

MASTER DISPENSING AGREEMENT

This Master Dispensing Agreement (the “**Master Agreement**”), dated as of May __, 2020, (the “**Effective Date**”), is entered into by and between Element Markets Renewable Energy, LLC, a Delaware limited liability company located at 3555 Timmons Lane, Suite 900, Houston, Texas 77027 (“**EMRE**”) and the City of Fresno (the “**City**”), a California municipal corporation located at 2600 Fresno Street, Fresno, California 93721. Each of EMRE and the City may be referred to herein as a “**Party**” and collectively as the “**Parties**”. Unless stated otherwise, capitalized terms utilized herein shall have the meanings ascribed to them in Article 1.

RECITALS

WHEREAS, EMRE is a marketer of Renewable Natural Gas (also referred to as RNG and defined below) and the Renewable Fuel Credits (defined below) generated from the use of RNG as Vehicle Fuel (defined below);

WHEREAS, the City dispenses compressed natural Gas (“**CNG**”) using natural Gas extracted from a natural Gas pipeline at its compression facilities as Vehicle Fuel for its fleet of transportation vehicles;

WHEREAS, each of EMRE and the City desire to enter into one or more transactions to convert RNG delivered by EMRE via exchange to the City into compressed RNG (“**Bio-CNG**”) to be dispensed as Vehicle Fuel at the Facilities pursuant to the Transaction Confirmation; and

WHEREAS, pursuant to the Agreement, EMRE will generate RINs and LCFS Credits for Bio-CNG used as Vehicle Fuel and share the revenue from the RINs and LCFS Credits as set forth in the Transaction Confirmation;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I. DEFINITIONS

The following terms have the meanings specified or referred to in this Article I:

Actual Production: defined in Section 2.01(d).

Agreement: refers to this Master Agreement, the Transaction Confirmation and the City Terms and Conditions.

Applicable Program means any one or both of the RFS and LCFS.

Bio-CNG: defined in the Recitals.

Business Day: any day except Saturday, Sunday or any other day on which commercial banks located in Houston, Texas or Fresno, California are authorized or required by Law to be closed for business.

CARB: means the California Air Resources Board.

Change in Law: defined in Section 3.06 of this Master Agreement.

City Terms and Conditions: that certain Agreement for Management of LCFS/RIN Credit Programs and Supply of RNG, executed by and between the Parties as of the Effective Date, and incorporated as Addendum 2 to this Agreement.

CNG: defined in the Recitals.

Delivery Period: defined in the Transaction Confirmation.

Dispensed Bio-CNG: defined in Section 2.01(c).

Dispensing Fee: defined in the Transaction Confirmation.

Dollars or \$: the lawful currency of the United States.

Effective Date: defined in the preamble to this Master Agreement.

Environmental Attributes: means any and all attributes, including the avoidance of Lifecycle Greenhouse Gas Emissions, that are (i) associated with the use of RNG as Vehicle Fuel and (ii) required to generate a RIN and LCFS Credit when RNG is used as Vehicle Fuel, including any and all reporting rights associated therewith.

EPA: the U.S. Environmental Protection Agency or its successor agency.

Facility or Facilities: the City's compression facilities listed on Appendix A to the Transaction Confirmation, as updated by the Parties from time to time.

Force Majeure: any cause not reasonably within the control of the Party claiming suspension, including, but not 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 transportation and/or storage by transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or 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 having jurisdiction.

Fossil LCFS Credits: the LCFS Credits that would have been generated if a quantity of Dispensed Bio-CNG was instead CNG produced from fossil or conventional natural Gas, determined using the applicable CNG pathway for non-renewable natural gas. To the extent the applicable CNG pathway for non-renewable natural gas generates a deficit under the LCFS (as opposed to an LCFS Credit), the number of Fossil LCFS Credits with respect to the Dispensed Bio-CNG is deemed to be zero.

Gas: any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane, including natural gas, as well as other types of gas, such as biogas produced from animal waste, agricultural waste, landfill gas or digester gas, that is cleaned to pipeline quality and injected into the pipeline system, in each case excluding any Environmental Attributes associated therewith.

Greenhouse Gas: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons, perfluorocarbons, sulphur hexafluoride, or any other substances or combination of substances that are or may become regulated or designated as Greenhouse Gases under any federal, state or local law or regulation, or any emission reduction registry, trading system, or reporting or reduction program for Greenhouse Gas emission reductions that is established, certified, maintained, or recognized by any international, governmental (including federal, state, or local agencies), or non-governmental agency from time to time, in each case measured in increments of one metric tonne of carbon dioxide equivalent.

Incremental LCFS Credits: the number of LCFS Credits generated from a quantity of Dispensed Bio-CNG that exceed the number of Fossil LCFS Credits attributable to the Dispensed Bio-CNG.

Law: any U.S. statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any governmental authority.

LCFS or Low Carbon Fuel Standard: the California Low Carbon Fuel Standard administered by CARB set forth in the California Code of Regulations at Title 17, Section 95480 *et seq.*, as amended, restated or supplemented to date.

LCFS Credits: credits generated and traded under the LCFS, with each credit equal to one metric ton of carbon dioxide reductions as compared to the baseline CO₂ emissions under the LCFS.

Lifecycle Greenhouse Gas Emissions: the aggregate quantity of Greenhouse Gas emissions (including direct emissions and significant indirect emissions from land use changes), as determined by the EPA or CARB, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

Master Agreement: defined in the preamble.

Person: an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

Q-RIN: a RIN that has been reviewed and validated by an approved QAP provider.

QAP: a registered Quality Assurance Plan under the Renewable Fuel Standard.

Renewable Fuel: has the meaning ascribed to “renewable fuel” in §80.1401 of the RFS.

Renewable Fuel Standard, RFS or RFS2: the renewable energy program and policies established by the Environmental Protection Agency and set forth in Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program, published on March 26, 2010 at 75 Fed. Reg. 14670 and codified at 40 C.F.R. § 80.1425 (2011), 40 C.F.R. § 80.1426 (2012), as amended, restated or supplemented to date.

