

SECOND AMENDMENT TO GROUND LEASE

This Second Amendment to Ground Lease (“**Second Amendment**”) is dated _____, 2018 (the “**Amendment Effective Date**”) and is between **COMMERCE REFUSE TO ENERGY AUTHORITY**, a joint powers authority organized and existing under the Joint Exercise of Powers Act, Government Code §§ 6500 *et seq.* (“**Landlord**”), and the **CITY OF COMMERCE**, a municipal corporation (“**Tenant**”). Landlord and Tenant are each a “**Party**” and together, the “**Parties**.”

A. Landlord and Tenant entered into a Ground Lease, dated April 13, 2004, as amended by a First Amendment to Ground Lease, dated June 7, 2011 (collectively, the “**Lease**”). Under the provisions of the Lease, Landlord leased to Tenant an approximately 13,147 square foot portion (the “**Premises**”) of Landlord’s approximately 6.5 acres of real property (“**Landlord Property**”) located at 5926 Sheila Street, City of Commerce, California 90040 (Los Angeles County Assessor’s Parcel Numbers 6334-025-911 and 6334-025-912) for the purposes of constructing and operating a compressed natural gas and/or liquefied natural gas facility (the “**Facility**”) for use in fueling Tenant’s vehicle fleet. The Term of the Lease commenced on April 13, 2004 (the “**Effective Date**”) and expires on the twenty-seventh (27th) anniversary of the Effective Date (April 12, 2031), unless terminated earlier as provided in the Lease. All terms not defined in this Second Amendment have the meanings ascribed in the Lease.

B. Following a recent review of the Lease, the Parties determined the Lease does not expressly provide Tenant with ingress and egress rights over Landlord Property to access the Facility located on the Premises even though Tenant has been utilizing a portion of the Landlord Property for access purposes since the Effective Date.

C. By this Second Amendment, the Parties desire to formalize Tenant’s access rights to and from the Premises.

Landlord and Tenant therefore agree to amend the Lease as follows:

1. The following subsection is hereby added to Section 4:

“4.7 Access Rights. Subject to any rights, powers, and privileges reserved by Landlord under the terms of this Lease, Tenant and its employees, agents, representatives, licensees, contractors, and invitees (collectively, “**Tenant Parties**”) shall have non-exclusive use of the private road off Sheila Street (the “**Private Road**”), which is depicted in Exhibit B-1 attached to this Lease, for ingress and egress to the Premises. Tenant acknowledges that Landlord and other individuals and entities have the right to use the Private Road. The rights granted to Tenant to use the Private Road do not include the right to store any property, equipment or vehicles, temporarily or permanently, on the Private Road or to use the Private Road for any other purpose, except only for ingress and egress to and from the Premises pursuant to the terms of this Lease. Tenant shall not make any alterations or modifications to, or perform any construction on, the Private Road unless permitted **in advance and in writing** by Landlord. Neither Tenant, nor any

Tenant Parties shall interfere with the use of the Private Road by Landlord or any other person or entity.

4.7.1. Rules and Regulations for Private Road. Landlord may, from time to time, install directional or traffic signage or establish, modify, amend, and enforce reasonable rules and regulations for the management, safety, maintenance and repair of any part of the Private Road. Tenant shall abide by all such signage and such rules and regulations and shall ensure that all Tenant Parties abide by such signage and rules and regulations.

4.7.2. Maintenance of Private Road. Landlord shall maintain the Private Road in good order, condition, and repair. However, if any portion of the Private Road is damaged by the acts, omissions, or negligence of Tenant or any Tenant Parties, then Tenant shall immediately repair such damage to the satisfaction of Landlord at Tenant's sole cost and expense.

4.7.3. Termination of Right to Use Private Road; No Assignment. Tenant's right to use the Private Road shall terminate upon expiration or earlier termination of this Lease. Tenant shall not sell, transfer, convey, exchange, assign, pledge, hypothecate, dispose of, or encumber, voluntarily, involuntarily, by operation of law or otherwise its right to use the Private Road or any portion thereof.

4.7.4. Landlord's Rights. Landlord may, in its sole and absolute discretion, from time to time:

- (a) Make changes to the Private Road as long as reasonable access to the Premises remains available;
- (b) Close temporarily any portion of the Private Road for maintenance or repair purposes as long as reasonable access to the Premises remains available;
- (c) Add improvements and other structures to the Private Road; and
- (d) Do and perform such other acts and make such other changes in, to or with respect to the Private Road as Landlord deems reasonably appropriate and so long as such acts or changes do not materially and adversely interfere with Tenant's access to or from the Premises.

4.7.5 Indemnity. Tenant agrees to indemnify, defend, and hold harmless Landlord from and against any and all Damages arising from or related to any act, omission, or negligence of Tenant or any Tenant Parties in connection with the Private Road at any time since the Effective Date. The foregoing indemnity survives the expiration or termination of the Lease."

2. Confirmation. Tenant represents and warrants for the benefit of Landlord as of the Amendment Effective Date as follows: (a) Tenant is the actual occupant in possession of the Premises and has not sublet, assigned or hypothecated or otherwise transferred all or any portion of its interest in the Lease; (b) all obligations of Tenant and Landlord which have accrued prior to the Effective Date have been performed; (c) there exists no breach or default, nor state of facts, nor condition which with notice, the passage of time, or both, would result in a breach or default on the part of Tenant or Landlord under the Lease; and (d) no claim, controversy, dispute, quarrel or disagreement exists between Landlord and Tenant.

3. No Further Modification. Except only as modified by this Second Amendment, the Lease remains in full force and effect. If there is any conflict or inconsistency between the Second Amendment and the Lease, this Second Amendment prevails.

4. Authority. Each signatory represents and warrants that he or she has the full authority to execute and deliver this Second Amendment.

[Signatures Appear on Following Page]

Landlord and Tenant are signing this Second Amendment as of the Amendment Effective Date.

**COMMERCE REFUSE TO ENERGY
AUTHORITY**

By: _____
Chairperson, Board of Directors

ATTEST:

Secretary to the Board

APPROVED AS TO FORM:

Lewis Brisbois Bisgaard & Smith, LLP

By: _____
CREA Counsel

CITY OF COMMERCE

By: _____
Hugo A. Argumedo, Mayor

ATTEST:

Lena Shumway, City Clerk

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney