



SHELL RETAIL AND
CONVENIENCE OPERATIONS
LLC

150 N Dairy Ashford
Houston, TX 77079
Info@ShellTapUp.com

To: City of Carson

Attn: Eliza Jane Whitman

From: Mike Okeefe

Subject: Fuel Delivery Agreement

Date: 5/03/2022

This “**Confirmation**” evidences the terms of the binding agreement reached between Seller and Buyer (each a “**Party**” and collectively, the “**Parties**”) as of the date specified above. This Confirmation, and the Shell TapUp General Terms and Conditions: Fuel Sale Services dated 5/03/2022 (the “**General Terms and Conditions**”), which is incorporated herein, together constitute the Parties’ entire agreement as to the transaction contemplated hereunder and supersedes all prior communications between the Parties. Capitalized terms used herein and not defined herein shall have the meaning given to such terms in the General Terms and Conditions.

1. SELLER: SHELL RETAIL AND CONVENIENCE OPERATIONS LLC DBA SHELL TAPUP
2. BUYER: City of Carson
3. MOTOR FUEL:
 - A. GRADE (1): PREMIUM
 - B. GRADE (2): DIESEL
4. MOTOR FUEL PRICE:
 - A. Premium and Diesel: Los Angeles - 916 RACK plus \$0.58 per gallon plus all applicable taxes
5. FREQUENCY OF DELIVERY: IT IS EXPECTED THAT BUYER WILL NEED 24/7 ACCESS TO FUEL PURCHASES WHICH NEED WILL BE DETERMINED BY BUYER IN ITS SOLE DISCRETION. AGREEMENT TO BE ON AS-NEEDED BY BUYER BASIS AND BUYER IS NOT OBLIGATED TO PURCHASE ANY FUEL
6. DELIVERY START DATE: 7/01/2022
7. DELIVERY END DATE: 6/30/2023, SUBJECT TO EARLIER TERMINATION PER THE GENERAL TERMS AND CONDITIONS

8. DELIVERY LOCATION: 18620 S. BROADWAY STREET, CARSON, CA 90248

9. VEHICLES/EQUIPMENT RECEIVING MOTOR FUEL: N/A

10. DELIVERY SERVICE FEE AND PRICE:

A. SERVICE FEE: \$0.00 PER VEHICLE AND/OR EQUIPMENT ASSOCIATED WITH THAT VEHICLE + \$0.00 DELIVERY FEE PER SERVICE BY LOT LOCATION. DELIVERY FEE IS CHARGED BY SELLER IF SERVICES CANNOT BE PERFORMED DUE TO NO FAULT OF SELLER OR ARE CANCELLED BY BUYER WITH LESS THAN TWO BUSINESS DAYS' NOTICE. SELLER CAN WAIVE THIS CHARGE FOR CANCELLATION IF BUYER DOES NOT REQUIRE SERVICE DUE TO INCLEMENT WEATHER.

B. OTHER: N/A

C. PRICING PROPOSAL: THE PRICING SET FORTH IN THIS CONFIRMATION SHALL BE BASED ON THE PRICING INFORMATION SET FORTH IN THE PRICING PROPOSAL ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE AS EXHIBIT "A."

11. PAYMENT TERMS:

A. PAYMENT METHOD: SEE EXHIBIT A

B. INVOICE FREQUENCY: MONTHLY

C. PAYMENT DUE DATE: NET 30

D. IN ADDITION TO THE ABOVE, BUYER AGREES TO MAKE PAYMENT IN ACCORDANCE WITH ANY OTHER PAYMENT TERMS SET FORTH THE SHELL TAPUP GENERAL TERMS AND CONDITIONS.

12. NOTICE INFORMATION:

A. BUYER: CITY OF CARSON

B. EMAIL: EJWHITMAN@CARSONCA.GOV

C. SELLER: SHELL TAPUP – 150 NORTH DAIRY ASHFORD RD HOUSTON, TX
77079

EMAIL: TAPUP@SHELL.COM

13. OTHER TERMS AND CONDITIONS:

Shell TapUp
General Terms and Conditions:
Fuel Sale Service

Dated as of 5/03/2022

These General Terms and Conditions are intended to facilitate the purchase, sale and delivery of motor fuel (as specified in the Confirmation, such motor fuel the “**Fuel**” and such transaction or series of transactions, the “**Fuel Sale**”) along with routine car cleaning and maintenance services. “**Buyer**” refers to the party receiving Fuel, and “**Seller**” refers to the party delivering Fuel and/or services. Terms used but not otherwise defined herein shall have the meaning set forth in the Confirmation. Seller and Buyer are herein referred to individually as a “**Party**” and collectively as the “**Parties**.” The entire agreement between the Parties shall be legally-binding relationship established by these General Terms and Conditions and the Confirmation (collectively, as offered by Seller from time to time, the “**Shell TapUp App**”) (collectively, the “**Agreement**”).