Renewable Identification Number or RIN: a unique number generated under RFS2 to represent a volume of Renewable Fuel used, directly or indirectly, as Vehicle Fuel.

Renewable Natural Gas or RNG: means a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure that (i) is produced through the anaerobic digestion of organic matter, (ii) is processed at a landfill or anaerobic digestion facility registered or eligible to be registered as a biogas production facility under the RFS, (iii) meets the applicable quality standards of the relevant pipeline and (iv) includes all associated Environmental Attributes.

Term: defined in Section 5.01(a) of this Master Agreement.

Tracking System: a system established pursuant to the RFS or LCFS, as applicable, by which the EPA or CARB records and facilitates the generation, ownership and transfer of RINs or LCFS Credits, as applicable, including (without limitation), the EPA Moderated Transaction System (EMTS) for RINs and the LCFS Reporting Tool (LRT) for LCFS Credits.

Transaction Confirmation: that certain Transaction Confirmation No. 1, executed by and between the Parties as of the Effective Date, attached as Addendum 1 to this Master Agreement.

Transportation Credits: means one or both of RINs and LCFS Credits, as applicable.

Vehicle Fuel: fuel for transportation vehicles.

ARTICLE II. DISPENSING; DISPENSING FEE

Section 2.01 Dispensing and other Obligations of the Parties.

- (a) At least ten (10) Business Days prior to the first day of each month of the Delivery Period (as defined in the applicable Transaction Confirmation), the City will provide EMRE with a non-binding estimate of the amount of CNG to be dispensed at the Facilities, based on historical usage provided to EMRE upon request.
- (b) EMRE will deliver Environmental Attributes to the City during each month of the Delivery Period, as defined in the Transaction Confirmation. Following receipt of Environmental Attributes, the City will bundle the Environmental Attributes with Gas extracted from a natural Gas pipeline at the Facilities to effect delivery of the RNG to the Facilities via exchange. Delivery, receipt and bundling of Environmental Attributes with Gas are deemed to occur sequentially immediately prior to processing of the equivalent quantity of RNG into Bio-CNG.
- (c) The City will convert the RNG received pursuant to clause (b) above to Bio-CNG at the Facilities and dispense the resulting Bio-CNG at the Facilities as Vehicle Fuel (the “**Dispensed Bio-CNG**”). The City agrees not to use Bio-CNG or RNG for parasitic load at the Facilities.
- (d) On or before the seventh day following the end of each month of the Delivery Period or upon receipt of the underlying billing statement, if later, the City will notify EMRE of the actual Gas procurement and associated Bio-CNG production of the Facilities (the “**Actual Production**”).
- (e) Following receipt of Actual Production and prior to the end of the month following delivery of the Environmental Attributes to the City, EMRE will provide the City with evidence of delivery of the Environmental Attributes by providing the City with an affidavit in the form attached as Exhibit A for such Environmental Attributes, as such form may be updated from time to time,

along with all supporting documentation referenced in such affidavit (the “**Environmental Supplier Affidavit**”).

- (f) Within five Business Days following receipt of the Environmental Attribute Supplier Affidavit, the City will evidence the bundling of the delivered Environmental Attributes with Gas, compression of the RNG into Bio-CNG and dispensing of the Dispensed Bio-CNG by providing EMRE with the affidavit attached as Exhibit B and all supporting documentation referenced therein (the “**Transportation Fuel Affidavit**”) including, without limitation, all records relating to (i) the purchase of Gas, (ii) the conversion of the bundled RNG into Bio-CNG and (iii) dispensing of the Dispensed Bio-CNG.
- (g) In the event a third party performs any of EMRE’s obligations with respect to supply of Environmental Attributes or generation of RINs, any references to “EMRE” herein with respect to such obligations including, without limitation, responsibility for required affidavits or documentation, will instead refer to such third party; provided that EMRE shall remain fully responsible for its obligations hereunder in all respects, including with respect to indemnification of the City, notwithstanding delegation of performance to a third party.
- (h) EMRE agrees to only supply the City with Environmental Attributes from biogas production facilities registered as producers of “Renewable Fuel” under the RFS.
- (i) Failure by the City to provide EMRE with an accurate and complete Transportation Fuel Affidavit shall excuse EMRE from its obligation to pay the City any portion of the Dispensing Fee attributable to the Transportation Credits to which the applicable Transportation Fuel Affidavit relates.

Section 2.02 Fees. In return for performance of the obligations of the City, the City will receive the Dispensing Fee set forth in the Transaction Confirmation. For the avoidance of doubt, no Dispensing Fee will be payable unless and until (i) Transportation Credits are generated from Dispensed Bio-CNG, (ii) the Transportation Credits generated from the Dispensed Bio-CNG are sold by EMRE or its designee, and (iii) proceeds are received by EMRE from such sale(s).

Section 2.03 Reporting. When a payment of the Dispensing Fee is made to the City, EMRE will provide the City with a report indicating the Transportation Credits to which the payment relates and the sales price of such Transportation Credits. EMRE will also provide the City with a report of the Transportation Credits generated from the Dispensed Bio-CNG each month (or quarter, in the case of LCFS Credits) of the Delivery Period.

ARTICLE III. OBLIGATIONS FOLLOWING DELIVERY OF ENVIRONMENTAL ATTRIBUTES; GENERATION OF RINS AND LCFS CREDITS

Section 3.01 Generation of RINs and LCFS Credits. Following receipt from the City of documentation sufficient to evidence production of the Bio-CNG and dispensing of Dispensed Bio-CNG, including the Transportation Fuel Affidavit, EMRE or its designee will generate, based upon the Dispensed Bio-CNG, (i) RINs for each month of the Delivery Period and (ii) LCFS Credits for each calendar quarter of the Delivery Period.

Section 3.02 Further Assurances; Affidavits; Marketing.

