

PRODUCT REQUIREMENTS CONTRACT

THIS CONTRACT (Contract) is made and entered into by and between the CITY OF FRESNO, a California municipal corporation, hereinafter called the "City," and H2B2 USA, LLC., hereinafter called the "Contractor," as follows:

1. **CONTRACT DOCUMENTS.** The General Conditions, Special Conditions, Insurance Requirements, and Scope of Work, for the following: **OFF-SITE HYDROGEN FUEL AGREEMENT** copies of which are annexed hereto, together with all the drawings, plans, and 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.** The Contractor's sole compensation for satisfactory performance of all services required or rendered pursuant to **Attachment D – Scope of Work** of this Agreement shall be an amount not to exceed \$3,500,000. The Contractor promises and agrees to furnish or cause to be furnished, in a new and working condition, and to the satisfaction of City, and in strict accordance with the Specifications, all of the items as set forth in the Contract Documents.

3. **PAYMENT.** City accepts Contractor's Proposal as stated and agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents. Contractor agrees to accept electronic payment from the City.

4. **INDEMNIFICATION:** To the furthest extent allowed by law, including California Civil Code section 2782, Contractor shall indemnify, defend and hold harmless City and each of its officers, officials, employees, agents, and volunteers from any and all claims, demands, actions in law or equity, loss, liability, fines, penalties, forfeitures, interest, costs including legal fees, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, property damage, or loss of any type) arising or alleged to have arisen directly or indirectly out of (1) any voluntary or involuntary act or omission, (2) error, omission or negligence, or (3) the performance or non-performance of this Contract. Contractor's obligations as set forth in this section shall apply regardless of whether City or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

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The defense and indemnity obligations set forth in this section shall survive termination or expiration of this Contract.

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 as set forth above.

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

H2B2 USA, LLC.,
A California limited liability company

CITY OF FRESNO,
a California municipal corporation

By: _____

By: _____

Name: Pedro Pajares
(Type or print written signature.)

Melissa Perales, Purchasing Manager
General Services Department

Dated: _____

Title: CEO

Dated: _____

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____

By: _____ Date

Name: _____
(Type or print written signature.)

Brandon M. Collet
Assistant City Attorney

Title: CFO/Controller/Secretary

Dated: _____

TODD STERMER, CMC
City Clerk

City Address:

By: _____ Date

1060 Fulton St, Suite 301
Fresno, CA 93721

Deputy

City address:

City of Fresno
Attention: Melissa Perales,
Purchasing Manager
2600 Fresno Street, Room 2156
Fresno, CA 93721

Attachments:

- A- General Conditions
- B- Special Conditions
- C- Insurance Requirements
- D- Scope of Work
- E- Disclosure of Conflict of Interest
- F- ACH Form

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ATTACHMENT "A"

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, including **Attachment A – General Conditions, Attachment B – Special Conditions, Attachment C – Insurance Requirements, Attachment D – Scope of Work**, and any addenda 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. **PRODUCTS LIABILITY INSURANCE:** If these Specifications are for equipment with moving parts, the Contractor shall maintain, and provide the City of Fresno with verification of, manufacturer's products liability insurance policy in excess of \$1,000,000 on said Bid Item(s) equipment.

3. **INDEMNIFICATION:** To the furthest extent allowed by law, including California Civil Code section 2782 (if applicable), Contractor 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, Contractor 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 or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or by the willful misconduct, of the City or any of its officers, officials, employees, agents or volunteers.

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

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defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

4. WORKMANSHIP GUARANTY: The workmanship of the goods or services provided to the City by the Contractor will be in accordance with generally accepted standards and Prudent Industry Practices.

5. WARRANTY: For the purchase of equipment and material, the Contractor, unless otherwise provided in the Specifications, shall guarantee all items furnished in accordance with the standard guarantee offered by the manufacturer to cities and consumers of the product. The Contractor shall be responsible for all warranty costs, including the transportation costs to and from the repair station.