Article 1. Fueling Program

1. As specified in the Confirmation, Seller shall provide the following goods and services to Buyer:
 - 1.1. Complete Fuel Sales to Buyer at the Delivery Location (as specified in the Confirmation). Title and risk of loss of the Fuel shall pass to Buyer when the Fuel passes from Seller’s delivery line into the receiving connection of the Vehicle and/or Equipment (in each case, as identified in the Confirmation) supplied by Buyer; and
 - 1.2. Provide Buyer with a financial overview outlining the volume of Fuel delivered to the Vehicle(s) and/or Equipment and the total cost for such Fuel Sale.
2. The Parties acknowledge and agree that no franchise relationship is formed by this Agreement.
3. Buyer shall provide Seller with non-confidential data and information, including, but not limited to, vehicle data such as make/model/year of vehicle, vehicle identification number or other identifying information for any Vehicle and/or Equipment.

Article 2. Authorizations and Delivery Location; Inspection

- 2.1 Buyer grants Seller authorization to drive its Vehicles and/or Equipment (including, but not limited to, within a Delivery Location or from one Delivery Location to another Delivery Location) as may be necessary or conducive to facilitate the Fuel Sale. Buyer acknowledges that Seller requires alternative fueling Delivery Locations for any Delivery Locations where Vehicles and/or Equipment are parked in enclosed Parking Garages, and that it must leave the Vehicles and/or Equipment receiving Fuel parked at least twenty-five (25) feet from any structures at the Delivery Location. The Booking Fee (as defined in the Confirmation) will be charged regardless of whether any Vehicles and/or Equipment are fueled if service was requested on that day.
- 2.2 Seller may inspect proposed Delivery Locations prior to any Fuel Sales. If the layout or address of an approved Delivery Location changes, Buyer must inform Seller as soon as possible so Seller can re-inspect or inspect the Delivery Location. If Seller deems a Delivery Location unacceptable for any reason, Seller reserves the right to cancel or postpone service at such Delivery Location (and the Booking Fee will still be charged to Buyer). If Seller deems the location of a Vehicle and/or

Equipment receiving Fuel as creating a potential safety hazard (for example, a vehicle is parked near a structure, school, hospital, drain or area where electrical work is being conducted) and is unable to promptly move such Vehicle and/or Equipment, Seller may decline to fuel or service such Vehicle and/or Equipment.

- 2.3 Buyer hereby grants Seller a license to use (and not an interest in) the Delivery Locations (and the Vehicles and/or Equipment located at the Delivery Locations) to complete each Transaction hereunder. The Delivery Locations and the Vehicles and/or Equipment located at the Delivery Locations may be used for the execution of the Fuel Sale, and any activities reasonably related thereto. In the event that Buyer does not own the Delivery Location, Buyer shall notify Seller and put Seller into contact with the property owner. Seller shall not be obligated to pay any money or provide anything of value in order to obtain any permits or get the property owner's permission to access or use the Delivery Location or otherwise complete the Fuel Sale and render the Car Car Services.
- 2.4 After delivery of the Fuel, Buyer shall inspect the Fuel within a reasonable time not to exceed thirty (30) days and provide written notice to Seller specifying any defects or other objections, unless Buyer intends to accept the Fuel in whole, in which case no notice will be necessary. Acceptance of the Fuel, whether in whole or in part, shall not be deemed a waiver of any defects identified by Buyer, nor any defects later discovered by Buyer, and specified to Seller in writing.