- (a) Each Party will provide the other Party with such cooperation, additional documentation, affidavits, certifications or other information as may be reasonably necessary to carry out the purposes of this Agreement (including pursuant to any audit of a Transaction Confirmation by a governmental authority). Each of the City and EMRE agree to perform, and to cause any representatives or agents performing on behalf of such Party to perform, its respective obligations hereunder in accordance with the RFS, the LCFS and any other applicable statutes, rules or regulations. Additional documentation includes, without limitation, evidence of (i) the production of RNG, (ii) that such RNG was converted into Bio-CNG, and (iii) the dispensing of Dispensed Bio-CNG.
- (b) EMRE and the City agree to work together (and with the authorized agents or service providers of the other Party, as applicable) in good faith to ensure that each Party's daily operations with respect to the RNG, Bio-CNG and Dispensed Bio-CNG comply with necessary standards and procedures for generating Transportation Credits, including, but not limited to, requirements within transportation, storage, processing, shipping, sales and use documentation and recordkeeping of RNG volumes produced, RNG converted to Bio-CNG at each Facility and Dispensed Bio-CNG.
- (c) Each Party will, and will cause any affiliate performing any of its obligations hereunder to, comply with reasonable governmental agency requests related to Transportation Credits to the extent directly related to its obligations herein.
- (d) EMRE agrees to use commercially reasonable efforts to have the RINs generated from use of the Dispensed Bio-CNG reviewed by a QAP provider.

Section 3.03 RIN and LCFS Credit Sales and Marketing. The price at which any Transportation Credits generated from Dispensed Bio-CNG are sold by EMRE, and the timing of any sale thereof, will be determined in EMRE's discretion, subject to EMRE's commercially reasonable efforts to monetize the Transportation Credits. The Transportation Credits generated hereunder will be tracked to the sales agreement under which such Transportation Credits are sold to ensure that the revenue used to calculate the Dispensing Fee hereunder is the actual gross revenue received for such Transportation Credits.

Section 3.04 Usage Data; Records.

- (a) Each Party, as applicable, will provide to the other copies of any and all documentation required by the EPA, CARB or a QAP provider or verifier under either the RFS or LCFS, as applicable, to (i) evidence that the RNG qualifies for RIN generation under RFS2, (ii) establish and maintain a low carbon intensity pathway for generation of Incremental LCFS Credits and (iii) evidence that the RNG is converted to Bio-CNG and the quantity of Dispensed Bio-CNG. This documentation will include, but is not limited to, all documentation, affidavits or reports required to certify that production and the delivery of the RNG from its point of production at the applicable Delivery Point is compliant with the transportation routing requirements

(“pathing”) of the RFS or LCFS, as applicable, and any documentation required following delivery of Environmental Attributes to the City under the RFS or LCFS and evidence that the registration and reporting requirements, as outlined by 40 C.F.R. §80.1450, §80.1454, or §80.1426, each as amended to date, are met.

- (b) The City shall maintain, or cause to be maintained, and ensure the accuracy of, all records relating to (i) the purchase of Gas by the City, (ii) the receipt of Environmental Attributes from EMRE under the Agreement, (iii) the bundling of the Environmental Attributes with Gas purchased by the City, (iv) the production of Bio-CNG, and (v) the dispensing of Dispensed Bio-CNG. Such records include, without limitation, a completed Transportation Fuel Affidavit and any other documentation that may be required under the RFS or LCFS, as applicable. Such documentation shall be maintained for a period of ten years from generation of such data or documentation, as applicable.
- (c) EMRE shall maintain all records relevant to the production, purchase, sale and delivery of the Environmental Attributes to the City related to the generation and sale of RINs and LCFS Credits and shall provide such documents to the City promptly upon reasonable request. Such records include, without limitation, an affidavit in the form of Appendix A to this Master Agreement with respect to the Environmental Attributes provided to the City during each month or quarter (in the case of LCFS Credits) of the Delivery Period.

Section 3.05 Reporting. Each Party shall facilitate access for the other Party or its relevant agents to any and all records relevant to Bio-CNG, Dispensed Bio-CNG, and the resulting RINs and LCFS Credits generated and sold for any portion of the Delivery Period upon the reasonable request of such other Party, subject to any applicable confidentiality obligations.

Section 3.06 Market Interruption; Change in Law.

- (a) any (x) action or inaction of the EPA, CARB or any other administrative or executive, legislative or judicial action, inaction, process, rule, notice, order, ruling or decree or (y) change in applicable law, rule or regulation, or the interpretation of an existing law, rule or regulation (each, a “**Change in Law**”) that:
 - (i) Suspends indefinitely or terminates the Applicable Program, each of EMRE and the City shall have the right to suspend or terminate this Agreement or any Transaction Confirmation by providing written notice to the other Party of such termination;
 - (ii) Results in or otherwise contributes to an interruption in either the RIN market or LCFS market, as applicable, EMRE shall have the right to suspend or terminate this Agreement or any Transaction Confirmation by providing written notice to the City of such termination; and
 - (iii) Disallows or renders any means or aspect of performance of this Agreement unlawful, the affected Party may terminate this Agreement by providing written notice of termination to the other Party.
- (b) Any notice of termination pursuant to this Section 3.06 must be received within 30 calendar

days of the event resulting in such termination or the party's receipt of notice of such event, as applicable.

- (c) In the event of termination pursuant to this Section 3.06, neither EMRE nor the City shall have any obligation or liability to any other party associated or in connection with, or in any way arising out of, such termination, except with respect to any RNG delivered to the City prior to termination of this Agreement.

Section 3.07 Fuel Reporting Entity Status; Covenant.

The City acknowledges and agrees that EMRE will be classified as an opt-in fuel reporting entity under Section 95483.1 of the LCFS with respect to all Dispensed Bio-CNG (including, for the avoidance of doubt, the non-renewable component of such Dispensed Bio-CNG) and will be the generator of LCFS Credits for the applicable Dispensed Bio-CNG. All LCFS Credits generated from Dispensed Bio-CNG will belong to EMRE; provided that EMRE will promptly remit to the City the Dispensing Fee as specified in the Transaction Confirmation. The City will not generate any RINs or LCFS Credits associated with any Dispensed Bio-CNG hereunder.

Section 3.08 Obligation of Agents.

