

## FUEL PURCHASE AGREEMENT

**THIS FUEL PURCHASE AGREEMENT** (this "Agreement") is executed on \_\_\_\_\_, 2019, to be effective as of February 1, 2019 the ("Effective Date"), by and between **TRILLIUM USA COMPANY, LLC**, a Delaware limited liability company, d/b/a Trillium CNG ("Trillium"), and **MT. DIABLO UNIFIED SCHOOL DISTRICT** ("Customer").

### BACKGROUND

A. Trillium is in the business of, among other things, designing, constructing, operating, and maintaining compressed natural gas ("CNG") fueling stations and delivering CNG to such facilities for dispensing CNG for use as a transportation fuel.

B. Customer desires for Trillium to operate a fueling station on Customer's property located at 1490 Gasoline Alley, Concord, California 94520 (the "Station"), and to assure itself of a supply of CNG to fuel its fleet and other vehicles.

C. The parties desire to memorialize their understandings and agreements with respect to the foregoing all as set forth in this Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, including without limitation the covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, Trillium and Customer hereby agree as follows:

### AGREEMENT

1. Condition Precedent. Trillium's obligations under this Agreement are contingent upon Trillium and Customer entering into a written lease agreement pursuant to which Customer leases to Trillium, and Trillium leases to Customer, the real property on which the Station is located (the "Station Lease").

2. Obligations of Trillium. In addition to the supply of CNG contemplated below, during the Term, Trillium shall (i) secure and directly pay for all services and work necessary to complete the improvements and equipment upgrades to the Station more particularly described in Exhibit A attached hereto, including engineering, construction costs and expenses and the procurement of all necessary permits associated therewith, (ii) act as Station operator including all maintenance and operational costs associated with the Station, (iii) provide signage and advertising, and (iv) be responsible for all utility bills arising from the operation of the Station. In addition to the improvements and equipment upgrades referenced on Exhibit A, incorporated by this reference, Trillium has previously made and installed certain additions and improvements, including, without limitation, CNG fueling equipment, to the real property on which the Station is located (collectively "Alterations"). Each of Trillium and Customer agree that Customer shall have no ownership or other interest in any Alterations at the Station, whether installed prior to or following the Effective Date, or any profits derived therefrom. Upon the expiration or earlier termination of this Agreement and the Station Lease, all Alterations shall be removed by Trillium in accordance with the terms of the Station Lease.

3. Purchase of CNG.

a. Purchase and Sale of CNG. During the Term Trillium shall supply to Customer at the Station, and Customer shall purchase from Trillium at the Station, CNG for fueling of motor vehicles.

b. Term. This Agreement shall be binding upon the parties as of the Effective Date and, unless earlier terminated as provided for herein, shall continue in full force and effect through and including the fourth (4<sup>th</sup>) anniversary of the Effective Date ("Term"). Following the expiration of the initial Term this Agreement shall automatically renew for successive one-month periods unless either party shall provide the other party written notice not less than 30 days prior to the expiration of the initial Term, or then current monthly renewal term, as applicable, of its intent to terminate this Agreement. Such exercised one-month periods shall for all purposes be considered a part of the Term and shall be on all the same terms and conditions of this Agreement, provided that any obligations or commitments herein that apply on an annual basis shall be prorated accordingly.

c. Customer Minimum Purchase Requirement. For purposes of this Agreement: (i) a "gge" represents the natural gas equivalent volume to the energy content of 1 gallon of regular unleaded gasoline, and (ii) the energy content of 1 gallon of regular unleaded gasoline is deemed to be 125,000 btu per gallon.