Article 3. Pricing

- 3.1 The price for the Fuel shall be as set forth on the Confirmation and Exhibit "A" (the "**Motor Fuel Price**").
- 3.2 The delivery service (including booking) shall be provided at the rates set forth on the Confirmation (such rates, the "**Fee**" and together with the "Motor Fuel Price", the "**Contract Price**") with a Contract Price not to exceed One Hundred Thousand Dollars (\$100,000).
- 3.3 Buyer acknowledges and agrees that the Contract Price shall be based on the projected number of Fueling days per week, the volume of gallons of Fuel per week, and the number of Vehicles and/or amount of Equipment to service set forth in the Pricing Proposal (as defined in the Confirmation) (each, a "**Projected Usage Metric**"). If Buyer's actual number of Fueling days per week, volume of gallons of Fuel per week used or the number of Vehicles and/or amount of Equipment to service (each, an "**Actual Usage Metric**") varies by more than 85% over the 90-day period commencing from the Delivery Start Date (such period, the "**Test Period**") from the relevant Projected Usage Metric for such Test Period, Seller may propose a new Agreement that includes updated pricing and/or an updated number of Fueling days per week to address deviations in Buyer's usage patterns. Within ten (10) business days after receipt of the proposed new Agreement from Seller, Buyer shall either agree to such proposed Agreement, subject to Buyer City Council approval or reject such proposed Agreement in writing. If Buyer fails to agree to or reject the proposed new Agreement in writing within the ten (10)-business day period, then Buyer shall be deemed to have rejected such proposed new Agreement. In the event Buyer rejects or is deemed to have rejected the proposed new Agreement, Seller may terminate this Agreement in accordance with Section 6 of this Agreement.

Article 4. Billing and Payment

- 4.1 Buyer shall pay for the Fuel Sales on the Payment Due Date (as defined in the Confirmation) in accordance with the Payment Method and any other Seller's payment terms specified in the Confirmation. Buyer shall make all payments to Seller without deduction, setoff, discount, allowance, notice or demand, in United States dollars.
- 4.2 Buyer may make payment via the Payment Method specified in Exhibit A. Buyer shall provide any written authorizations required for the applicable Payment Method.
- 4.3 Seller's extension of credit for the purchase of the Fuel Sales, the terms under which any such credit will be extended or maintained, and the amount of credit extended are subject to the sole discretion of Seller, any of which terms or amount may be altered or revoked with written notification to Buyer. For the purposes of Seller's evaluation of Buyer's financial condition and creditworthiness, upon Seller's request at any time, Buyer shall provide Seller with information and documents relating to Buyer's financial condition and creditworthiness. If Seller elects not to extend Buyer credit, or elects to alter or revoke any extension of credit to Buyer, or Buyer exceeds the credit line, Seller may require Buyer to provide additional credit assurances, including advance cash payment or cash deposit before any Fuel Sales are provided.
- 4.4 If Buyer fails to make timely payment of any amount due Seller, in addition to all other rights or remedies available to Seller, Seller may take such action as Seller deems reasonable under the circumstances. Without limiting the generality of the foregoing, Seller may: (1) offset, net, or recoup any amounts due Seller by Buyer for Fuel Sales invoices (including applicable taxes, fees and interest) under this Agreement or under any other related agreements against any amounts due Buyer by Seller under this Agreement or any other related agreement; (2) defer further deliveries of the Fuel Sales until payment of all outstanding amounts is made; (3) demand advance wire transfer payment for further deliveries; or (4) terminate this Agreement or the transactions under any or all Confirmations. For the purposes of this Agreement, "**Law**" shall mean means any applicable statute, constitution, ordinance, regulation, rule, administrative order, or other requirement of any federal, state, or local government agency or authority in effect at the time of execution, or during the term, of this Agreement.

Article 5. License

- 5.1 Seller shall obtain and maintain all necessary governmental licenses, permits and/or exemptions (collectively, the "**Permits**") required by Law for performance of the Fuel Sale.

Article 6. Termination of the Agreement

- 6.1 In addition to its rights set forth elsewhere in this Agreement or, if applicable, the Confirmation, Seller may provide notice of immediate termination of this Agreement or the Transactions hereunder if (a) any Permit necessary for the implementation of the Fuel Sale is not granted or is revoked, (b) the conditions under which any such Permit has been or will be granted is unacceptable to Seller, in its sole discretion, (c) Buyer stops or suspends or threatens to stop or suspend payment of all or a substantial part of its debts or is unable to pay its debts when due; any steps are taken by Buyer for a moratorium affecting all or substantially all of its debts; any step is taken by any natural or legal person ("**Person**") in connection with the administration, winding up, or bankruptcy of Buyer's business; any step is taken to enforce security over, execution, or other similar process is levied or served against all or substantially all of Buyer's assets, including the appointment of a receiver, administrator, administrative receiver, trustee in bankruptcy, manager or similar officer; (d) any Person, other than an affiliate of Buyer, either ceases to have control of or acquires control

of Buyer; (e) Buyer violates or causes Seller to be in violation of applicable Laws; or (f) Buyer rejects (or is deemed to have rejected) a new Agreement after a material deviation in any Actual Usage Metrics from the relevant Projected Usage Metrics as provided in Section 3.3 of this Agreement.