Each Party acknowledges and agrees that any and all obligations of the Parties to provide information, data, documentation or other cooperation to the other Party are also applicable to an agent of the other Party in the event that such Party retains a service provider or other agent to perform any obligations under this Agreement.

Section 3.09 Confidentiality.

- (a) Neither Party shall disclose, directly or indirectly, without the prior written consent of the other Party, the commercial terms of this Master Agreement or any Transaction Confirmation or any non-public data, information or other documentation provided by one Party to another under this Agreement (the "**Confidential Information**") to a third Party (other than the employees, contractors, lenders, owners, counsel, accountants and other agents of the Party, entities in which such Party has an ownership interest, prospective investors in a Party or prospective purchasers of all or substantially all of a Party's assets or of any rights under this Agreement, provided that to the extent any such persons do not have a professional or other legally binding obligation to maintain the confidentiality of such information, such persons shall have agreed to keep such terms confidential and provided further that such disclosing Party shall be liable to the other Party for breach of confidentiality by any such third party), except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of the Agreement, (iii) to the extent necessary in connection with the implementation or performance of any transaction, or (iv) to the extent necessary to comply with a regulatory agency's requirements, in each case to the extent confidential treatment is requested prior to or contemporaneously with disclosure. Each Party shall notify the other Party of any proceeding of which it is aware which may result in any unpermitted disclosure of Confidential Information and use reasonable efforts to prevent or limit the disclosure. The

existence of the Agreement is not subject to this confidentiality obligation. 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.

- (b) In the event that disclosure is required by a governmental body, applicable law or pursuant to the California Public Records Act, the Party subject to such requirement may disclose the material terms of this Agreement to the extent so required, but shall promptly notify the other Party, to the extent permitted by the governmental body or applicable law, prior to disclosure and shall cooperate (consistent with the disclosing Party's legal obligations) with the other Party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other Party.

ARTICLE IV. LIMITATION OF LIABILITY

Section 4.01 Limitation of Liability.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, TREBLED, ENHANCED OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS OR OTHER COMMERCIAL OR EXPECTED ECONOMIC LOSS, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), ANY INDEMNITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED THAT THE FOREGOING SHALL NOT PROHIBIT OR LIMIT (I) ANY RECOVERY OF DISPENSING FEES DUE UNDER THIS AGREEMENT FOLLOWING RECEIPT OF SALE PROCEEDS BY EMRE FOR RINS OR INCREMENTAL LCFS CREDITS GENERATED FROM DISPENSED BIO-CNG, WHICH SHALL BE DEEMED DIRECT AND ACTUAL DAMAGES OR (II) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE CITY SET FORTH IN ADDENDUM 2 IN THE EVENT OF CONTRACTOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Section 4.02 Force Majeure.

Neither Party shall be liable to the other for failure to perform an obligation, to the extent such failure was caused by Force Majeure. 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 unless primary, in-path, firm 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; (iv) the loss of EMRE's or the City's market(s), as applicable; or (v) the loss or failure of Gas or Environmental Attribute supplies or depletion of reserves, as applicable. 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. The party whose performance is prevented by Force Majeure must provide Notice 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 practicable after the occurrence of the Force Majeure event. 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 perform its obligations to the extent impeded by, and for the duration of, such event of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other Party during such occurrence or event.

ARTICLE V. TERM; TERMINATION

Section 5.01 Term. The term of this Agreement will begin on May __, 2020 and end on May __, 2023 (the “**Initial Term**”); provided that the term may be extended by mutual written agreement of the Parties for two (2) additional consecutive one (1) year terms (the Initial Term and any extension periods referred to as the “**Term**”), unless earlier terminated in accordance with this Agreement.

Section 5.02 Termination.

- (a) Either Party may terminate this Agreement upon the commencement of a case under Title 11 of the United States Code or other similar insolvency law that is not cured within two (2) Business Days.
- (b) The City and EMRE reserve the right to terminate this Agreement for any reason, upon ninety (90) days’ prior written notice to the respective Party. Notwithstanding the foregoing, to the extent the City terminates this Agreement under this clause (b), the City shall not begin negotiations with respect to the procurement of RNG for use as Bio-CNG with any other person prior to delivering notice of such termination to EMRE.
- (c) Each Party also has the rights set forth in Section 6 of Addendum 2 with respect to termination of this Agreement.
- (d) Notwithstanding anything herein to the contrary, the terms of this Agreement will remain in effect until the obligations of the Parties with respect to any Transaction Confirmation are fully performed or otherwise satisfied.

ARTICLE VI. MISCELLANEOUS

Section 6.01 Indirect and other Expenses. Except as may be expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement shall be paid by the Party incurring such costs and expenses.

Section 6.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested,

postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 6.02):

If to EMRE: Element Markets Renewable Energy, LLC
3555 Timmons Lane, Suite 900
Houston, TX 77027
Attn: RNG Operations
Fax: (281) 207-7211
Email: BiogasOps@elementmarkets.com

If to the City: City of Fresno
2600 Fresno Street
Fresno, California 93721
Attn: Sandra Gamez, Senior Procurement Specialist
Fax: (559) 457-1265
Email: _____

Section 6.03 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 6.04 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 6.05 Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter.

Section 6.06 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Except as provided in this Section 6.06, neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, assignment of this Agreement by EMRE is permitted without the consent of the City if (i) the assignee entity is controlled by or under common control with the assigning Party, (ii) the assigning Party can demonstrate that the same personnel will be responsible for executing this Agreement following such assignment and (iii) the assignee entity accepts all of rights and obligations under this Agreement. Following any assignment permitted under this Section

6.06, the assigning Party shall be released from any and all obligations or liabilities arising under, or relating to, this Agreement attributable to the period following the effective date of such assignment.

Section 6.07 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 6.08 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 6.09 Governing Law; Submission to Jurisdiction.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California and where applicable, the County of Fresno, without giving effect to any choice or conflict of laws provision or rule (whether of the State of California or any other jurisdiction) that would permit or require the application of the laws of a different jurisdiction.

Section 6.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.


[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective authorized representatives.