6. PRECEDENCE OF CONTRACT DOCUMENTS: The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this purchase; (2) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (3) Special Conditions; (4) General Conditions; (5) Scope of Work.

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

7. CONTRACT DOCUMENTS: Upon award of the Contract, the Contractor shall execute and submit all required documents to the Purchasing Manager, 2101 G Street, Fresno, CA 93706 in a form acceptable to the City.

8. 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).

9. PATENTS: For the purchase of equipment and material, the Contractor shall hold the City of Fresno, its officers and employees, harmless from any and all liability for damages arising out of the use of any patented material, equipment, device or process incorporated into or made a part of or required by the manufacturer's specifications to be used on or in connection with the material, equipment or supplies purchased by the City pursuant to these Specifications, and Contractor agrees, by submission of a proposal hereunder, to defend the City, at Contractor's sole expense, in any action or suit for damages or injunctive relief on account of any allegedly unauthorized use of or infringement of patent rights on any patented material, equipment, device or process, if the City is named as a defendant in any such action or suit.

10. OSHA COMPLIANCE: For the purchase of equipment and material, the items covered by this Contract must conform with the Safety Orders of the State of California, Division of Industrial Safety, pursuant to the California Occupational Safety and Health Act, and the Federal Standards established by the Occupational Safety and Health Act of 1970, and their present and future amendments during the term of this Contract. In the

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event of a conflict between such Safety Orders and Federal Standards, the items shall conform to the respective Order or Standard which is more restrictive.

11. **RECYCLING PROGRAM:** In the event Contractor 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, Contractor at its sole cost and expense shall:

- a) Immediately establish and maintain a viable and ongoing recycling program, approved by 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 City's 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.

12. **DELIVERY AND EXTENSIONS:** Unless otherwise provided in the Specifications, delivery shall be made F.O.B. the specified place of delivery within the City of Fresno or environs.

If Contractor is delayed making delivery by any conditions or events beyond the reasonable control of Contractor and without its fault or negligence such as acts of God or the public enemy, acts of City in its contractual capacity or otherwise, illegal strikes, boycotts or like illegal obstructive action by employee or labor organizations, illegal general lockouts or other defensive action by employers, whether general or by organizations of employers, fires, floods, epidemics, quarantine restrictions, and delays of common carriers; Contractor shall have no claim for damages against City for any such cause of delay, but shall in such cases be entitled to such extension of time as shall reasonably compensate for actual loss of time occasioned thereby, upon application to said City Manager for such extension; provided, that no such extension of time shall be granted unless Contractor shall have notified the Purchasing Manager in writing, of the condition or event which is expected to cause a delay in delivery and the actual or estimated number of days of delay anticipated on account thereof, within one week after the commencement or occurrence of the condition or event. Contractor shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Purchasing Manager of the cessation of such occurrence. The decision of said City Manager as to the number of additional days, if any, to be allowed for completion of delivery on account of such condition or event, shall be given in writing to Contractor.

13. **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

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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.

14. 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.

15. 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 30 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 this Contract, if personally delivered, upon the delivery thereof to the authorized representative of City or to City's said address.

16. 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 this Contract in the case of the Contractor and at the address set forth on the signature page of the Contract in the case of the City, or at such 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.

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17. **BINDING**: Subject to the following section, once this Contract is signed by all parties, it shall be binding upon from the date hereof, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.
18. **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.
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.
24. **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.
25. **EXHIBITS**: Each exhibit and attachment referenced in this Contract is, by the reference, incorporated into and made a part of this Contract.
26. **CUMULATIVE REMEDIES**: No remedy or election hereunder shall be deemed

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exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. **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.

28. **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.

29. **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.

30. **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.