- 6.2 Seller may terminate this Agreement for convenience at its own discretion upon fifteen (15) days' prior written notice to Buyer.
- 6.3 Buyer may terminate this Agreement for convenience at its own discretion upon fifteen (15) days' prior written notice to Seller.
- 6.4 In the event that a Party is in material default of this Agreement (the "**Breaching Party**"), the other Party (the "**Non-Breaching Party**") may send notice of such default. If such default is not cured within five (5) days, then the Non-Breaching Party has the option, in its sole discretion, to terminate any and all Transactions hereunder effective within one (1) day of written notice of such termination to the Breaching Party.
- 6.5 On termination of this Agreement for cause: (a) all sums owed to Seller will become immediately due and payable, and all of Seller's obligations under this Agreement will cease; (b) any order for Agreements accepted by Seller which has not yet been fulfilled may be cancelled at Seller's sole discretion without liability on Seller's part; and (c) the rights and obligations of the Parties under this Agreement will terminate, except those rights and obligations expressly stated to survive termination.

Article 7. Liability

- 7.1 Seller warrants that (a) it has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, (b) it has good and marketable title to the Fuel, (c) the Fuel is free and clear of any restrictions on or conditions to transfer or assignment, and Buyer will acquire absolute title to the Fuel free and clear of mortgages, liens, pledges, charges, encumbrances, equities, claims, covenants, conditions and restrictions, (d) all Fuel sold to Buyer will meet Seller's then current specifications at the time title to the Fuel transfers to Buyer as specified in the Confirmation and (e) Seller will comply with all applicable Laws in the performance of the Fuel Sale (including, but not limited to, with respect to regulatory standards for motor fuel). SELLER MAKES NO OTHER WARRANTIES OF ANY KIND AS TO THE PRODUCTS OR SERVICES SOLD TO BUYER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE TIMELINESS, RELIABILITY OR SUITABILITY OF THE FUEL SALE EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT BUYER RETAINS SOLE RESPONSIBILITY FOR THE MAINTENANCE, SAFETY AND CONDITION OF ITS VEHICLES AND/OR EQUIPMENT.
- 7.2 SELLER WILL NOT BE LIABLE TO BUYER FOR ANY DEFECT IN QUALITY OF ANY FUEL SOLD TO BUYER UNLESS BUYER PROVIDES SELLER NOTICE WITHIN FIVE (5) BUSINESS DAYS AFTER DELIVERY. Buyer will provide samples of motor fuel from the Vehicle and/or Equipment, the applicable invoice, and repair documentation along with such written notice and any other documentation or evidence (including but not limited to damaged vehicle or equipment parts) reasonably requested by Seller. Buyer acknowledges that Seller's on-site equipment is limited and only suitable for light, on-site cleaning.

7.3 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING UNDER THIS AGREEMENT WHETHER UNDER TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE), CONTRACT, PRODUCT LIABILITY, STRICT LIABILITY, WARRANTY, STATUTE, OR OTHERWISE, EXCEPT WHERE SELLER ENGAGES IN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

7.4 TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS IN ITS ESSENTIAL PURPOSE, SELLER SHALL NOT BE LIABLE TO BUYER FOR CLAIMS IN THE AGGREGATE IN EXCESS OF U.S. \$500,000 (THE "CAP"), EXCEPT WHERE SELLER ENGAGES IN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN WHICH CASE THERE SHALL BE NO LIMITATION TO SELLER'S LIABILITY. ADDITIONALLY, IN THE EVENT OF DAMAGE TO A VEHICLE AND/OR EQUIPMENT, SELLER SHALL NOT BE LIABLE FOR MORE THAN THE VALUE OF THE REPLACEMENT OF SUCH VEHICLE AND/OR EQUIPMENT OR THE COST TO REPAIR SUCH VEHICLE AND/OR EQUIPMENT, WHICHEVER IS LESS, IN EACH CASE UP TO THE CAP.