CITY OF FRESNO,
a California municipal corporation


**ELEMENT MARKETS RENEWABLE
ENERGY, LLC,**
a Delaware limited liability company


By: _____
Gregory A. Barfield
Director of Transportation
Fresno Area Express Transportation Dept.

By:  _____ **KRB**
Angela Schwarz
President

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____ **KRB**
Leslie Ward
Treasurer

By:  _____ **5/13/2020**
Kristi M. Costa
Deputy City Attorney
Date

REVIEWED BY:
 _____
Keri Bevel
Secretary

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____

Deputy
Date

**APPENDIX A
Environmental Attribute Supplier Affidavit**

AFFIDAVIT

The undersigned, _____ (name), _____ (title) and authorized signatory of Element Markets Renewable Energy, LLC (“EMRE”), being duly sworn, says the following:

I am over the age of 18 and am a resident of the State of _____. I have the legal capacity to make this affidavit and personal knowledge of the facts herein.

MEM provided _____ MMBtu of Environmental Attributes to the City of Fresno (the “City”) during the month of [MONTH] [YEAR] under that certain Master Dispensing Agreement, dated as of [____], by and between EMRE and the City, and that certain Transaction Confirmation executed thereunder (together, the “Agreement”). Capitalized terms not otherwise defined in this affidavit have the meanings ascribed to such terms in the Agreement.

The Environmental Attributes were produced through the conversion of organic matter at a landfill/waste disposal center, manure digester or sewage waste treatment facility into RNG.

Such RNG produced by the landfill/waste disposal center, manure digester, or sewage waste treatment gas processing facility from which the Environmental Attributes were unbundled by EMRE consisted of a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure.

The Environmental Attributes have not been sold or transferred by EMRE to, or used by, any party other than the City in accordance with the Agreement.

Documentation of the measurement and throughput delivery of such RNG, as well as the creation of the Environmental Attributes, is attached as Appendix 1 to this affidavit.

I declare that, to the best of my knowledge and belief and under the penalty of perjury, the information herein is true, correct and complete.

Executed this _____ day of _____, 20____

Printed Name: _____

* * *

STATE OF _____

COUNTY OF _____

The foregoing affidavit was subscribed and sworn to before me on this _____ day of _____, 20____, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(Notary Seal) _____ (Notary Signature)

**APPENDIX B
Transportation Fuel Affidavit**

AFFIDAVIT

The undersigned, _____ (name), _____ (title) and authorized signatory of the City of Fresno (the "City"), being duly sworn, says the following:

I am over the age of 18 and am a resident of the State of _____. I have the legal capacity to make this affidavit and personal knowledge of the facts herein.

The City procured and accepted delivery of _____ MMBtu of natural gas and bundled such natural gas with _____ MMBtu of Environmental Attributes received by the City from Element Markets Renewable Energy, LLC or its affiliate ("EMRE") in accordance with that certain Master Dispensing Agreement, dated as of April [], 2020 and the Transaction Confirmation executed thereunder (together, the "Agreement") to complete delivery of the RNG by EMRE to the City via exchange. Capitalized terms used and not otherwise defined in this affidavit have the meanings ascribed to such terms in the Agreement. Documentation of the measurement and throughput delivery of such natural gas is attached as Appendix 1 to this affidavit.

The _____ MMBtu of RNG to which this affidavit relates consist of a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure.

The Environmental Attributes and resulting RNG (either prior to or following processing and including any right, title or interest in and thereto) was processed into Vehicle Fuel and dispensed as transportation vehicle fuel.

Except as set forth in this Agreement, the City has not made, and will not make, any claim or assert any right to any Environmental Attribute or other environmental credit or attribute associated with the RNG or Vehicle Fuel, including, without limitation, RINs.

[] [MMBtu] of RNG were processed at a Facility and _____ GGEs (gasoline gallon equivalent) of Bio-CNG were produced. Documentation of the processing and dispensing of Bio-CNG as Vehicle Fuel is provided as Appendix 2 to this affidavit.

I declare that, to the best of my knowledge and belief and under the penalty of perjury, the information herein is true, correct and complete.

Executed this _____ day of _____, 20____

Printed Name: _____

[Continued on following page]

(Transportation Fuel Affidavit – cont.)

* * *

STATE OF _____

COUNTY OF _____

The foregoing affidavit was subscribed and sworn to before me on this _____ day of _____, 20____, by _____, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(Notary Seal)

Notary Signature

**ADDENDUM 1 to MASTER AGREEMENT
TRANSACTION CONFIRMATION**

May __, 2020

This Transaction Confirmation is executed pursuant to the Master Dispensing Agreement between Element Markets Renewable Energy, LLC and the City of Fresno, dated as of May __, 2020 (the "Master Agreement"). The terms of this Transaction Confirmation are binding upon execution by the Parties. Capitalized terms not otherwise defined in this Transaction Confirmation have the meanings ascribed to such terms in the Master Agreement.

Element Markets Renewable Energy, LLC
Attn: Biogas Operations
Phone: 281-207-7281
Email: BiogasOps@elementmarkets.com

City of Fresno
Attn: Sandra Gamez, Senior Procurement Specialist
Phone: 559-621-1169
Email: _____

Dispensing Fee: with respect to each month (or quarter, in the case of LCFS Revenue) of the Delivery Period, the City Percentage of RIN Revenue, Non-Incremental LCFS Revenue and Incremental LCFS Revenue as calculated below, subject to the Special Conditions of this Transaction Confirmation:

"**City Percentage**" means (i) with respect to RIN Revenue, eight percent (8%); (ii) with respect to Non-Incremental LCFS Revenue, one hundred percent (100%) and (iii) with respect to Incremental LCFS Revenue (A) generated by Incremental LCFS Credits attributable to RNG derived from swine or dairy manure, three percent (3%) and (B) generated by Incremental LCFS Credits attributable to RNG derived from anaerobic digestion of municipal waste water sludge, twenty-seven percent (27%).

"**RIN Revenue**" means the revenue actually received by EMRE from the sale of RINs generated from Dispensed Bio-CNG.