4. Pricing and Payment.

a. Price. The purchase price for the CNG purchased by Customer and any Customer Users (as defined below) pursuant to this Agreement shall be determined in accordance with the "CNG Purchase" formula set forth in Exhibit B

b. Invoicing.

i. Invoices. By the tenth (10<sup>th</sup>) day of each calendar month during the Term, Trillium will deliver an invoice to Customer reflecting the amount owing from Customer for purchases of CNG during the preceding calendar month.

c. Payment. Customer shall pay Trillium the amounts shown on the face of each invoice within forty-five (45) calendar days from the date of the applicable invoice. Payments shall be made in U.S. dollars. Customer shall pay interest on all past due payments calculated at a rate of twelve percent (12%) per annum from the due date until paid.

d. Taxes. Any and all federal, state and local fuel use taxes, sales taxes, excise taxes, value-added taxes, duties, customs, inspection or testing fees, and all other taxes, fees, interest and charges of any nature whatsoever imposed on or measured by the transactions between Trillium and Customer or Customer Users, as applicable, under this Agreement shall be paid by Customer as part of the prices determined in accordance with Exhibit B. In the event that (i) any such taxes, fees, interest and charges are not included in the prices determined in accordance with Exhibit B and (ii) Trillium is required to pay the same, Customer shall reimburse Trillium therefor upon demand.

5. Fueling Procedures.

a. Customer's Employees and Independent Contractors. Customer's employees and/or independent contractors identified in advance in writing to Trillium (each, a "Customer User"),

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and mutually agreed upon, shall be entitled to purchase CNG at the Station on Customer's behalf under this Agreement.

b. Fueling Procedures. Each user shall perform all fueling acts necessary to purchase CNG, and in no event shall Trillium have any obligation whatsoever to assist any Customer User with any fueling acts. Each Customer User's purchase of CNG will be tracked by such Trillium Fueling Card issued to the subject purchaser.

c. Customer Liability for Purchases. Customer shall be responsible for any and all purchases of CNG by any and all Customer Users or otherwise associated with any and all of the Trillium Fueling Cards issued to Customer Users; provided, however that if Customer has notified Trillium in writing (i) not to accept a particular Trillium Fueling Card or (ii) that a particular Trillium Fueling Card has been lost or stolen, in the case of each of (i) and (ii), as identified by the Trillium Fueling Card number, then Customer shall have no liability for any purchases of CNG associated with such that identified lost or stolen Trillium Fueling Card after twenty-four hours has passed following Trillium's receipt of such notice. Any disputes as to whether Customer is liable for any purchases of CNG will be resolved by Trillium in its good faith reliance on the tracked Trillium Fueling Card data.

d. Adequate Assurances. Omitted.

e. Fuel Specifications. Trillium acknowledges and agrees that it is Customer's desire to obtain CNG fuel that is made available in accordance with industry best practices and that does not contain impurities such as moisture, oil, and non-methane hydrocarbon content in CNG fuel to the extent practicable. This includes but is not limited to the design of the Trillium's dryer, compressor, and filtration equipment, and regular maintenance of all CNG Station components.

f. Data Provision. In order to fairly assess contamination responsibility, Trillium will provide within five (5) business days after a request from Customer operating and maintenance data, samples of oil and other materials as required, as well as access for Customer's personnel to inspect compression, drying, and filtering equipment and operations.

6. Operations; Maintenance.

a. Permits. Trillium shall be responsible for all necessary federal, state, or local governmental permits, authorizations, variances, licenses, consents, certificates, and other approvals necessary to construct, upgrade, and operate the Station, all at Trillium's sole expense. Customer shall use its best efforts to assist Trillium in obtaining all such permits, grants, authorizations, variances, licenses, consents, certificates, and other approvals.

b. Third Party Customers. The Station shall be open for service 24 hours a day, seven days a week. Customer acknowledges and agrees that third party customers will have access to the Station at all times.

c. Maintenance; Reimbursement for Non-Functional Station. Trillium shall, at its cost and expense, be responsible for all repairs to, and scheduled maintenance of, the Station necessary to ensure the Station is operational at all times during Customer's ordinary business hours, Monday through Friday, 5 a.m. to 8:00 p.m. on all school days. In the event that, due to Trillium's failure to adequately maintain the Station, the Station is not functional for Customer use during Customer's ordinary business hours Trillium shall be obligated to pay Customer an amount equal to the difference

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between (a) the price for such fuel Customer would have paid pursuant to Section 3 of this Agreement but for the non-functional condition of the Station, and (b) the actual price for such fuel Customer paid to a third party provider during the time the Station was non-function, including mileage and operational costs; provided, however, in no event will such payment exceed \$250 in the aggregate, per day. Further, such payment obligation shall in no event apply to regularly scheduled maintenance of the Station, provided that the Customer is notified of such scheduled maintenance no less than 72 hours prior to the commencement of such scheduled maintenance. Trillium will coordinate regularly scheduled maintenance with the Customer to ensure that scheduled downtime does not interfere with the Customer's fueling operations.