7.5 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY SHALL DEFEND, INDEMNIFY, PROTECT AND HOLD HARMLESS THE OTHER PARTY, ITS PARENT, AFFILIATE AND SUBSIDIARY COMPANIES, AND THEIR RESPECTIVE OFFICERS, AND EMPLOYEES AGAINST ANY LOSS, DAMAGE, CLAIM, SUIT, LIABILITY, JUDGMENT, COST AND EXPENSE (INCLUDING BUT NOT LIMITED TO ENVIRONMENTAL RESPONSE COSTS AND REASONABLE ATTORNEYS' FEES, COURT COSTS AND OTHER COSTS OF LITIGATION), AND ANY FINES, PENALTIES AND ASSESSMENTS ("CLAIMS") ARISING FROM OR OTHERWISE IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT TO THE EXTENT RELATING TO (A) ANY THIRD PARTY CLAIMS (INCLUDING BUT NOT LIMITED TO EMPLOYEES OF THE RESPECTIVE PARTIES) ARISING FROM A BREACH OF THE AGREEMENT BY THE INDEMNIFYING PARTY OR THE INDEMNIFYING PARTY'S NEGLIGENCE OR WILLFUL MISCONDUCT OR (B) CLAIMS BETWEEN THE PARTIES, FOR A BREACH OF THE INDEMNIFYING PARTY'S REPRESENTATIONS OR WARRANTIES SET FORTH HEREIN. WHERE A CLAIM IS THE RESULT OF JOINT NEGLIGENCE OR WILLFUL MISCONDUCT OF BUYER AND SELLER, THE INDEMNIFYING PARTY'S DUTY OF INDEMNIFICATION SHALL BE IN PROPORTION TO ITS ALLOCABLE SHARE OF SUCH JOINT NEGLIGENCE OR WILLFUL MISCONDUCT.

7.6 SELLER SHALL HAVE THE RIGHT, BUT NOT THE DUTY, TO PARTICIPATE IN THE DEFENSE AND SETTLEMENT OF ANY CLAIM OR LITIGATION WITH ATTORNEYS OF SELLER'S SELECTION WITHOUT RELIEVING BUYER OF ANY OBLIGATIONS UNDER THIS AGREEMENT. BUYER SHALL COOPERATE WITH SELLER IN SELLER'S INVESTIGATION AND DEFENSE OF ANY CLAIM. ANY SETTLEMENT OF A THIRD PARTY CLAIM SHALL REQUIRE THE CONSENT OF THE INDEMNIFYING PARTY.

Article 8. Insurance

8.1 Each Party shall, maintain throughout the duration of this Agreement the following minimum insurance. All such insurances will be placed with reputable and substantial insurers and in compliance with the Law.

- (a) Employers' Liability insurance with a limit as required by Law or US \$1,000,000 per occurrence, whichever is higher, and Workers' Compensation as required by Law.
- (b) General Liability insurance including contractual liability and completed operations coverage with a limit of US \$5,000,000 per occurrence.
- (c) Auto Liability insurance covering owned, non-owned and hired vehicles with a limit as required by Law or US \$1,000,000 per occurrence, whichever is higher.
- (d) Each Party shall maintain all risk property insurance with limits adequate to repair or replace physical loss or damage to its owned and/or leased property.
- (e) Notwithstanding the above limits, if Seller carries higher insurance limits or broader coverages, Buyer will be entitled to such higher limits or broader coverages.

8.2 To the extent allowed by the applicable Law, each Party's policies shall include a waiver of subrogation in favor of the other Party and its affiliated and subsidiary companies, but only to the extent of their obligations and liabilities to the other Party assumed under Article 7 of this Agreement. Each Party shall include the other Party, its affiliated and subsidiary companies as an additional insured under (b) and (c) above, but only to the extent of their obligations and liabilities to the other Party assumed under Article 7 of this Agreement and for the minimum limits of insurance stated herein. Upon request, a memorandum or certificate of insurance shall be provided to the requesting Party.

8.3 All of the insurance policies that each Party is required to maintain in this Agreement will be considered as primary insurance in relation to any similar insurance maintained by the other Party without any right of contribution from the other Party's insurance policies, but only to the extent of each Party's obligations and liabilities to the other Party assumed under this Agreement.