"**Incremental LCFS Revenue**" means the revenue actually received by EMRE from the sale of Incremental LCFS Credits.

"**Non-Incremental LCFS Revenue**" means the revenue actually received by EMRE from the sale of LCFS Credits that constitute Fossil LCFS Credits (as such term is defined in the Master Agreement).

Delivery Period: Begins and ends concurrently with the Term of the Master Agreement.

Contract Quantity: Equivalent to the actual quantity of Gas converted to CNG at the Facilities during each month of the Delivery Period (the "**Monthly Usage Quantity**").

Facilities: The dispensing facilities set forth on Schedule A hereto, which Schedule may be updated from time to time by mutual agreement of the Parties.

Payment of Dispensing Fee: The Dispensing Fee will be remitted to the City within five (5) Business Days of the end of any month in which RIN Revenue, Incremental LCFS Revenue or Non-Incremental LCFS Revenue is received by EMRE, as applicable.

SPECIAL CONDITIONS

(1) **Notice of Changes or Expected Changes to Monthly Usage Quantity.** The City will notify EMRE of any changes to vehicle fueling patterns or procedures at any Facility that will, or are reasonably likely to, result in a material change in the Monthly Usage Quantity.

(2) **Disqualified RNG.** To the extent a Party takes or fails to take any action that results in a quantity of RNG dispensed as Dispensed Bio-CNG that would have otherwise been eligible to generate RINs and, once a pathway is available under the LCFS, Incremental LCFS Credits, becoming ineligible to generate such credits and no act or omission of the other Party caused, in whole or in part, such result (such Party, the “Non-Performing Party”), the RNG is deemed to be “Disqualified RNG”. With respect to any Disqualified RNG:

(i) To the extent the Non-Performing Party is EMRE and such action or omission is determined to be negligent, the City is entitled to receive the Dispensing Fee that would have otherwise been paid to the City had the RNG not been deemed Disqualified RNG, to the extent the Dispensing Fee has not already been paid with respect to the RNG; and

(ii) To the extent the Non-Performing Party is the City:

(A) The City shall return any Environmental Attributes associated with the Disqualified Biomethane to EMRE, along with any documentation reasonably requested to document the transfer of such Environmental Attributes, including, without limitation, an affidavit stating that the Environmental Attributes were not modified or transferred and that the City transfers all right, title and interest in and to the Environmental Attributes to EMRE. The City is not required to make any payment to EMRE with respect to any Environmental Attributes returned to EMRE pursuant to this paragraph.

(B) If the City does not return the Environmental Attributes to EMRE pursuant to clause (A) of this section, the City shall refund any amounts paid to the City and, to the extent the action or omission on the part of the City is grossly negligent, pay EMRE the remainder of the revenue that would have been generated from the Disqualified RNG based upon the prices at which the RINs or Incremental LCFS Credits generated or that would have been generated from the Disqualified Biomethane were sold or were to be sold by EMRE, as applicable.

(3) **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, THE CITY AGREES THAT THE MEASURE OF DAMAGES SET FORTH IN SECTION 2 IS THE EXCLUSIVE REMEDY OF THE PARTIES WITH RESPECT TO DISQUALIFIED RNG AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

* * *


[Signature page follows]

Each of the Parties caused its authorized representative to execute this Transaction Confirmation where indicated below as of the date first written above.

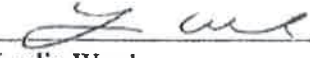
CITY OF FRESNO,
a California municipal corporation


ELEMENT MARKETS RENEWABLE ENERGY, LLC,
a Delaware limited liability company

By: _____
Gregory A. Barfield
Director of Transportation
Fresno Area Express Transportation Dept.

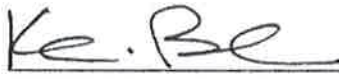
By:  _____ KRB
Angela Schwarz
President

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____ KRB
Leslie Ward
Treasurer

By:  _____ 5/13/2020
Kristi M. Costa Date
Deputy City Attorney

REVIEWED BY:

 _____
Keri Bevel
Secretary

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____

Deputy Date

**SCHEDULE A
FACILITIES**

[To be provided by the City]

**CITY OF FRESNO, CALIFORNIA – MANAGEMENT OF LCFS/RIN CREDIT PROGRAMS AND SUPPLY OF RNG
(Addendum 2 to Master Agreement)**

THIS Addendum 2 to Master Agreement (“Addendum 2” or the “City Terms and Conditions”) is made and entered into effective the ___ day of May, 2020, by and between the City of Fresno, a California municipal corporation (the “City”), and Element Markets Renewable Energy, LLC (“EMRE”).

RECITALS

WHEREAS, the Master Agreement, along with Addendum 1 (the Transaction Confirmation) and this Addendum 2 thereto, collectively referred to as the “Agreement”) arose from a competitive Request for Proposal (RFP) process conducted by the City; and

WHEREAS, the purpose of the Agreement is for EMRE to provide renewable fuel credit management services to the City as provided herein; and

WHEREAS, the Federal Renewable Fuel Standard (RFS) was created under the Energy Policy Act of 2005 and established the first renewable fuel volume mandate in the United States. The original RFS program (RFS1) required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012. Under the Energy Independence and Security Act (EISA) of 2007, the RFS program was expanded, requiring 36 billion gallons of fuel to be blended by 2022. RFS2, the EPA’s revised regulation, allows biogas that is used as transportation fuel to be eligible to generate credits (Renewable Identification Numbers, or RINs) which can be purchased by obligated parties (refiners, fuel importers) to meet compliance with EISA. Only biogas, that is produced through the conversion of organic matter and used as renewable fuel, can generate RINs. Specific gas that qualifies are landfill gas, agriculture digester gas and waste treatment gas;

WHEREAS, the California Low Carbon Fuel Standard (LCFS) was established in 2009 under the AB 32 Scoping Plan. It uses a market-based cap and trade approach to lowering the greenhouse gas emissions from petroleum-based transportation fuels; and

WHEREAS, capitalized terms not otherwise defined in this Addendum 2 have the meanings ascribed to such terms in the Master Agreement or the Transaction Confirmation (Addendum 1);