31. **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. The City reserves the right to add, modify or delete items from the Contract including, without limitation, the Special Conditions and Scope of Work. Any such changes shall be made only by means of a formal change order signed by both the City and the Contractor

ATTACHMENT “B”

Special Conditions

TERM OF CONTRACT

This Contract shall be in effect for three (3) years from the date of the Notice to Proceed (“Initial Term”). The Contract may be extended, with the mutual written consent of both parties, for two (2) one (1) year increments with price increases/decreases in accordance with the provisions set forth herein, 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 three months. Such continuance shall be subject to price increases/decreases in accordance with the provisions set forth herein, and all other terms and conditions remaining the same as if the Contract had been extended for such a temporary period by an amendment hereto.

PRICING CONDITIONS

For the entire Term of the Contract, pricing will be fixed at the pricing listed in **Attachment D – Scope of Work**.

ACH PAYMENT INITIATIVE - ELECTRONIC PAYMENT

The Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract. Payment for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Controller, in the Controller’s sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary City procedures and practices. The proposer shall comply with the Controller’s procedures to authorize electronic payments. Proposer acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the Controller’s electronic payment procedures, except where the Controller has expressly authorized payment by paper check as set forth above.

PAYMENT

The contractor shall be eligible for payments upon delivery and acceptance of any number of items.

The contractor must invoice the City of Fresno, Department of Transportation as soon as

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the Goods are received by the City in the delivery point. Invoices shall conspicuously display the City of Fresno Purchase Order Number, line-item cost, volume of fuel (measured in kilograms), vehicle identification number, delivery note tracking number, and shall be sent to:

FAX Administration Division
Attention: Accounting
2223 "G" Street
Fresno, CA 93706

The City of Fresno, Department of Transportation has 30 days from the date of invoicing to remit payment.

ATTACHMENT "C"

Insurance Requirements

INSURANCE REQUIREMENTS:

1. Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

2. If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

3. The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

- a) 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

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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.”

- b) 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).
- c) Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance.

MINIMUM LIMITS OF INSURANCE

CONTRACTOR shall procure and maintain for the duration of the contract insurance with limits of liability 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
 - a) \$1,000,000 per occurrence for bodily injury and property damage;
 - b) \$1,000,000 per occurrence for personal and advertising injury;
 - c) \$2,000,000 aggregate for products and completed operations; and,
 - d) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
- 2. COMMERCIAL AUTOMOBILE LIABILITY
 - a) \$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 and EMPLOYER’S LIABILITY with limits of liability not less than:
 - a) \$1,000,000 each accident for bodily injury;
 - b) \$1,000,000 disease each employee; and,
 - c) \$1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event CONTRACTOR 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

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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

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

1. 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 has been given to CITY, except ten (10) days for nonpayment of premium. CONTRACTOR 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, CONTRACTOR 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, CONTRACTOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than seven (7) calendar days following to the expiration date of the expiring policy.
2. The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
3. The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured for all ongoing and completed operations. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
4. The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONTRACTORS' insurance shall be primary to and require no contribution from the City. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.
5. If CONTRACTOR maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONTRACTOR.
6. Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

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7. All policies of insurance shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.
8. The Builder's Risk Insurance shall have the policy endorsed to provide the City of Fresno to be named as a Loss Payee.

PROVIDING OF DOCUMENTS

CONTRACTOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. 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 broker. Upon request of CITY, CONTRACTOR 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. All subcontractors working under the direction of CONTRACTOR shall also be required to provide all documents noted herein.

SUBCONTRACTORS

If CONTRACTOR subcontracts any or all of the services to be performed under this Agreement, CONTRACTOR shall require, at the discretion of the CITY Risk Manager or designee, 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 required, CONTRACTOR 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.

ATTACHMENT "D"

Scope of Work

1.0 PROJECT SUMMARY & GENERAL INFORMATION

1.1 Project Summary

The City of Fresno/Fresno Area Express (FAX) desires to purchase hydrogen fuel at the Contractor's fueling location for FAX's hydrogen fuel cell buses. To meet this desire, the Contractor shall supply and sell to FAX on hydrogen fuel.