8.4 To the extent permitted under the Law, Seller shall maintain the option to self insure any of the above insurances.

8.5 Each Party will notify the other Party of cancellation of any insurance required herein within seven (7) days of receipt of its insurer's notification to that effect.

Article 9. Force Majeure

9.1 Neither Party will be liable to the other or the other Party's affiliates if it fails to perform its obligations under this Agreement while and to the extent performance is delayed or prevented by a Force Majeure Event. "**Force Majeure Event**" means any circumstance reasonably outside the control of the affected Party which prevents or delays performance of an obligation, other than the payment of money or the provision of security, under this Agreement. Examples of Force Majeure Events include: (a) any natural or man-made disaster, such as a fire, explosion, landslide, earthquake, storm, hurricane, flood, tidal wave, or other adverse weather condition; (b) any armed

conflict, revolution, act of a governmental or military authority, riot, blockade, embargo, trade sanction, act of terrorism or sabotage, or civil commotion; (c) any epidemic or quarantine restriction; (d) any shortage or cessation of any supply of labor, service, utility, or facility; (e) any shortage or cessation of supply, or inability to procure on reasonable terms, any raw material, feedstock, or other substance from which the Fuel (such product, a “**Product**”) is derived or of any of Seller’s sources of supply for Fuel or any Product; (f) any unavailability of or interference with, or inability to procure on reasonable terms, the means of transportation of the Fuel; or (g) any unplanned shutdown, shutdown in anticipation of a breakdown, or malfunction affecting the plant or source of supply of Fuel or any other Product, or closure or standstill at production or storage facilities; (h) compliance with any applicable Laws which affects performance; or (i) any strike, lock-out, or labor dispute.

9.2 If a Force Majeure Event affects its performance, Seller may, in its sole discretion, modify, suspend, or cancel deliveries under this Agreement, or apportion any reduced quantity of Fuel or other Product as it deems necessary. If sources of supply or means of transportation are affected by a Force Majeure Event, Seller will have sole discretion of whether to obtain supplies or transportation from any alternative sources. Buyer agrees that Seller will not be liable if Seller does not use alternative sources of supply or transportation during a Force Majeure Event. Seller reserves the right to increase the price or fees charged for Fuel, or the delivery of Fuel as a result of a Force Majeure Event.

9.3 The Parties agree to promptly resume performance of their obligations under this Agreement when a Force Majeure Event or its results no longer prevent or delay performance. The term of this Agreement will not be extended because of any suspension or delay during a Force Majeure Event. If any Force Majeure Event lasts longer than 60 days, either Party may terminate this Agreement with immediate effect by written notice to the other Party.

9.4 Each Party will be responsible for its own costs incurred in relation to a Force Majeure Event. Each Party must inform the other in writing as soon as reasonably possible when that Party becomes aware of an actual or potential Force Majeure Event and when the Force Majeure Event ends.

Article 10. Trademark Use / Advertising; IP Rights

Nothing in this Agreement shall give Buyer the right to display or use Seller or its affiliates trademarks, service marks, logos, color schemes, designs, trade dress, styles of labeling, corporate names or trade names (“**Seller Marks**”) as part of press releases, marketing, advertising, promotional materials, its corporate or business name, legal identity, electronic identity, or in any other manner. Buyer agrees to obtain prior written consent of Seller or of the relevant Seller affiliate for any proposed use of the Seller Marks, which shall be within the absolute and sole discretion of the owner of the Seller Marks, and then only if in compliance with the Seller brand standards manual. Where any prior written consent of Seller or of the relevant Seller affiliate for any use of the Seller Marks is granted, Buyer shall ensure that the use of the Seller Marks does not injure, bring into disrepute, ridicule or lessen the public image of Seller or any Seller affiliate.

For the avoidance of doubt, this Agreement does not grant Buyer or any of its affiliates any interest in intellectual property rights of Seller or its affiliates, including but not limited to any patents, Seller Marks, copyright and database right, right in know-how, or other similar right in any country in connection with the Fuel or Fuel Sale, or any literature, manual, material or information supplied in

connection with this Agreement, in each case whether or not registered, and including any application for registration of any of the above as well as all rights to apply to register any of the items above.

