

PRODUCT PURCHASE CONTRACT

THIS CONTRACT (Contract) is made and entered into, effective _____, by and between the CITY OF FRESNO, a California municipal corporation (City), and Trillium Transportation Fuels, LLC (DBA Love's Alternative Energy) (Contractor), as follows:

1. CONTRACT DOCUMENTS. The "General Conditions", "Special Conditions" and "Scope of Work" for the following: purchase of compressed natural gas copies of which are annexed hereto, together with all documents specifically referred to in said annexed documents and are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.

2. PRICE. For the monetary consideration of a total not to exceed THIRTY-FIVE MILLION DOLLARS AND ZERO CENTS (\$35,000,000) for up to five years, as set forth in the Contract Documents, the Contractor promises and agrees to furnish to the satisfaction of the City, and in strict accordance with the Specifications, all of the items as set forth in the Contract Documents.

3. PAYMENT. The City agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents. The Contractor agrees to accept electronic payment from the City.

4. INDEMNIFICATION: Each party shall indemnify, defend, and hold harmless the other party and its officers, officials, employees, agents, and volunteers from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees, that arise out of or result from the negligent acts, errors, omissions, or willful misconduct of the indemnifying party or its subcontractors in connection with this Contract. Neither party shall be obligated to indemnify the other party for claims arising from the other party's negligent acts, errors, omissions, or willful misconduct.

If the Contractor should subcontract all or any portion of the work to be performed under this Contract, the Contractor shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract for a period of two (2) years .

5. The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by the City shall be subsequent to that of the Contractor's, and this Contract shall be binding and effective upon execution by both parties.

CITY OF FRESNO,
A California municipal corporation

By: _____
Georgeanne A. White
City Manager

By: _____
Gregory Barinfeld, M.A.
Director of Transportation

APPROVED AS TO FORM:
ANDREW JANZ

City Attorney
By: _____
Jennifer Wharton
250AD6D4466E467...
Date
Senior Deputy City Attorney

ATTEST:
TODD STERMER, MMC
City Clerk

By: _____
Deputy
Date

Addresses:
CITY:
City of Fresno
Attention: Frank Peter, Fleet Manager
2223 G Street
Fresno, CA 93706
Phone: (559) 621-1403
E-mail: Frank.Peter@Fresno.gov

Trillium Transportation Fuels, LLC
DBA Love's Alternative Energy

Signed by:
By: _____
Ryan Erickson
289E23D00B5047F...

Name: _____
Ryan Erickson

Title: _____
VP
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

CONSULTANT:
Love's Alternative Energy
Attention: Todd McCarthy, General
Manager
2929 Allen Parkway
Houston, TX 77019
Phone: 405-432-3178
E-mail: Todd.McCarthy@loves.com

Attachments:

1. General Conditions
2. Special Conditions
3. Technical Specifications

Attachment 1

General Conditions

1. **DEFINITIONS:** Wherever used in the Specifications, including the Instructions to Bidders and the Bid Proposal, or any of the Contract Documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

- (a) "City," "Buyer," "Owner," "Vendee" and "City of Fresno" shall each mean and refer to the City of Fresno, California.
- (b) "Contract" and "Contract Documents" shall each mean and refer to these Specifications, the Agreement and other standard Specifications, City's Specifications and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
- (c) "Contractor," "Seller," "Supplier" and "Contractor" shall each mean and refer to each person or other entity awarded a Contract hereunder and named or to be named in the Agreement with the City to furnish the goods or services, or both, to be furnished under the Contract.
- (d) "Council" and "City Council" shall each mean and refer to the Council of the City.
- (e) "Goods" and "Merchandise" shall each mean and refer to the equipment, material, article, supply or thing to be furnished by the Seller under the Contract.
- (f) "Purchasing Manager" shall mean and refer to the Purchasing Manager of the City.
- (g) "Specifications" shall mean and refer to all of the Contract Documents.
- (h) "Working day" shall mean and refer to City regular business day.