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Renewable Fuel Credit Management Services. EMRE shall provide the following renewable fuel credit management services (Services) in accordance with the Agreement:
 - (a) Register (Opt In) as an Opt-In Fuel Reporting Entity with respect to the RNG provided to the City in lieu of the City opting in under Section 95483(b)(1)(A) of the LCFS as described in the Master Agreement;
 - (b) Manage all regulatory requirements including regulatory filings;
 - (c) Manage all regulatory requirements including regulatory filings, market rules, reporting requirements, and any compliance obligations promulgated under the LCFS or subsequent legislation;
 - (d) Keep the City informed of LCFS market conditions on a quarterly basis and provide data confirming the price received for LCFS Credits generated from the Monthly Usage Quantity of RNG;
 - (e) Provide annual cumulative accounting of LCFS Credits generated from the Monthly Usage Quantity of RNG;

- (f) Provide the City LCFS and RFS2-qualified RNG during the Term at the City's filling stations; and
 - (g) Handle all LCFS and RFS2 registration and monetization of credits
2. EMRE Payments. EMRE shall pay to City the percentage of revenue from the Services as set forth in "Exhibit A" in accordance with Addendum 1 of the Agreement.
 3. Supply of Renewable Natural Gas (RNG). EMRE shall provide the following RNG services in accordance with the Agreement:
 - (a) Provide RNG registered under a fuel pathway with LCFS and RFS; and
 - (b) Provide Quality Assurance Plan (QAP) for RNG, if applicable.
 4. Intentionally Omitted.
 5. Term of Agreement. It is the intent of the parties that the term of this Agreement will begin May ____, 2020 and end on May ____, 2023, unless terminated earlier in accordance with this Agreement. The parties shall have the option to extend the term of this Agreement for two (2) additional one (1) year terms by mutual written agreement.
 6. Termination of Agreement.
 - (a) Intentionally omitted.
 - (b) This Agreement may be terminated immediately by either party upon seven calendar days prior written notice should the other party fail substantially to observe, fulfill, or perform any material obligation, covenant, term, or condition in accordance with the Agreement. A party will have failed substantially to observe, fulfill, or perform any obligation, covenant, term, or condition of the Agreement, if such failure is not cured within seven calendar days of such party's receipt of written notice of such breach and this shall constitute a

material default and breach of the Agreement. The party terminating the Agreement may exercise any right, remedy (in law or equity), or privilege which may be available to it under the Agreement and the applicable laws of the State of California or any other applicable law, or proceed by appropriate court action to enforce the terms of the Agreement, or to recover damages for the breach of the Agreement.

(c) Except to the extent explicitly stated otherwise in this Agreement, no remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

7. Indemnification. EMRE shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, EMRE or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent, willful or intentional acts or omissions of EMRE or any of its officers, employees, agents or volunteers; provided nothing herein shall constitute a waiver by EMRE of governmental immunities including California Government Code Section 810 et seq.

This section shall survive expiration or termination of this Agreement.

8. Insurance. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to EMRE's profession.

MINIMUM LIMITS OF INSURANCE

EMRE, or any party EMRE subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY:

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY:

\$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits.

4. EMPLOYER'S LIABILITY:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. PROFESSIONAL LIABILITY (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event EMRE purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non- contributory basis for the benefit of the CITY, its officers, officials, employees, agents, and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

EMRE shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and EMRE shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY's Risk Manager or designee. At the option of the CITY's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents, and volunteers; or
- (ii) EMRE shall provide a financial guarantee, satisfactory to CITY's Risk Manager or designee, guaranteeing payment of losses and related

investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. EMRE shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, EMRE's insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of EMRE's insurance and shall not contribute with it. EMRE shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: EMRE and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents, and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown and must be before the effective date of the Agreement or the commencement of work by EMRE.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by EMRE, EMRE must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. EMRE is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, EMRE shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, EMRE shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by EMRE shall not be deemed to release or diminish the liability of EMRE, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by EMRE. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of EMRE, its principals, officers, agents, employees, persons under the supervision of EMRE, vendors, suppliers, invitees, consultants, sub-suppliers, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS

If EMRE subcontracts any or all of the services to be performed under this Agreement, EMRE may require such subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is executed, EMRE will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

VERIFICATION OF COVERAGE

EMRE shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or EMRE. Upon request of CITY, EMRE shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

9. PRECEDENCE OF CONTRACT DOCUMENTS: The order of precedence of documents with respect to the Agreement shall be, to the extent a conflict arises between two or more of the following documents with respect to any matter explicitly addressed therein: (1) applicable Rules and Regulations of Federal Agencies relating to the source of funds for this project; (2) any amendment or Change Order to the Contract; (3) the Master Agreement, (4) Addendum 1 to the Agreement (Transaction Confirmation); (5) this Addendum 2 (Customer Terms and Conditions) and (6) Contractor's response to the City's Request for Proposal (RFP) No. 9509 titled "Third Party Consulting Services for Management of LCFS/RIN Credit Programs and Supply of RNG". For the avoidance of doubt, this Addendum 2 shall govern with respect to any matter not explicitly addressed in the Master Agreement or Addendum 1, as applicable, each as amended or supplemented by the Parties from time to time

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order of precedence stated in this Section 9.

10. FEDERAL IMMIGRATION REFORM AND CONTROL ACT OF 1986: As a material part of any contract for a City of Fresno project, every contractor who has employees who will work on a City of Fresno project, is required to comply with all of the provisions of the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603, 100 Stat. 3359). This requirement includes compliance with all of the employee documentation provisions. Furthermore, EMRE will make any employee documentation required to comply with the Act immediately available to the City upon its request for each individual employee working on a City of Fresno project.

11. WORKMANSHIP GUARANTY: The workmanship of the services to be performed for the City by EMRE will be in accord with the Specifications, and where not specified, in accord with any generally accepted standards applicable to the Services.

12. ALTERATION OF TERMS: No alterations or variations of the terms of the Agreement shall be valid unless made in writing and signed by both parties.