Article 11. Tax

- 11.1 Buyer hereby represents and warrants to Seller that it is the end user of any motor fuels sold to it pursuant to the Fuel Sale and not a re-seller of motor fuel. If at any time Buyer commences re-selling motor fuel to its customers, it shall notify Seller immediately and remit any tax information reasonably required by Seller in connection therewith.
- 11.2 Buyer shall pay all U.S. federal, U.S. state, and U.S. local tax or other U.S. taxes that are directly imposed on transactions governed by this Agreement. “Tax” or “Taxes” include the following U.S. taxes: federal, state, and local excise taxes, sales and transaction taxes, gross receipts taxes, utility taxes, environmental taxes and fees or any other taxes that Seller may be required to collect or pay on the transactions governed by this Agreement.
- 11.3 Buyer shall not be liable for any of Seller’s income taxes; any franchise tax measured by capital, capital stock, net worth, gross margin, gross receipt or gross profit (including any withholding taxes imposed on gross amounts); any minimum or alternative minimum tax; or any taxes imposed by Law on Seller that are prohibited by Law from being passed on to Buyer. Further, Buyer shall not be liable to Seller for any employment related tax, fee, or charge. Buyer shall not be liable for any of Seller’s inventory based taxes, ad valorem taxes or property taxes. Buyer shall be responsible for filing returns and paying inventory based taxes, ad valorem taxes and property taxes on property and/or inventory that they own on the assessment date.
- 11.4 Notwithstanding the above, Seller shall not collect, and Buyer shall not pay, any such Tax or duty for which Buyer furnishes to Seller a properly completed exemption certificate or a direct payment permit certificate or for which Seller may claim an available exemption from Tax. Buyer shall be responsible for any Tax, interest and penalty if such exemption certificate or direct payment permit certificate is disallowed by the proper taxing authority.
- 11.5 In the event that a refund opportunity arises with respect to any Tax paid by one Party as a result of the transactions governed by this Agreement, both Parties shall reasonably work together to pursue such refund. If one Party receives a refund or a credit for any Tax paid by the other Party with respect to this Agreement, then the Party receiving the refund or credit agrees to refund to that other Party the full amount of such refund or credit.
- 11.6 Seller will furnish to Buyer a properly completed I.R.S. Form W-8 or I.R.S. Form W-9, as appropriate, to enable Buyer to determine if U.S. income tax withholding is required. If U.S. withholding applies, Buyer will withhold amounts on its payments to Seller as required under U.S. law, unless Seller provides Buyer with the appropriate documentation to mitigate such tax.

Article 12. Compliance with Laws and Shell General Business Principles

- a) Buyer represents and warrants to Seller that will comply with all applicable Laws, and its payments to Seller shall not constitute the proceeds of crime in contravention of anti-money laundering Laws.
- b) Only the Buyer shall pay the invoice from Seller. No person other than the Buyer shall pay the invoice without the prior consent of Seller.

- c) Buyer represents and warrants that it is not the subject of U.S. sanctions or of sanctions consistent with U.S. Laws. Buyer acknowledges that it is familiar with and will comply with all applicable trade control Laws relating to the direct or indirect use, diversion, trade, export or re-export of motor fuel.
- d) Buyer understands that Seller's personnel are expected to act in accordance with the "Shell General Business Principles" ("SGBP"), at www.shell.com/sGBP, for the Shell Group of companies. Buyer agrees not to induce or attempt to induce any Seller personnel to act inconsistently with the SGBP.

Article 13. E-Business: Other Terms and Conditions May Apply

Seller may, in its sole discretion, provide Buyer with access to a password-protected online order fulfilment and information portal, informational websites or applications (including, but not limited to, the Shell TapUp App). As a condition of access and use of any applications, portals or websites, Buyer agrees to comply with all terms of use for those tools. The terms of use will be provided in the applicable portal or website. Buyer agrees to read and comply with those terms of use. Seller or its affiliates may, in their sole discretion, change the terms of use at any time. Access and use of the application, portal or website indicates Buyer's acceptance of the terms of use. If Buyer cannot or does not comply with the terms of use, then Buyer must immediately cease access and use of such application, portal or website.

Article 14. Notice Information

Unless otherwise specified in this Agreement, all notices must be in writing, addressed to the Parties as specified in the confirm. Any notice may be given to the other Party by certified mail, overnight mail or local courier at the addresses specified in the confirm. Parties may modify the notice information above via written notice to the other Party pursuant to this [Article 14](#).

Article 15. Public Announcements

Buyer agrees to coordinate with and receive approval from Seller prior to any public announcements with respect to the subject matter of this Agreement.