7. Warranty; Limitations on Liability.

a. Warranty. Trillium hereby represents and warrants that the CNG sold to Customer pursuant to this Agreement shall conform to the specifications set forth on Exhibit C, incorporated by this reference, (the "Specifications"), if any. The foregoing such warranty is the sole and exclusive warranty of Trillium with respect to any and all CNG sold to Customer pursuant to this Agreement, **AND TRILLIUM HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, AND CUSTOMER HEREBY ACKNOWLEDGES THE FOREGOING DISCLAIMER.**

b. Exclusive Remedy. Trillium's sole obligation and Customer's exclusive remedy for any failure of CNG to conform to Trillium's warranty set forth in Section 7.a shall be to refund to Customer the purchase price actually paid by Customer for such non-conforming CNG.

c. Limitation of Liability. **TRILLIUM SHALL NOT BE LIABLE FOR: ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONTINGENT DAMAGES WHATSOEVER, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, OR ANY OTHER LEGAL OR EQUITABLE THEORY OF THE SAME TYPE. TRILLIUM HEREBY DISCLAIMS THE OBLIGATIONS AND DAMAGES DESCRIBED IN THIS SUBPARAGRAPH, REGARDLESS OF WHETHER TRILLIUM HAS BEEN GIVEN NOTICE OF THE POSSIBILITY OF SUCH OBLIGATIONS OR DAMAGES.** Without limiting the generality of the foregoing, Trillium specifically disclaims any liability for (i) special or punitive damages, penalties, damages for lost profits or revenues, loss of use of trucks or trailers or other equipment or systems, cost of capital, cost of substitute products or trucks or trailers or other equipment or systems, delay in Customer's performance, downtime, or shutdown or slowdown costs (ii) any other types of economic loss by Customer or Customer Users.

8. Indemnification.

a. Customer shall indemnify, defend and hold harmless Trillium and its affiliates, employees, representatives and agents (the "Trillium Indemnitees") from and against any and all losses, liabilities, costs, damages and expenses (including but not limited to reasonable attorneys' fees and other costs of defense) caused by: (i) the negligence or willful misconduct of Customer, its employees, agents or contractors, or Customer Users, or (ii) resulting from the failure of Customer to perform or observe any of the terms and conditions of this Agreement, including safety and fueling procedures as indicated by Trillium.

b. Trillium shall indemnify, defend and hold harmless Customer and its affiliates, employees, representatives and agents (the "Customer Indemnitees") from and against any and all losses, liabilities, costs, damages and expenses (including but not limited to reasonable attorneys' fees and other costs of defense) caused by: (i) the negligence or willful misconduct of Trillium, its employees, agents or contractors, or (ii) resulting from the failure of Trillium to perform or observe any of the terms and conditions of this Agreement.

9. Events of Default and Termination; Early Termination; Default Damages.

a. Default by Customer; Termination by Trillium. This Agreement and the use of any Trillium Fueling Cards may be terminated by Trillium immediately upon written notice in the event (each an "Event of Default") that Customer: (a) fails to make any payment hereunder as and when due; (b) by act or omission breaches or defaults on any material term or condition of this Agreement other than the obligation to make payments as and when due and Customer fails to cure such breach or default within thirty (30) calendar days after written notice from Trillium; or (c) becomes insolvent, makes an assignment for the benefit of creditors, has a receiver appointed over all or any portion of its property, becomes the subject of an "order for relief" as that term is used in the U.S. Bankruptcy Code, or is liquidated or dissolved or its affairs are wound up; or (d) fails to perform any covenant, term, condition, or agreement binding on Customer under the Station Lease.