2. **INDEMNIFICATION:** Each party shall indemnify, defend, and hold harmless the other party and its officers, officials, employees, agents, and volunteers from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and reasonable attorney fees, that arise out of or result from the negligent acts, errors, omissions, or willful misconduct of the indemnifying party or its subcontractors in connection with this Contract. Neither party shall be obligated to indemnify the other party for claims arising from the other party's negligent acts, errors, omissions, or willful misconduct.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

3. **PRECEDENCE OF CONTRACT DOCUMENTS:** The order of precedence of documents shall be: (1) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (2) Special Conditions; (3) General Conditions; (4) Technical Specifications.

Attachment 1

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

4. CONTRACT DOCUMENTS: Upon award of the Contract, the Contractor shall execute and submit all required documents (which will include the "Contract," a sample of which is included in these Specifications) to the Purchasing Manager, 2101 G. Street, Bldg. A, Fresno, California 93706 in a form acceptable to the City of Fresno within 15 calendar days (except in the event federal funding is applicable to this Contract, then 10 working days) from the date of Notice of Award.

5. ASSIGNMENT OF PAYMENT: Contractor hereby agrees it will not assign the payment of any monies due it from the City under the terms of this Contract to any other individual(s), corporation(s) or entity(ies) without written approval from City. The City retains the right to pay any and all monies due Contractor directly to Contractor.

6. PAYMENT: Unless otherwise provided in the Specifications, payment of the Contract price shall be made by City to Contractor in lawful money of the United States by warrant of City issued and delivered to Contractor in the ordinary course of City business promptly after completion of delivery of the specified item(s) and their acceptance by City.

7. TERMINATION FOR CONVENIENCE: The City reserves the right to terminate this Contract upon 60 calendar days' prior written notice to the Contractor. In the event of such termination, the Contractor shall be paid for satisfactory service performed to the date of termination.

8. TERMINATION FOR NON-PERFORMANCE: If Contractor shall (i) materially breach any of its obligations under this Contract (including, without limitation, the failure to meet quality standards or to complete delivery, within the time specified herein, of all or any part of the materials, equipment, supplies or services to be provided under the Contract), and (iii) fail to commence and diligently pursue reasonable efforts to cure such breach within 15 calendar days after written notice by the City specifically describing the breach; the City Manager or designee, acting for and on behalf of the City, may at any time after the expiration of the time for delivery, terminate the Contract as to the whole thereof, or in the event partial delivery has been made and accepted, as to such items or service to be furnished which have not been delivered or accepted prior to such termination. Such termination shall be effective upon receipt by Contractor of written notice of termination from said City Manager or designee, which notice shall be deemed to have been received by Contractor, if mailed, within forty-eight hours to Contractor's address as contained in the Contractor's Bid Proposal or, if personally delivered, upon the delivery thereof to Contractor, the authorized representative of Contractor, or to the Contractor's said address.

The Contractor may terminate this Contract if City materially breaches any of its obligations under this Contract and fails to commence and diligently pursue reasonable efforts to cure such breach within 30 calendar days after written notice by the Contractor specifically describing the breach. Such termination shall be effective upon receipt by City of written notice of termination from Contractor, which notice shall be deemed to have been received by City, if mailed, within forty-eight hours to City's address as contained on the signature page of the Contract or, if personally delivered, upon the delivery thereof to the authorized representative of City or to City's said address.

Attachment 1

9. **NOTICES:** Except as otherwise expressly provided in the Specifications, any notice required or intended to be given to either party under the terms of this Contract 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 Contract in the case of the 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.
10. **BINDING:** Subject to the following section, once this Contract 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.
11. **ASSIGNMENT:** The Contract is personal to the Contractor and there shall be no assignment, transfer, sale, or subcontracting by the Contractor of its rights or obligations under the Contract without the prior written approval of the City. Any attempted assignment, transfer, sale, or subcontracting by the Contractor, its successors or assigns, shall be null and void unless approved in writing by the City.
12. **COMPLIANCE WITH LAW:** In providing the services required under this Contract, Contractor and its subcontractors shall at all times comply with all applicable laws of the United States, the State of California and City, 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 this Contract.
13. **WAIVER:** The waiver by either party of a breach by the other of any provision of this Contract 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 this Contract 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.
14. **HEADINGS:** The section headings in this Contract 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.
15. **SEVERABILITY:** The provisions of this Contract are severable. The invalidity, or unenforceability of any one provision in this Contract shall not affect the other provisions.
16. **INTERPRETATION:** The parties acknowledge that this Contract in its final form is the result of the combined efforts of the parties and that, should any provision of this Contract be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Contract in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.
17. **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.
18. **EXHIBITS:** Each exhibit and attachment referenced in this Contract is, by the reference, incorporated into and made a part of this Contract.

Attachment 1

19. 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.

20. NO THIRD-PARTY BENEFICIARIES: The rights, interests, duties and obligations defined within this Contract 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 this Contract benefit or flow to the interest of any third parties other than expressly identified within this section. The parties do intend that in the event that the State of California is funding the purchase hereunder, that the State of California be a third party beneficiary under this Contract and all rights, interest and benefits of this Contract accrue to the State.

21. FUNDING: This Contract is contingent on the appropriation of funds by City. Should funds not be appropriated, this Contract may be terminated by City upon prior written notice to Contractor notwithstanding any other provision of these General Conditions. In such event, City shall pay Contractor for all services performed through the termination date

22. GOVERNING LAW AND VENUE: The Contract 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 Contract and any rights and duties hereunder shall be Fresno County, California.

23. EXTENT OF CONTRACT: Each party acknowledges that they have read and fully understand the contents of this Contract. This Contract 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.

24. MODIFICATIONS AND CHANGE ORDERS: This Contract may be modified only by written instrument duly authorized and executed by both City and Contractor in accordance with City's current applicable contract change order resolution, as may be revised. Neither party may unilaterally modify any terms of this Contract. Any proposed changes to the Contract, including Special Conditions and Technical Specifications, must be mutually agreed upon in writing. Any such changes shall be made only by means of a formal change order signed by both the City and the Contractor.

Attachment 2

Special Conditions**TERM OF CONTRACT**

This Contract shall be in effect for an initial term of one (1) year from the date of the Notice to Proceed. The Contract may be extended, with the mutual written consent of both parties, for up to four optional one (1) one-year increments with price increases/decreases in accordance with the pricing index listed below. All other terms and conditions specified herein remaining the same. If either the City or Contractor elects not to extend the Contract, or upon expiration of the final one-year extension term, the Contractor shall aid the City in continuing, uninterrupted, the requirements of the Contract, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the Purchasing Manager, for a specified term not to exceed twelve (12) months. Such continuance shall be subject to price increases/decreases in accordance with the provisions set forth herein, and all other terms and conditions remain the same as if the contract had been extended for such a temporary period by an amendment hereto.

PRICING CONDITIONS

Beginning on the first anniversary of the Effective Date of the Contract, and each subsequent one-year anniversary/option year enacted, pricing listed in the Preferred Location Pricing table will be automatically adjusted to reflect any increases in the National Consumer Price Index for All Urban Consumers, U.S. City Average (All Items; 1982-84 = 100) as issued by the U.S. Department of Labor, Bureau of Labor Statistics.

Alternative Tax Credit:

- i. To the extent that (a) the Alternative Fuel Tax Credit (as defined below) is available for a respective year during the Term, and (b) Loves actually receives the Alternative Fuel Tax Credit which relates to GGEs of Product purchased by FAX during any year of the Term, Loves shall pay to FAX a rebate equal to 100% of the Alternative Fuel Tax Credit value per GGE of Product purchased by FAX during such year of the Term (the "AFTC Rebate").
- ii. The "Alternative Fuel Tax Credit" means that tax credit as described in 26 USC § 6426 and as applied to CNG in 26 USC § 6426 (d)(2)(c) and further described in IRS Notice 2006-92.