Article 16. Governing Law, Disputes and Jurisdiction

This Agreement shall be governed by the laws of the State of California, without regard to its conflicts of law provisions which might refer the matter to the laws of another jurisdiction. Exclusive jurisdiction over and venue of any suit arising out of this Agreement will be in state and federal courts located in Los Angeles, California.

Article 17. Assignment

This Agreement may not be assigned by Buyer without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any assignment in violation of this [Article 17](#) shall be null and void.

Article 18. Counterparts

The Confirmation may be signed in one or more counterparts, all of which shall be taken together as one agreement. The exchange of copies of this Agreement and of signature pages by facsimile, DocuSign or e-mail transmission (or approval by both Parties through the Shell TapUp App) shall constitute effective execution and delivery of this Agreement as to the Parties. Signature of the Parties transmitted by facsimile, DocuSign or e-mail (or via request submittal with accompanying, signed electronic confirmation via the Shell TapUp App) shall be deemed to be their original signature for all purposes. If signature is made electronically via DocuSign or electronic confirmation via the Shell TapUp App, the Parties agree to waive any right to dispute the authenticity of the signature, or the admissibility of this Agreement, where the challenge is based on the absence of a physical signature.

Article 19. Amendments

Except as expressly provided under this Agreement, all amendments and supplements to this Agreement must be in writing and signed by both Parties unless executed electronically through a virtual contracting system offered through the TapUp App.

Article 20. Illegality

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement.

Article 21. Successors and Assigns

This Agreement is binding upon and enforceable against the Parties' respective successors, permitted assignees, legal representatives, executors, administrators, heirs, and legatees.

Article 22. Opportunity for Counsel; Construction

Buyer represents that it has read this Agreement in full, and that it has the opportunity to discuss it with counsel of its choosing and request changes through the confirmation process, if desired. The Parties agree that this document shall not be construed against the drafter.

Article 23. Survival

Articles that state that they survive or by their nature are intended to survive completion of performance, expiration, or termination of this Agreement do so, along with all remedies attached to them. Articles which survive expiration or termination of this Agreement include: Article 7, Article 10, Article 11, Article 12, as well as Articles 14 through 23.

Article 24. No Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties and their respective affiliates, and nothing in this Agreement should be construed to create any right in favor of, duty, standard of care, or liability to any other Person.

Article 25. Attorney's Fees

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition

to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**Service Agreement for Establishment of
Shell TapUp Mobile Fueling and City of Carson**

Approval Signatures

By: _____ Date _____
Mike Okeefe
Vice President, Shell TapUp
Shell Retail and Convenience Operations LLC DBA Shell TapUp

By: _____ Date _____
Name: Lula Davis-Holmes
Title: Mayor
Company: City of Carson

ATTEST:

Dr. Khaleah R. Bradshaw, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[rjl]

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY

NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

EXHIBIT "A"

PRICING AND INVOICING

Service to be provided at 18620 S. Broadway Street, CA 90248

Service 2x per week 100 vehicles fueled at an average of 8 gallons per vehicle approximately 1600 gallons per week.

Cost for Shell diesel is the Los Angeles, CA rack price (wholesale price for fuel) plus all applicable taxes plus \$0.58 per gallon. Price for Shell diesel on January 14, 2022 was \$4.33 per gallon delivered. (AVG. retail price \$4.79)

Cost for Shell V Power is the Los Angeles, CA rack price plus all applicable taxes plus \$0.58 per gallon. Price for Shell V Power on January 14, 2022 was \$4.49 per gallon delivered. (AVG. retail price \$4.74)

Shell will provide City with access to Shell's business portal which will allow City to monitor Shell's service in real time and allow City to customize reports to assist City in the management of its fuel consumption and cost.

Each month Seller shall furnish to Buyer an original invoice for all charges and expenses incurred during the preceding month. By submitting an invoice for payment under this Agreement, Seller is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses.

Buyer shall independently review each invoice submitted by Seller to determine whether charges and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges or expenses incurred which are disputed by Buyer, Buyer will remit payment to Seller within thirty (30) days of receipt of Seller's correct and undisputed invoice. In the event any charges or expenses are disputed by Buyer, the original invoice shall be returned by Buyer to Seller for correction and resubmission. Review and payment by Buyer for any invoice provided by Seller shall not constitute a waiver of any rights or remedies provided herein.