Transaction Confirmation.
- 3.2** To the extent the Contract Quantity is not supplied by Supplier or delivery not taken by Customer, the non-performing party shall satisfy the terms of this Contract financially in accordance with the following options. Customer shall continue to receive and pay for Distribution Company delivery service.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

Cover Standard:

The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas or Electricity shall be recovery of the following: (i) in the event of a breach by Supplier on any Day(s), payment by Supplier to Customer in an amount equal to the positive difference, if any, between the purchase price paid by Customer utilizing the Cover Standard and the Contract Price, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Supplier for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Customer on any Day(s), payment by Customer to Supplier in the amount equal to the positive difference, if any, between the Contract Price and the price received by Supplier utilizing the Cover Standard for the resale of such Gas or Electricity, adjusted for commercially reasonable differences in transmission or transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Customer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Customer has used commercially reasonable efforts to replace the Gas or Electricity or Supplier has used commercially reasonable efforts to sell the Gas or Electricity to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas or Electricity not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transmission or transportation to the applicable Delivery Point, multiplied by the quantity of such Gas or Electricity not replaced or sold. Imbalance Charges shall not be recovered under this Section, but Supplier and/or Customer shall be

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responsible for Imbalance Charges, if any, as provided in Section 4.4. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas or Electricity shall be recovery of the following: (i) in the event of a breach by Supplier on any Day(s), payment by Supplier to Customer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Supplier and received by Customer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Customer on any Day(s), payment by Customer to Supplier in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Supplier and received by Customer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section, but Supplier and/or Customer shall be responsible for Imbalance Charges, if any, as provided in Section 4.4. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

SECTION 4. PARTICULARS OF SERVICE

- 4.1 Each transaction shall be effectuated in accordance with the procedures specified in Section 1 of the Base Contract. The terms of a transaction shall be as agreed to by the parties in a Transaction Confirmation and include the type of services to be supplied and the basis for those services, whether Firm or Interruptible. Each Transaction Confirmation shall also include (i) identification of Customer Accounts, Facilities and meters, (ii) term, (iii) Contract Price and related provisions, and (iv) other special terms and conditions, if any.
- 4.2 The parties agree that the Distribution Company determines when the Customer will be switched to Supplier for its Gas or Electricity supply, and that such switch will occur in accordance with the Distribution Company's rules and practices regarding the switching of Customers to Suppliers. Therefore, Supplier shall begin delivery of Gas or Electricity to Customer on the date the Distribution Company switches the Customer to Supplier. With respect to each transaction, Supplier will use commercially reasonable efforts to cause each Distribution Company to take whatever steps are necessary to allow Supplier to begin providing service hereunder at the beginning of each transaction.
- 4.3 The parties acknowledge and agree that this Contract contemplates the purchase and sale of Gas or Electricity to meet Customer's consumption attributable to Customer's Accounts specified in the Transaction Confirmation. The parties shall agree to use commercially reasonable efforts to avoid imposition of any Imbalance Charges.
- 4.4 Customer shall promptly notify Supplier of, and fully comply with, all Distribution Company curtailment or interruption orders or similar notices received by Customer from Distribution Company requiring the interruption or curtailment of Customer's Gas or Electricity usage at any Account and pay any and all Imbalance Charges imposed upon or incurred by either party as a result of Customer's failure to so comply.
- 4.5 Subject to Section 8, Supplier will be responsible for all services necessary for the procurement and delivery of Gas or Electricity to the Delivery Point; including transportation; nomination; confirmations; scheduling; transmission and ancillary services; imbalance services, and; arrangement of billing services for all charges and notices related to Customer's usage of Gas or Electricity consistent with options agreed to by the parties in the Base Contract and in the Transaction Confirmation. Customer acknowledges that Supplier is not responsible for delivery by Distribution Company from the Delivery Point to Facilities. In addition, Supplier must satisfy all obligations imposed by the Distribution Company for the Gas or Electricity at and before the Delivery Point.
- 4.6 If Supplier lacks adequate information to perform its duties under this Contract, Supplier shall immediately provide Customer with formal notice of such information that it deems necessary to enable Supplier to perform such duties, and Customer shall supply such reasonably requested information.

SECTION 5. AUDIT

A party shall have the right, at its own expense, upon reasonable notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the

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extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas or Electricity delivery. All retroactive adjustments shall be paid in full by the party owing payment within 30 Days after Notice and substantiation of such inaccuracy.