PAYMENT

The yearly contract amount will not exceed \$7,000,000 and the overall total will not exceed \$35,000,000 for the five possible years of the contract. The Contractor shall be eligible for monthly reimbursement payments for fuel purchased in the previous calendar month. City will be charged the retail price at the time and location of purchase, and any discount will be applied post-transaction. Any discount will be reflected by Contractor on monthly invoices submitted to City. The discount will include a fixed time-based accrual fee for Renewable Natural Gas Rebates

Attachment 2

and the actuals will be provided as a true-up on the following month invoice. Payment by City shall be made directly to Contractor within 45 days of receipt.

The Contractor must invoice the correct department in the City of Fresno, in order to initiate the payment process. Any invoices supplied by Contractor that do not include the correct department in the City of Fresno will be communicated by the City to the Contractor for reissuance. Incorrect department(s) on invoices will not absolve City of paying invoices. Invoices shall be supplied in duplicate and conspicuously displayed with the City of Fresno Contract and/or Purchase Order Number and shall be sent to:

City of Fresno
ATTN: FAX Fleet Manager
2223 G Street
Fresno, CA 93706

PREFERRED LOCATION PRICING

If City purchases a minimum of 10,000 GGEs in one calendar month, City will qualify for Preferred Location Pricing in that month. If City does not purchase 10,000 GGEs in one calendar month, fuel purchases for that month will be charged at the prevailing retail price at the Preferred Location instead of the Preferred Location Pricing.

The City reserves the right to purchase CNG fuel from other sources.

The per gasoline gallon equivalent (5.660 pounds of natural gas as established by the National Institute of Standards and Technology Handbook 44, Appendix D, the "GGE") price for Customer's purchases of Product at Preferred Locations is equal to the sum of (the "Price" or "Prices"):

- iii. The amount set forth in the 'Gas Costs' column in the 'Preferred Location Pricing' table below;
- iv. PLUS the amount listed under the column titled "Adder", in the "Preferred Location Pricing" table below for the respective Locations,
- v. PLUS any applicable taxes.
- vi. MINUS the amount listed under the column titled 'AFTC Rebate in the 'Preferred Location Pricing' table below

Attachment 2

Preferred Location Pricing				
Seller	Location	Gas Costs ¹	Adder	AFTC Rebate ²
Trillium Fresno, CA –	4646 South Chestnut Ave	Supplier costs	\$1.10	(\$0.50)

a. Renewable Natural Gas Rebates: In addition to the above, Customer will be rebated, the values of the applicable renewable natural gas green attributes including:

- vii. a five percent (5%) RIN share at a conversion rate of 11.69 D3 RIN per Dekatherm (“DTH”) paid via rebate.
- viii. a five percent (5%) incremental LCFS share at a CI or -150 less fossil value paid via rebate.

¹ The Gas Costs shall be variable each month and shall include all of Trillium’s costs as supplier, including but not limited to the commodity index price, distribution, electricity, and basis.

² Alternative Fuels Tax Credit ‘AFTC Rebate’ is expired as of 1/1/2025. The AFTC Rebate is only applicable if Alternative Fuel Tax Credit is in place.

Attachment 3

Technical Specifications

Background:

FAX’s compressed natural gas (CNG) station that fuels its’ entire fleet of fixed-route buses is currently under rehabilitation. Due to ongoing repairs, sometimes the station is intermittently inoperable. In order to continue providing fixed-route transportation services without interruption, FAX must refuel the fleet at an alternate location. It may take between two to five years for full station restoration to be completed.

Bus Fleet Composition:

The current list of buses at the FAX Service Center requiring CNG fueling is shown in the table below. Due to vehicle retirement and replacement, these numbers will change, and therefore this list is non-exhaustive.

Item	Quantity	Description
40’ Bus	35	New Flyer C40LFR or XHE40
40’ Bus	91	Gillig BRT+ or LF 40
29’ Bus	3	Gillig LF 29

Fueling Location:

Love’s will provide CNG for FAX’s fixed-route bus fleet at: 4642 S Chestnut Ave, Fresno, CA 93727.