b. Default by Trillium; Termination by Customer. This Agreement may be terminated by Customer immediately upon written notice in Event of Default if Trillium: (a) by act or omission breaches or defaults on any material term or condition of this Agreement and Trillium fails to cure such breach or default within thirty (30) calendar days after written notice from Customer; or (b) becomes insolvent, makes an assignment for the benefit of creditors, has a receiver appointed over all or any portion of its property, becomes the subject of an "order for relief" as that term is used in the U.S. Bankruptcy Code, or is liquidated or dissolved or its affairs are wound up.

c. Default by Customer and Damages. Upon the occurrence of an Event of Default by Customer and termination of the Agreement by Trillium due to Customer's default, Customer shall pay to Trillium the following, not as a penalty, but as a reasonable measure of anticipated or actual loss due to the difficulties that may arise in proof of loss. Within fourteen (14) days of the termination of the Agreement by Trillium arising from Customer's default, Customer shall pay the sum of (i) any amount previously invoiced and yet to be invoiced charges for CNG dispensed to Customer that has not been paid to Trillium plus (ii) the cost of liquidating any natural gas contracts or agreements or related financial transactions ("Gas Procurement Cost") incurred by Trillium for supplying natural gas as a feedstock for the CNG provided to Customer. The Gas Procurement Cost is equal to the (i) positive difference, if any, between the Contract Value of the natural gas to be liquidated and the current Market Value of said natural gas plus and (ii) any additional costs and fees that arise from commercially reasonable efforts and transactions for the "buyer" to replace the CNG or the "seller" to sell the CNG to a third party.

For the purposes of Section 9.c, "Contract Value" means the amount of natural gas remaining to be delivered or purchased under a transaction multiplied by the contract price of said natural gas. "Market Value" means the amount of natural gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction, which price shall be determined by the Trillium in a commercially reasonable manner. To ascertain Market Value, the Trillium may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from

leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs.

d. Effect of Termination. Neither expiration nor termination of this Agreement shall affect the rights or responsibilities of the parties hereunder that accrued prior to expiration or termination. Sections 7, 8, 9 and 10 shall survive expiration or termination.

10. Miscellaneous.

a. Notice. All notices, requests, demands and other communications under this Agreement shall be given in writing and shall be personally delivered; sent by electronic mail transmission; or sent to the applicable parties at their respective addresses indicated in this Section 10.a by registered or certified U.S. mail, return receipt requested and postage prepaid; or by private overnight mail courier service, as follows:

If to Trillium:

Trillium USA Company, LLC d.b.a Trillium  
2929 Allen Parkway, Suite 4100  
Houston, Texas 77019  
Attention: General Manager  
Email: [jonathan.gee@trilliumcng.com](mailto:jonathan.gee@trilliumcng.com)

With a copy to:

Trillium USA Company, LLC d.b.a Trillium  
2929 Allen Parkway, Suite 4100  
Houston, Texas 77019  
Attention: Associate General Counsel  
Email: [morris.collie@musketcorp.com](mailto:morris.collie@musketcorp.com)

If to Customer:

Superintendent  
Chief Business Officer  
Mt. Diablo Unified School District  
1936 Carlotta Drive  
Concord, CA 94519  
Email: [superintendentsoffice@mdusd.org](mailto:superintendentsoffice@mdusd.org), [ramosr@mdusd.org](mailto:ramosr@mdusd.org)

or to such other person or address as either party shall have specified by notice in writing to the other party. If personally delivered, such communication shall be deemed delivered upon actual receipt; if sent by electronic mail, such communication shall be deemed delivered upon the recipient's confirmation of receipt (it being understood that an automatic response to such electronic mail shall not be deemed confirmation of receipt); if sent by facsimile transmission, such communication shall be deemed delivered the day of the transmission, or if the transmission is not made on a business day, the first business day after transmission (and sender shall bear the burden of proof of delivery); if sent by