SECTION 6. WARRANTY AND INDEMNITY

- 6.1 All Gas delivered by Supplier shall meet the pressure, quality and heat content requirements of the Receiving Distribution Company at and before the Delivery Point. All Electricity delivered by Supplier shall meet the applicable quality requirements of the Distribution Company and ISO at and before the Delivery Point.
- 6.2 EXCEPT AS PROVIDED IN HEREIN, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.
- 6.3 Supplier agrees to indemnify Customer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or Electricity or other charges thereon that attach at or before Delivery Point. Customer agrees to indemnify Supplier and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or Electricity or other charges thereon that attach after Delivery Point.

SECTION 7. DEFAULTS AND REMEDIES

- 7.1 If an Event of Default has occurred and is continuing, the non-defaulting party shall have the right, by Notice to the defaulting party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date, in accordance with the Distribution Company's rules and practices (the "Early Termination Date") for the liquidation and termination of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and damages shall be calculated consistent with Section 7.2 below. With respect to each Excluded Transaction, its termination date shall be deemed to be the Early Termination Date for purposes of Section 7.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

As of the Early Termination Date, the non-defaulting party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party under the Contract (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The non-defaulting party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Customer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Supplier if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section, "Contract Value" means the amount of Gas or Electricity remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas or Electricity remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the non-defaulting party in a commercially reasonable manner. To ascertain the Market Value, the non-defaulting party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas or Electricity futures contracts, quotations from leading dealers in energy swap contracts or physical Gas or Electricity trading markets, similar sales or purchases and any other bona fide third-party offers, all

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adjusted for the length of the term and differences in transmission costs and volume transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the non-defaulting party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

As of the Early Termination Date, the non-defaulting party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party under the Contract for all Gas or Electricity delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges related to such delivery and receipt (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

- 7.2** The parties agree that each transaction hereunder constitutes a "forward contract" within the meaning of the United States Bankruptcy Code and that Customer and Supplier are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

- 7.3** The non-defaulting party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 7.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the defaulting party, the non-defaulting party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

Other Agreement Setoffs Do Not Apply:

- 7.3** The non-defaulting party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 7.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the defaulting party, the non-defaulting party may setoff any Net Settlement Amount against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract.

- 7.4** If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 7.3 is unascertained, the non-defaulting party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the non-defaulting party accounting to the defaulting party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 7.3 shall be discounted to net present value in a commercially reasonable manner determined by the non-defaulting party.
- 7.5** As soon as practicable after a liquidation, notice shall be given by the non-defaulting party to the defaulting party of the Net Settlement Amount and whether the Net Settlement Amount is due to or due from the non-defaulting party. The notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the defaulting party against the non-defaulting party. The Net Settlement Amount, as well as any setoffs applied against such amount pursuant to Section 7.3, shall be paid by the close of business on the second Business Day following such notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due until the date of payment at a rate equal to the lower of (i) unless otherwise agreed, the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.
- 7.6** With respect to this Section 7, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. FORCE MAJEURE

- 8.1** Except with regard to a party's obligation to make payment(s) due hereunder, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension and that could not have been prevented by the exercise of reasonable diligence, as further defined below.
- 8.2** Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings (such as hurricanes) which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transmission, transportation and/or storage; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a Governmental Authority. Supplier and Customer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.
- 8.3** Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of Interruptible or secondary Firm transportation or transmission unless primary, in-path, Firm transmission or transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Supplier's ability to sell Gas or Electricity at a higher or more advantageous price than the Contract Price, Customer's ability to purchase Gas or Electricity at a lower or more advantageous price than the Contract Price, or a Governmental Authority disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) Customer's inability to use Gas or Electricity purchased hereunder, except, in either case, as provided in Section 8; or (v) the loss or failure of Supplier's Gas or Electricity supply or depletion of reserves, except, in either case, as provided in Section 8. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.
- 8.4** Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.
- 8.5** The party whose performance is prevented by Force Majeure must provide Notice (as defined in Section 11.1) to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas or Electricity, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.
- 8.6** Notwithstanding this Section, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 9. TAXES

The parties have selected either "Customer Pays At and After Delivery Point" or "Supplier Pays Before and At Delivery Point" as indicated on the Base Contract. The parties agree to take all lawful actions to minimize taxes imposed on transactions hereunder.

Customer Pays At and After Delivery Point:

- 9.1** Supplier shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any Government Authority ("Taxes") on or with respect to the Gas or Electricity prior to the Delivery Point(s) and excluding those Taxes that may not be legally passed through. Customer shall pay or cause to be paid all Taxes on or with respect to the Gas or Electricity at and after the Delivery Point(s).