1.2 Limitations of the Scope of Work

This Scope of Work does not necessarily include a full and complete description of all required parts, materials, resources, services, or processes required to fulfill the project. Information provided in this Statement of Work is provided only for those materials, procedures, and values that are considered key to achieving the overall goals and objectives of the project. The Contractor is expected to be experienced in and adhere to the customs of the trade.

1.3 Definitions

Delivery Certificate: means the document that the Contractor shall release to the FAX staff at the delivery point in SoHyCal Production Facility which must comprise the following minimum information: volume dispensed (in kilograms), date of service, time of service and quality check and that FAX staff must sign and return to Contractor before leaving the Delivery Point

Environmental Attributes: means any all attributes, including the avoidance of Lifecycle Greenhouse Gas Emissions, that are associated with the use of hydrogen as vehicle fuel and required to generate RIN and LCFS credits when hydrogen is used as vehicle fuel, including any and all reporting rights associated therewith.

Force Majeure: means an unforeseeable and unavoidable extraordinary event that prevents a party from performing. This includes, but not limited to, natural disasters (e.g. earthquakes, floods, etc.), extreme weather events (e.g. hurricane, tornado, etc.), sabotage, war, acts of terrorism, labor strikes, and government actions.

Guaranteed Production: means the minimum that FAX is obligated to purchase for each contract period and a maximum that the Contractor is obligated to supply for each contract period.

Official Government Business Vehicles: means a City owned vehicle operated by Fresno Area Express for the purpose of transit operations or in support of transit operations. It excludes personally owned vehicles and vehicles that are owned by the City, but not operated by Fresno Area Express for transit related purposes.

SoHyCal Production Facility: means a hydrogen fuel production facility owned and operated by H2B2 USA, LLC and subsidiaries, located at 24205 Whitesbridge Ave., Kerman, CA 93630. This will be the Delivery Point.

Take-or-Pay: means the minimum amount FAX is obligated to purchase from the Contractor.

1.4 Record Retention

The Contractor shall keep a record of all transactions for at least four (4) years.

2.0 TECHNICAL SPECIFICATIONS

2.1 Compliance With Standards

The hydrogen fuel provided under this agreement shall comply with:

- SAE J2719, *Hydrogen Fuel Quality for Fuel Cell Vehicles*
- SAE J2600, *Hydrogen Surface Vehicle Fueling Connection Devices*
- SAE J2601-2, *Fueling Protocol for Gaseous Hydrogen Powered Heavy Duty Vehicles*
- SAE J2799, *Hydrogen Surface Vehicle to Station Communications Hardware and Software*
- NFPA 2, *Hydrogen Technologies Code*
- OSHA requirements 29 CFR 1910, as applicable
- California Fire Code
- California Electric Code

3.0 Ordering & Delivery

3.1 Ordering Fuel

FAX's Responsibility: FAX is responsible for utilizing its staff to drive the hydrogen fuel cell buses to and from the Contractor's SoHyCal Production Facility located at 24205 Whitesbridge Ave., Kerman, CA 93630 for refueling. FAX staff shall be responsible to verify and sign the Delivery Certificates.

Contractor Responsibility: The Contractor is responsible for having staff at its SoHyCal Production Facility located at 24205 Whitesbridge Ave., Kerman, CA

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93630, to perform the refueling of FAX's hydrogen fuel cell buses. FAX staff shall not perform the refueling.

The transfer of risk to FAX, along with acceptance, will occur when the hydrogen is loaded onto FAX's transport, as detailed below:

- (1) The hydrogen's specifications will be measured and verified during the loading process at the Delivery Point.
- (2) Should the measurement process during verification reveal that the hydrogen does not meet all the required specifications, FAX reserves the right (but is not obligated) to reject the hydrogen.
- (3) Contractor will bear sole responsibility for improving and/or correcting the hydrogen to ensure it conforms to the required specifications.
- (4) If the specifications' non-compliance cannot be corrected, Contractor will make all reasonable efforts to source the necessary hydrogen up to the Guaranteed Production volume from third-party suppliers at its own cost.