13. CONTRACT CHANGES: No changes or modifications to the Agreement shall be made unless agreed to and signed by both parties. No prior, current or post award verbal agreement or agreements with any officer, agent, or employee of the City shall affect or modify any terms or obligations of these Specifications or any Agreement resulting from this procurement.

14. AMENDMENTS: The City of Fresno reserves the right to add, modify, or delete items from the Contract. Any changes shall be made only by means of a formal amendment signed by both the City and EMRE.

15. ASSIGNMENT: The Agreement is personal to EMRE and there shall be no assignment, transfer, sale, or subcontracting by EMRE of its rights or obligations under the Agreement without the prior written approval of the City except to the extent permitted pursuant to the Master Agreement. Any attempted assignment, transfer, sale or subcontracting by EMRE, its successors or assigns, shall be null and void unless approved in writing by the City.

16. TERMINATION BY CITY FOR NON-APPROPRIATION: Intentionally omitted (not applicable).

17. INDEPENDENT CONTRACTOR: In the furnishing of the services provided for herein, EMRE is acting as an independent contractor. Neither EMRE, nor any of its officers, associates, agents, or employees shall be deemed an employee, joint venturer, partner or agent of the City for any purpose. However, the City shall retain the right to verify that EMRE is performing its respective obligations in accordance with the terms of the Contract. Because of

its status as an independent contractor, EMRE and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to City employees. EMRE shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, EMRE shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of EMRE's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, EMRE may be providing services to others unrelated to City or to this Agreement.

18. GOVERNING LAW AND VENUE: The Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of the Agreement and any rights and duties thereunder shall be Fresno County, California.

19. COMPLIANCE WITH LAW: In providing the services required under the Contract, EMRE shall at all times comply with all applicable laws of the United States, the State of California and the City of Fresno, and with all applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of the Contract.

20. SEVERABILITY: The provisions of the Agreement are severable. The invalidity or unenforceability of any one provision in the Agreement shall not affect the other provisions.

21. INTERPRETATION: EMRE acknowledges that the Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of the Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing the Agreement in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

22. ATTORNEY'S FEES: If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of the Contract, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

23. EXHIBITS: The Request for Proposal (RFP) No. 9509 titled "Third Party Consulting Services for Management of LCFS/RIN Credit Programs and Supply of RNG" in its entirety, and associated addendums, will be incorporated into and made a part of this Contract. Each exhibit and attachment referenced in the Agreement is, by the reference, incorporated into and made a part of the Agreement subject to the order of precedence set forth in Section 9 of this Addendum 2.

24. MAINTENANCE OF RECORDS: Records of each of City and EMRE pertaining to the Services hereunder shall be kept on a generally recognized accounting basis and shall be available to the other Party or its authorized representatives upon request during regular business hours throughout the life of the Agreement and for a period of three years after final payment and for ten years following dispensing of the R-CNG as Vehicle Fuel. In addition, all books, documents, papers, and records of each Party pertaining to the Agreement shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time as may be reasonably requested by the other Party; provided that (i) this Section 24 shall apply solely to the portion of such materials pertaining to the Agreement and is subject to confidentiality obligations that a Party may have to third parties with respect to such materials. This section shall survive expiration or termination of the Contract.

25. **RECYCLING**: In the event EMRE maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, EMRE at its sole cost and expense shall:

(a) After award, immediately establish and maintain a viable and ongoing recycling program, approved by the City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.

(b) Immediately contact the Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

(c) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

26. **NOTICES**: Any notice required or intended to be given to either party under the terms of the Agreement shall be in writing and shall be deemed to be duly given if delivered personally or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of the Proposal in the case of EMRE and at the address in the Master Agreement for mailing of invoices in the case of City, or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

27. **BINDING**: Subject to Section 15 of these General Conditions, once the Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives in its entirety.

28. **WAIVER**: The waiver by either party of a breach by the other of any provision of the Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Contract. No provisions of the Agreement may be waived unless in writing and signed by all parties to this Contract. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

29. **CUMULATIVE REMEDIES**: No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

30. **NO THIRD PARTY BENEFICIARIES**: The rights, interests, duties and obligations defined within the Agreement are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in the Agreement would benefit or flow to the interest of any third parties.

31. **EXTENT OF AGREEMENT**: Each party acknowledges that they have read and fully understand the contents of this Contract. The Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be modified only by written instrument duly authorized and executed by both City and EMRE.

32. **HEADINGS**: The section headings in the Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Contract.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

ELEMENT MARKETS RENEWABLE ENERGY, LLC


By: _____
Gregory A. Barfield,
Director of Transportation Fresno Area
Express Transportation Department

By:  _____ **KRB**
Name: Angela Schwarz
Title: President

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____ **KRB**
Name: Leslie Ward
Title: Treasurer

By:  _____ **5/13/2020**
Kristi M. Costa, Date
Deputy City Attorney

REVIEWED BY:
 _____
Keri Bevel

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____
Deputy Date

Addresses:

CITY:
City of Fresno
Attention: Sandra Gamez
Senior Procurement Specialist
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-1169
FAX: (559) 457-1265

EMRE:
Element Markets Renewable Energy, LLC
Attention: RNG Operations

3555 Timmons Lane, Suite 900
Houston, TX 77027
BiogasOps@elementmarkets.com
Phone: (281) 207-7200
FAX: (281) 207-7211

Attachment: Exhibit A

EXHIBIT A

RIN AND LCFS CREDIT REVENUE SHARE PERCENTAGES TO THE CITY

EMRE shall pay the City the below percentiles of the LCFS and RIN credits sales generated from the City’s use of the Dispensed Bio-CNG as Vehicle Fuel in accordance with and as described in Addendum 1 to the Agreement:

Credit Type	Initial Term of Contract			Option Years	
	Year 1	Year 2	Year 3	Year 4	Year 5
Fossil LCFS Credits	100%	100%	100%	100%	100%
Incremental LCFS Credits					
Manure Digester Production	3%	3%	3%	3%	3%
Waste Water Digester Production	27%	27%	27%	27%	27%
RIN Credit	8%	8%	8%	8%	8%