Supplier Pays Before and At Delivery Point:

- 9.1** Supplier shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any Government Authority ("Taxes") on or with respect to the Gas or Electricity prior to and at the Delivery Point(s) and excluding those Taxes that may not be legally passed through. Customer shall pay or cause to be paid all Taxes

on or with respect to the Gas or Electricity after the Delivery Point(s).

- 9.2 If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Customer shall pay or cause to be paid any increase in applicable Taxes occurring after the commencement of deliveries under transactions between the Parties. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof. Customer shall be liable for Taxes and associated interest or penalties assessed against Supplier due to Customer's failure to provide or to complete any such certificate or other necessary documentation in a timely and proper fashion.

SECTION 10. LIMITATIONS OF REMEDIES, LIABILITY AND DAMAGES

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. NEITHER PARTY IS LIABLE OR RESPONSIBLE FOR ANY INJURY, LOSS, CLAIM, EXPENSE, LIABILITY OR DAMAGE RESULTING FROM ANY INTERRUPTION, SHORTAGE, INSUFFICIENCY OF OR FAILURE OF THE DISTRIBUTION COMPANY TO DELIVER GAS OR ELECTRICITY SCHEDULED BY SUPPLIER.

SECTION 11. NOTICES

- 11.1 All Transaction Confirmations, invoices, payment instructions and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.
- 11.2 All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.
- 11.3 Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful communication. If the Day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.
- 11.4 The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

SECTION 12. MISCELLANEOUS

- 12.1 Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.
- 12.2 Unless the parties have elected on the Base Contract not to make this Section applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any

Base Contract for Retail Sale and Purchase of Natural Gas

transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent necessary to comply with a Governmental Authority's reporting requirements including but not limited to Gas or Electricity cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Notwithstanding Section 10, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

- 12.3** In the event disclosure is required by a Governmental Authority or applicable law, the party subject to such requirement shall use commercially reasonable efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party and subject to such efforts may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party.
- 12.4** The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties.
- 12.5** No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may, without the prior approval of the other party, (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any Affiliate by assignment, merger or otherwise so long as the Affiliate meets any creditworthiness requirements under this Contract. Upon any such assignment, transfer and assumption, the assigning party or transferor, as applicable, shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.
- 12.6** The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.
- 12.7** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.
- 12.8** The requirements and provisions of this Contract shall not be construed as creating an association, trust, partnership, or joint venture, or as imposing a trust or partnership duty, obligation, or liability on either party, or as creating any relationship between the parties other than that of independent contractors for the sale and purchase of Gas or Electricity.
- 12.9** This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.
- 12.10** If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract, and the parties agree to attempt to implement an equitable adjustment in the provisions of this Contract with a view toward effecting the purposes of this Contract by replacing the provision that is invalid, void or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, void or unenforceable.
- 12.11** The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.
- 12.12** The confidentiality provisions, indemnities, releases from liability, limitations on liability or damages and dispute resolution provisions expressed in this Contract shall, unless otherwise provided herein, survive without limitation the termination, cancellation or expiration of this Contract, and shall apply whether in contract, equity, tort or otherwise.

Base Contract for Retail Sale and Purchase of Natural Gas

- 12.13** Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.
- 12.14** If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas or Electricity, as applicable, for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price.
- 12.15** This contract may be terminated upon 30 Days written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any Transaction Confirmation(s).

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

EXHIBIT A
TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

Letterhead/Logo	Date: _____ Transaction Confirmation #: _____
This Transaction Confirmation is subject to the Base Contract between Supplier and Customer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within two Business Days after receipt, unless otherwise specified in the Base Contract or herein.	
SUPPLIER: _____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No.: _____ Distribution Company: _____ Distribution Company Contract Number: _____	CUSTOMER: _____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No.: _____ Distribution Company: _____ Distribution Company Contract Number: _____
Commodity: Electricity ☐ Natural Gas ☐	
Contract Price:	
Billing and Payment Information:	
Delivery Period:	
Performance Obligation and Contract Quantity:	
Delivery Point:	

Facility/Account Information:

Special Conditions:

Supplier: _____

By: _____

Title: _____

Date: _____

Customer: _____

By: _____

Title: _____

Date: _____

ADDENDUM 1

AMENDMENTS TO NAESB BASE RETAIL CONTRACT GENERAL TERMS AND CONDITIONS

The following amendments (the “Amendments”) are made to the Base Retail Contract for the Purchase of Natural Gas, dated 12-11-13 and incorporated by reference therein.