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overnight courier, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal.

b. Assignment; No Third-party Beneficiaries. Neither party may assign this Agreement or its rights or obligations hereunder, in whole or in part, voluntarily or by operation of law, without the prior written consent of the other party, with such consent not unreasonably withheld, delayed or conditioned, and any attempted assignment without such consent shall be null and void and without legal effect. Notwithstanding the foregoing, Trillium may assign this Agreement or its rights or obligations hereunder, in whole or in part, to any of its affiliates or to any person or entity that purchases all or any substantial portion of its assets, without Customer's consent. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective permitted successors and permitted assigns. Nothing contained in this Agreement shall be deemed to confer upon any other person or entity any right or remedy under or by reason of this Agreement.

c. Severability. If a court of competent jurisdiction determines any provision(s) of this Agreement to be illegal or excessively broad, then this Agreement shall be construed so that the remaining provisions shall not be affected but shall remain in full force and effect, and any such illegal or excessively broad provision(s) shall be deemed, without further action on the part of any person, to be modified, amended and/or limited to the extent necessary to render the same valid and enforceable in such jurisdiction.

d. Amendment and Waiver. No provisions of this Agreement may be modified, waived or discharged unless such modification, waiver or discharge is agreed to in a writing executed by Customer and Trillium. No action taken pursuant to this Agreement shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement. No waiver by either party at any time of any breach by the other party of, or compliance with, any provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions at the same or at any prior or subsequent time.

e. Entire Agreement. This Agreement (including the exhibits attached hereto and contemporaneous Lease) supersedes all prior agreements, whether oral or in writing, between the parties with respect to its subject matter and constitutes the complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. There have been and are no conditions, agreements, representations or warranties between the parties with respect to the subject matter of this Agreement other than those set forth or provided for in this Agreement.

f. Counterparts; Facsimile Signatures. This Agreement may be executed by facsimile signature pages and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

g. Governing Law. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, EXCLUDING ANY CHOICE-OF-LAW RULES THAT MAY DIRECT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.**

[SIGNATURES TO FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives, effective as of the Effective Date.

**TRILLIUM:**

**TRILLIUM USA COMPANY, LLC**

By: \_\_\_\_\_  
 Name: Bill Cashmareck  
 Title: Managing Director  
 Date: 2/6/19

**CUSTOMER:**

**MT. DIABLO UNIFIED SCHOOL DISTRICT**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

EXHIBIT A

Station Upgrades

<b>CNG Storage Vessel</b>	<b>Manufacturer: CP Industries Quantity: (1) Water Volume: 46 cubic feet External Diameter: 24" Length: 21' Pressure Rating: 4,000 PSI</b>
<b>Valve Panel</b>	<b>CNG Station's valve-panel upgrades to include status assessment and necessary modifications to improve fueling experience.</b>

## EXHIBIT B

### CNG Purchase

#### CNG Purchase:

For CNG purchased at the Station during the Term by Customer or a Customer User who is not exempt from Federal, State and other Tax, then Customer or such Customer User shall pay to Trillium a total amount equal to:

$$\text{CF Adder} + \text{Index Gas Cost} + \text{T} = \text{Price/gge}$$

“CF Adder” represents a compression fee and is equal to \$1.44 multiplied by the gge’s dispensed to Customer during the Term.

“Index Gas Cost” means the cost of the natural gas that is included in the total gge’s purchased by the Customer at the Station during such calendar month. Trillium will price the natural gas off the PGE City Gate Index Price as published on the 1<sup>st</sup> of the month by Argus Natural Gas Americas. Upon 30 day notice to Customer, Trillium reserves the right to change the Index provider it uses in determining the Price.

“T” means the aggregate cost of all federal, state and local fuel use taxes, sales taxes, excise taxes, value-added taxes, duties, customs, inspection or testing fees, and all other taxes, fees, interest and charges to be collected or otherwise paid in connection with the purchase and sale of CNG at the station during the Term.