3.2 Operating Hours

The Contractor shall make available to FAX its fuel and services Monday through Sunday at all hours of the day.

3.3 Inoperable Station Notification and Scheduled Outage

Contractor shall inform to FAX with sufficient anticipation its planned annual shutdowns ("**Scheduled Outages**") or any technical shutdown. Contractor will make reasonable efforts to plan Scheduled Outages in a manner that does not unreasonably interfere with the facilities and operations of FAX. Contractor and FAX shall be exempt of the Take-Or-Pay obligations during these periods.

3.4 Fueling Network Expansion

If the Contractor expands its fueling network to new locations, the terms and conditions of this agreement and its pricing shall extend to those fueling stations.

3.5 Eligible Vehicles

The Contractor will only be permitted to fuel and invoice FAX for official government business vehicles. FAX must provide the Contractor, and as applicable update, a listing or register of vehicles and their identification numbers that are eligible for fueling at the Contractor's SoHyCal Green Production Facility. Any vehicles not on this listing or register will not be permitted to fuel or be invoiced for fuel expenses.

3.6 Invoicing

The Contractor's invoice shall include the following:

- City of Fresno Purchasing Order Number
- Transaction Dates
- Vehicle Identification Number
- Fuel consumption (kilograms and gasoline gallon equivalent)
- Line-Item Cost

4.0 PRICING

4.1 Fuel Price

The Contractor shall bill FAX for each kilogram of hydrogen dispensed into its vehicles at the price in accordance with the below schedule (the "**Selling Price**"):

Term (years 1 thru 5):

- a) \$19.00 per kilogram of hydrogen.

Service Fee: FAX shall pay to Contractor a flat price of \$72,000 for each Contract Year of the Term as Service Fee for the availability of such infrastructure needed to accomplish the service of the Contract. Service Fee will be paid upfront within the following thirty (30) days of the beginning of each Contract Year.

Government Taxes & Fees: All applicable governmental taxes and fees shall be listed separately when invoicing.

5.0 ENVIRONMENTAL ATTRIBUTES

5.1 Environmental Attributes Ownership

The Contractor will retain ownership of all environmental attributes associated with the hydrogen fuel. FAX acknowledges that it has no right or claim to any benefit of the environmental attributes of the hydrogen fuel that it purchases.

6.0 TAKE OR PAY

6.1 Take or Pay

The Guaranteed Production will be established by setting a minimum that FAX is obligated to purchase (take-or-pay) for each contract period and a maximum that the Contractor is obligated to supply for each contract period. The maximum amount does not preclude the Contractor from selling more than the maximum amount to FAX, nor does it hinder FAX from purchasing more than the maximum amount. The Guaranteed

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Production amount does not alter the “not to exceed” threshold as authorized by City Council and established in the agreement’s preamble, paragraph 2. FAX and the Contractor agree that an increase in the “not to exceed” threshold must follow the provisions of *General Conditions, paragraph 31*. The amounts are as follows:

Guaranteed Production Amounts	
Contract Year	Amounts
Year 1	At a maximum 10,000 Kg annually
Year 2	At a minimum 15,000 Kg annually (Take-or-pay) At a maximum 17,000 Kg annually
Year 3	At a minimum 17,000 Kg annually (Take-or-pay) At a maximum 19,000 Kg annually
Year 4	To be negotiated at the time of extension
Year 5	To be negotiated at the time of extension

FAX and the Contractor will be released from its obligations for take-or-pay in the event of a Force Majeure event.

6.2 Failure to supply

If Contractor is unable to provide to FAX the daily Guaranteed Production either as a result of fail meeting the hydrogen specifications or because its unable to meet the FAX demand:

- a) FAX will be entitled, as its sole compensation and remedy, to purchase hydrogen from a third party at a price not exceeding \$19.00/kg.
- b) In such an event, Contractor will reimburse FAX in an amount equal to the product of (A) the hydrogen purchased by FAX from such third party (up to an amount equal to the Unremedied Shortfall); and (B)(i) the lesser of: (x) the price (in \$/kg) that FAX paid to such third party to purchase such amount to supply the Unremedied Shortfall minus the Purchase Price; and (y) \$19.00 per kg.
- c) The total compensation payable by Contractor in Performance Damages shall not exceed \$150,000.00 in each Contract year.

Contractor will be released from its obligations to supply the Guaranteed Production to FAX in the event of a Force Majeure event. “

6.3 Remedies

FAX shall purchase and receive all the Guaranteed Production that Contractor makes available to FAX at the Delivery Point on each day of the Term according to the following structure (the “Hydrogen Yearly Production”):

- Contract Year #1: estimated consumption of no less than 30.50 kg/day averaged in seven (7) days periods, which shall mean 10,000 kilograms within the following twelve (12) months after the Contract date hereof.
- Contract Year #2: estimated consumption of no less than 41.00 kg/day averaged in seven (7) days periods, which shall mean 15,000 kilograms within the following twelve (12) months after the second (2) anniversary of the Contract date hereof.
- Contract Year #3: estimated consumption of no less than 52.00 kg day averaged in seven (7) days periods, which shall mean 17,000 kilograms within the following twelve (12) months after the third (3) anniversary of the Contract date hereof.

On and after the Contract Year #2 if FAX fails to accept delivery of any Hydrogen Yearly Production that Contractor makes available to FAX at the Delivery Point on such year, then FAX shall pay to Seller the Selling Price for each such kg of stranded product as if FAX has received such stranded product at the Delivery Point.

The daily averaged consumption to which is referred this paragraph 6.3 could be daily distributed by FAX within seven (7) days period to the extent that is technically and operatively feasible by the Contractor. The remedies of this paragraph shall be accrued and compensated to Contractor by each seven (7) days period set herein.

6.4 Third-party service penalty

The Contractor and FAX mutually recognize each other as exclusive partner for the provision of the service set in this agreement. Therefore, in Contract Year #1 FAX commits not to obtain hydrogen by any other third-party providers unless the Hydrogen Yearly Production is purchased in its entirety to Contractor.

If Contractor becomes aware or noticed that FAX has obtained or purchased hydrogen to any third party when the Hydrogen Yearly Production in Contract Year #1 was not sold by Contractor to FAX, then FAX will need to pay a penalty equivalent to the product of (A) the difference between the (i) Hydrogen Yearly Production (in kilograms) of Contract Year #1, minus (ii) the volume in kilograms purchased to Contractor in such Contract Year #1, and (B) ten (10) times the Selling Price..

Exception: The third-party service penalties will not apply during an official emergency declaration that requires FAX’s Fuel Cell Electric Buses (FCEB) to respond and operate outside of its service area.

ATTACHMENT "E" DISCLOSURE OF CONFLICT OF INTEREST

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

 Signature

 Date

 Name

 Company

 Address

Additional page(s) attached.

 City, State, Zip

ATTACHMENT "F"

**CITY OF FRESNO
FINANCE DEPARTMENT
ACCOUNTS PAYABLE SECTION**

AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS (ACH CREDITS)

Company Name _____ Contact Email Address _____
(Required)

Contact Name _____ Telephone Number _____

The City of Fresno, Finance Department, (FINANCE DEPARTMENT), is authorized to initiate credit entries to the company above, (COMPANY), in the account below at the depository financial institution named below, (DEPOSITORY), and to credit the same account. Company acknowledges that the origination of ACH transactions to its account must comply with the provisions of U.S. law.

Depository Name _____ Branch _____

City _____ State _____ Zip Code _____

Routing Number _____ Account Number _____

ACH Authorization Agreement Form already on file with City.

This authorization is to remain in the full force and affect until FINANCE DEPARTMENT has received written notification of its termination. The FINANCE DEPARTMENT and DEPOSITORY have a reasonable time to process the termination.

Name(s) _____
(Please Print)

Signature _____ Date _____

Title _____