Amendments to Section 2: Definitions

Section 2 is amended by adding the following new Section 2.43:

“2.43 “Commercially Reasonable” means any standard or prevalent practice or procedure frequently practiced among counterparties transacting under similar circumstances for the wholesale or retail purchase and sale of natural gas in the United States.”

Amendments to Section 3: Performance Obligation

Section 3.2 is amended by deleting the sentence, “Customer shall continue to receive and pay for Distribution Company delivery service.” and replacing it with the following:

“Notwithstanding any financial settlement contemplated herein, Customer may, at its own discretion and expense, choose to receive replacement natural gas and delivery services from the Distribution Company.”

Amendments to Section 4: Particulars of Service

Section 4.5 is amended by adding the following language at the end:

“So long as the Gas procured and delivered by Supplier meets the quality specification requirements outlined within the current Receiving Distribution Company tariff, the source and delivery path of the Gas to the Receiving Distribution Company system shall be at Supplier’s sole discretion.”

Amendments to Section 6: Warranty and Indemnity

Section 6 is amended by adding the following new Sections 6.4, 6.5, 6.6, and 6.7:

“6.4 Supplier warrants its title and right to sell the Gas delivered hereunder and warrants that the Gas shall be free and clear from liens and adverse claims and is in conformity with all valid laws, order, rules and regulations of duly constituted authorities having jurisdiction. **EXCEPT TO THE EXTENT SET FORTH IN THIS CONTRACT,**

SUPPLIER MAKES NO WARRANTIES OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, REGARDING THE GAS, OR THE SUPPLY THEREOF, AND SUPPLIER DISCLAIMS SAME.”

“6.5 Customer acknowledges and agrees that all charges for Gas billed under this Contract shall be based on monthly metering and measurement data provided to Supplier by Receiving Distribution Company, and that those amounts shall be deemed agreed and definitive for all purposes.”

“6.6 Customer acknowledges and agrees that Supplier shall procure Gas on a day-to-day basis and that the quality of all Gas delivered, regardless of its original source, shall be governed by the relevant provisions within the current Receiving Distribution Company tariff.

“6.7 Customer acknowledges and agrees that because of the commingled and blended nature of natural gas pipeline transportation, the quality of the Gas ultimately delivered to Customer shall be the responsibility of Receiving Distribution Company. Any and all claims of Customer relating to the quality of the Gas shall be directed toward Receiving Distribution Company and Receiving Distribution Company’s overall gas distribution system, except where otherwise governed by the current Receiving Distribution Company tariff. Customer waives any and all claims against Supplier for damages arising from the quality of the Gas delivered, except where such damages can be proven to be due to the quality of Gas originally delivered by Supplier to Receiving Distribution Company.

Amendments to Section 7: Defaults and Remedies

Section 7.1 is amended by adding the following language to the definition of “Market Value” following the words “in a commercially reasonable manner.”:

“For the purposes of this Section, “Market Value” may also include the value of any biomethane or renewable natural gas that Supplier may have contracted for delivery to Customer under this Contract and/or the value of any emissions credits, including, but not limited to, LCFS Credits or Renewable Identification Numbers, created therefrom.”

Section 7 is amended by adding the following new Section 7.7:

“7.7 In addition to Early Termination Damages contemplated in this Section, the parties shall also be bound by the additional Termination provisions listed in Section 14 of the Transaction Confirmation.”

Amendments to Section 12: Miscellaneous

Section 12.2 is amended by adding the term, “duly filed public information request,” to subsection (i) immediately after the word, “regulation,” and before the words, “or exchange rule.”

Section 12 is amended by adding the following new Sections 12.16 and 12.17:

“12.16 This Contract shall be governed by the laws of the State of California. Parties consent to the exclusive jurisdiction of the state and/or federal courts located in Riverside, California in any action or proceeding arising out of this Contract, including any challenges to the validity hereof. **TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, SUPPLIER AND CUSTOMER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY THAT SUPPLIER AND/OR CUSTOMER MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS CONTRACT. THE PARTIES ACKNOWLEDGES THAT EACH PARTY HAS BEEN INDUCED TO ENTER INTO THE OBLIGATIONS BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS WAIVER.**”

“12.17 Customer has requested to attach its standard terms and conditions (“Customer’s Terms and Conditions”) to this Contract, which are attached hereto as Addendum #2. In case of any conflict between the Base Contract and Customer’s Terms and Conditions, the latter shall govern at all times.”

In witness whereof, the Amendments are agreed to and incorporated into the Base Retail Contract as of the dates below:

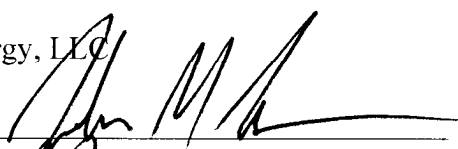
Supplier:

GHI Energy, LLC

By: _____

Title: _____

Date: _____


PRESIDENT
12-11-13

Customer:

City of Riverside, California

By: _____

Belinda J. Graham

Title: _____

Date: _____

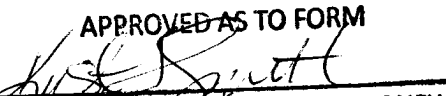

Assistant City Manager
1-13-14

Attest: _____

City Clerk


Cory Nicol

APPROVED AS TO FORM


SUPERVISING DEPUTY CITY ATTORNEY

ADDENDUM 2

CUSTOMER'S TERMS AND CONDITIONS

1. STATEMENT OF SERVICES

A. SUPPLIER shall perform the work necessary to complete the services set forth in Addendum 3, "Scope of Services", inclusive of all attachments set forth herein, in accordance with the terms of the Base Contract, with Addenda dated 12-11-13. All services shall be provided at the times and places designated by CUSTOMER.

B. SUPPLIER shall provide the personnel to perform the specified services.

2. INDEPENDENT CONTRACTOR

SUPPLIER'S relationship to CUSTOMER in the performance of this Agreement is that of an Independent Contractor. SUPPLIER'S personnel performing services under this Agreement shall at all times be under SUPPLIER'S exclusive direction and control and shall be employees of SUPPLIER and not employees of CUSTOMER. SUPPLIER shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, worker's compensation and similar matters.

3. ASSIGNMENTS AND SUBCONTRACTING

A. Neither this Agreement, nor any interest herein or claim hereunder, may be assigned by SUPPLIER either voluntarily or by operation of law, nor may all, or any part, of this Agreement be sub-contracted by SUPPLIER, without the prior written consent of CUSTOMER. Consent by CUSTOMER shall not be deemed to relieve SUPPLIER of its obligation to comply fully with all terms and conditions of this Agreement.

B. CUSTOMER hereby consents to SUPPLIER'S sub-contracting of portions of the Scope of Work to the parties identified below for the functions described in SUPPLIER'S proposal. SUPPLIER shall include in the sub-contract Agreement the stipulation that SUPPLIER, not CUSTOMER, is solely responsible for payment to the sub-supplier for the amounts owing, and that the sub-supplier shall have no claim, and shall take no action, against CUSTOMER, its officers, directors, employees or sureties for nonpayment by SUPPLIER.

<u>Sub-supplier's Name/Address</u>	<u>Sub-Contract % Amount</u>
Devlar Energy Marketing 384 Inverness Parkway, Suite 150 Englewood, CO 80112	1.25%

C. SUPPLIER shall ensure at all times that the activities of sub-supplier and the services provided to SUPPLIER shall be included underneath SUPPLIER'S professional liability insurance policy as provided for in this Agreement.

D. SUPPLIER shall have no right to terminate any sub-contract for cause and then perform the work with its own employees without CUSTOMER's prior written consent. CUSTOMER reserves the right to require SUPPLIER to replace its terminated sub-supplier with another sub-supplier agreeable to CUSTOMER, and to do so without any increase or delay in the performance of this Agreement.

4. INSURANCE

SUPPLIER shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the SUPPLIER, its agents, representatives, employees or subcontractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if SUPPLIER has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the SUPPLIER maintains higher limits than the minimums shown above, the CUSTOMER requires and shall be entitled to coverage for the higher limits maintained by the SUPPLIER.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The CUSTOMER, its officers, officials, employees, and volunteers are to be covered as additional insured's on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the SUPPLIER including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the SUPPLIER'S insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related with respect to performance to the extent of the SUPPLIER'S contractual obligations set forth under "Indemnification", the SUPPLIER'S insurance coverage shall be primary insurance as respects the CUSTOMER, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CUSTOMER, its officers, officials, employees, or volunteers shall be excess of the SUPPLIER'S insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except by (30) days prior written notice of cancellation or material change in coverage provided to the CUSTOMER.

Waiver of Subrogation

SUPPLIER hereby grants to CUSTOMER a waiver of any right to subrogation which any insurer of said SUPPLIER may acquire against the CUSTOMER by virtue of the payment of any loss under such insurance. SUPPLIER agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CUSTOMER has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CUSTOMER. The CUSTOMER may require the SUPPLIER to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the CUSTOMER.

Verification of Coverage

SUPPLIER shall furnish the CUSTOMER's Risk Manager with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CUSTOMER before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the SUPPLIER'S obligation to provide them. The CUSTOMER reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

CUSTOMER reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. INDEMNIFICATION

A. SUPPLIER shall indemnify, defend, and hold harmless CUSTOMER, its officers, directors, employees, and agents, from all losses, damages, claims for personal injury or damages to real or personal property, to the extent caused by SUPPLIER'S negligence. SUPPLIER agrees to indemnify CUSTOMER against expenses, including reasonable attorney's fees and liability arising from any such claim, provided SUPPLIER has the right to control the defense or settlement of any such claim in accordance with the following:

1) SUPPLIER at its own cost and expense, shall indemnify, defend, and hold harmless CUSTOMER from, and against, any and all claims, demands, actions, suits, damages, liabilities, losses and expenses, including reasonable attorney's fees and reimbursements, for personal injury or property damage asserted by third parties ("Third Party Claims") to the extent caused by the negligence or willful misconduct of SUPPLIER in connection with SUPPLIER'S performance or failure to perform this Agreement hereunder.

2) CUSTOMER shall promptly give written notice to SUPPLIER after obtaining knowledge of any Third Party Claim against CUSTOMER as to which recovery may be sought against SUPPLIER because of the indemnity set forth in clause 1. above.

3) SUPPLIER will have the right to defend CUSTOMER against any such Third Party Claim with counsel mutually agreed upon by SUPPLIER and CUSTOMER. In addition:

a) CUSTOMER may retain separate co-counsel at its sole cost and expense to monitor the defense of such Third Party Claim provided, however, that SUPPLIER shall have the right to control the defense of such Third Party Claim in SUPPLIER'S sole discretion;

b) CUSTOMER will not consent to the entry of any judgment or enter into any settlement with respect to such Third Party Claim without the prior written consent of SUPPLIER; and

c) CUSTOMER shall cooperate with all reasonable requests of SUPPLIER in connection with the defense of such Third Party Claim.

4) To the extent reasonably possible, CUSTOMER shall use its good faith efforts to mitigate any losses that SUPPLIER is obligated to indemnify against, pursuant to this indemnification provision.

6. CHANGES

By written notice or order, CUSTOMER may, from time to time, order work suspension or make changes to the general scope of this Agreement, including, but not limited to, the services furnished to CUSTOMER by SUPPLIER as described in Addendum 3 and the Base Contract. If any such work suspension or change causes an increase or decrease in the price of this Agreement or in the time required for its performance, SUPPLIER shall promptly notify CUSTOMER thereof and assert its claim for adjustment within ten (10) days after the change or work suspension is ordered, and an equitable adjustment shall be negotiated. Nothing in this provision shall excuse SUPPLIER from otherwise proceeding immediately with Agreement as changed.

7. DISPUTES

A. Except as otherwise provided for in this Agreement, any dispute concerning a question of fact arising under this Agreement, which is not disposed of by supplement agreement, shall be decided by CUSTOMER'S General Services Director, who shall reduce the decision to writing and shall mail, or otherwise furnish a copy thereof to SUPPLIER. The decision of the General Services Director shall be the final and conclusive administrative decision of the CUSTOMER unless, within thirty (30) calendar days from the date of receipt of such decision, SUPPLIER mails or otherwise furnishes to the General Services Director a written appeal addressed to the CUSTOMER'S City Manager. The decision of the CUSTOMER'S City Manager, or duly authorized representative for the determination of such appeals, shall be the final and conclusive administrative decision of the CUSTOMER and SUPPLIER shall not be entitled to any further administrative appeal.

B. Any such decision made pursuant to this Article shall be final and conclusive, unless the same is fraudulent, capricious, arbitrary or so grossly erroneous as to necessarily imply bad faith or is not supported by substantial evidence. In cases where fraud by such official or his representative or Board is alleged, the provisions of this Article shall not be pleaded in any suit as limiting judicial review of any such decision.

C. Pending final decision of a dispute hereunder, SUPPLIER shall proceed diligently with the performance of this Agreement in accordance with the decision of CUSTOMER'S General Services Director. This "Disputes" clause does not preclude consideration of questions in law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making the final decision of any CUSTOMER official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

8. TERMINATION

)
A. SUPPLIER shall have no rights to terminate any sub-contracts for cause and then perform the work with its own forces without CUSTOMER's prior written consent. CUSTOMER reserves the right to require SUPPLIER to replace its terminated sub-suppliers with another sub-supplier agreeable to CUSTOMER, and to do so without any increase or delay in the performance of this Agreement.

B. CUSTOMER may terminate this Agreement for SUPPLIER'S default if a federal or state proceeding for the relief of debtors is undertaken by or against SUPPLIER, or if SUPPLIER

makes an assignment for the benefit of creditors, or if SUPPLIER breaches any term(s) or violates any provision(s) of this Agreement and does not cure such breach or violation within thirty (30) calendar days after written notice thereof by CUSTOMER. SUPPLIER shall be liable for any and all reasonable cost incurred by CUSTOMER as a result of such default including, but not limited to, procurement costs of the same or similar services defaulted on by SUPPLIER under this Agreement. Such termination shall comply with the Federal Acquisition Regulation (FAR), Part 31.205 and Part 49.

9. NOTICES

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notice(s) in person or by depositing said notice(s) in the U.S. Mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

TO CUSTOMER:

City of Riverside
8095 Lincoln Avenue
Riverside, CA 92517-1968
ATTENTION: Martin Bowman
Fleet Operations Manager
(951) 351-6199 phone
(951) 351-6143 facsimile

TO SUPPLIER:

GHI Energy, LLC
800 Bering Drive, Suite 301
Houston, TX 77057
ATTENTION: John Greene
President
(281) 761-7835 phone
(832) 415-9724 facsimile

10. AUDIT AND INSPECTION OF RECORDS

SUPPLIER shall provide CUSTOMER, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other agents of CUSTOMER, such access to SUPPLIERS accounting books, records, payroll documents and facilities of the SUPPLIER which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. SUPPLIER shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during SUPPLIER'Ss performance hereunder and for a period of four (4) years from the date of final payment by CUSTOMER. CUSTOMER'S right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in Article 3 of this Agreement. SUPPLIER shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

11. FEDERAL, STATE AND LOCAL LAWS

SUPPLIER warrants that in the performance of this Agreement, it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

12. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance under this Agreement, SUPPLIER or Subcontractor shall not discriminate on the basis of race, religion, color, sex, age or national origin in the performance of this Agreement. The SUPPLIER shall carry out applicable requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d and U.S. DOT regulations in the award and administration of DOT assisted contracts. Failure by the SUPPLIER or Subcontractor to carry out these requirements is a material breach of the Agreement, which may result in the termination of this Agreement or such other remedy as the CUSTOMER deems appropriate.

13. OWNERSHIP OF REPORTS AND DOCUMENTS

The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of CUSTOMER. Copies may be made for SUPPLIER'S records but shall not be furnished to others without written authorization from CUSTOMER. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by CUSTOMER.

14. NOTICE OF LABOR DISPUTE

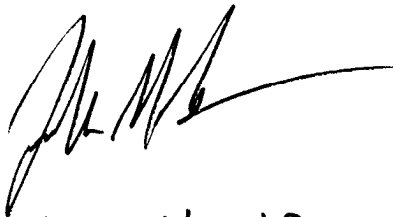
Whenever SUPPLIER has knowledge that any actual or potential labor dispute may delay this Agreement, SUPPLIER shall immediately notify and submit all relevant information to CUSTOMER. SUPPLIER shall insert the substance of this entire clause into any subcontract hereunder, as to which a labor dispute may delay this Agreement.

15. PRIVACY ACT REQUIREMENTS

SUPPLIER shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, SUPPLIER agrees to obtain the express consent of the Federal Government before the SUPPLIER or its employees operate a system of records on behalf of the Federal Government. SUPPLIER understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

16. GOVERNING LAW

This Agreement shall be interpreted and construed according to, and governed by, the laws of the State of California. The federal or state courts located in the County of Riverside, State of California, shall have jurisdiction to hear any dispute under this Agreement.

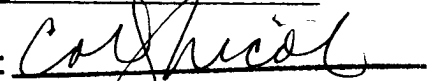

12-11-13

City of Riverside, California

By: 
Belinda J. Graham

Assistant City Manager

Date: 1-13-14

Attest: 
City Clerk

APPROVED AS TO FORM


SUPERVISING DEPUTY CITY ATTORNEY

ADDENDUM 3

EXHIBIT A

SCOPE OF SERVICES

Introduction

The City of Riverside (City) desires for GHI Energy LLC to: (1) supply 100 percent of City's natural gas for vehicles requirements in the form of a guaranteed supply of natural gas to City's CNG facility located at 8095 Lincoln Avenue (Corporation Yard), and future service to a second location at the corner of Jurupa Avenue/Acorn Street on a non-interruptible basis; and (2) develop and manage its Low Carbon Fuel Standard (LCFS) program as outlined in California Assembly Bill AB32.

Background

The City operates a fleet of 409 alternative vehicles, including CNG, LPG, Electric and Hydrogen. The current facility is located at Corporation Yard. Historically, the City has purchased its natural gas requirements from the local public utility, Southern California Gas Company (SoCal Gas). City's goal is to reduce its energy costs while maintaining the highest possible degree of reliability in its natural gas supply to ensure that buses can be fueled and operated every day of the year.

CNG / Service Requirements

City's usage is approximately 1,000,000 therms of CNG fuel annually. Monthly usage averages approximately 80,000 therms and is expected to increase during the contract term due to construction of a second CNG fueling station which is estimated to be complete in 2014.

GHI Energy LLC must be a registered Energy Service Provider (ESP) with SoCal Gas and as approved by the California PUC. GHI Energy LLC must assume full responsibility for guaranteed delivery of required volumes at all times, including any periods during which supply is curtailed or restricted in any way by the local utility company or any other entity. City will require proposing parties to provide proposal pricing in a minimum amount to allow for a reasonable minimum contract term. City reserves the right to select the option that is determined to be the most advantageous to City and enter into a contract based on that selection. During the term of this agreement, City reserves the right to purchase natural gas based on a current index (e.g. SoCal Gas), plus or minus fees, or convert such agreement into a fixed price, longer term agreement or such other terms as may be in the best interest of City. *Index pricing* shall mean the price posting relative to that as first published each month for SoCal Gas. *Fixed pricing* shall mean a constant price for all natural gas requirements during the contract term.

In addition, GHI Energy LLC will be required to provide the following services based on the selected procurement method:

- Monthly monitoring of natural gas usage
- Daily balancing as required by natural gas supplier
- Billing services
- Natural gas information and consulting services
- Handle all gas supply and delivery arrangements (both natural gas suppliers and utility companies)
- Monitor gas infrastructure issues (gas supply, reliability) and strategies for curtailment protection
- Maintain an auditable "paper trail"
- Act as an advocate on relevant issues before the Public Utilities Commission

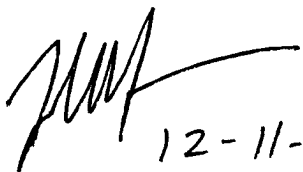
California's LCFS Program

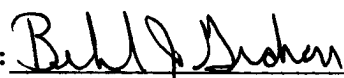
California's Low Carbon Fuel Standard (LCFS) Program was enacted to support the California Global Warming Solutions Act of 2006 (AB32). The Program is designed to lower greenhouse gas (GHG) emissions by reducing the full fuel-cycle carbon intensity of transportation fuels used in California. Regulated parties were required to begin reducing carbon intensities in 2011, with the goal of a 10 percent reduction by 2020.

LCFS credits or deficits for each fuel are calculated by using the formula found in Section 95484(a)(3) of the ARB Regulations. A regulated party using a fuel with carbon intensity below the baseline generates credits. Those parties with carbon intensities above the baseline generate deficits. Under the ARB Regulations, City, as the owner of one CNG fueling station, will receive LCFS credits for CNG therm usage which may be sold to other regulated entities. It is anticipated that, as compliance obligations of AB32 become more restrictive on regulated parties, the value of City's LCFS credits will increase. City shall for the term of the agreement, and in return for compensation, provide GHI Energy LLC with rights to all LCFS credits generated as a result of CNG being dispensed from City's CNG fueling stations. GHI Energy LLC shall compensate City for a fossil fuel equivalent volume of credits created at the fueling station(s) using the guidance provided in Title 17 of the California Code of Regulations. GHI Energy LLC shall identify a method or approach that will guarantee that City is reimbursed within 15 calendar days or other mutually agreed upon timeframe for 100 percent of the market value of its LCFS credits earned each month throughout the contract term.

The services provided by GHI Energy LLC shall include, but not be limited to:

- Register (Opt In) as the regulated party on behalf of City
- Manage all regulatory requirements including regulatory filings
- Reporting requirements
- Adherence to market rules
- Verification of actual emissions to regulatory agencies
- All compliance obligations promulgated under AB32 or subsequent legislation
- Keep City informed of LCFS market conditions on a monthly basis
- Provide annual cumulative accounting of City's LCFS credit balance


12-11-13

by: 
Belinda J. Graham
Assistant City Manager

Date: 1-13-14

APPROVED AS TO FORM
SUPERVISOR
CITY CLERK
CITY ATTORNEY
TEST: