

ADDENDUM TO
AGREEMENT FOR PURCHASE AND SALE
AND ESCROW INSTRUCTIONS

This Addendum to Agreement for Purchase and Sale and Escrow Instructions (“Addendum”) is made as of _____, 2011, by the City of Lemoore, a California Municipal corporation, (“Seller”), and Full Circle Renewables, LLC, a California limited liability company (“Buyer”).

RECITALS

WHEREAS, concurrently with this Addendum, Buyer and Seller are entering into an Agreement for Purchase and Sale and Escrow Instructions, dated _____, 2011 (“PSA”), for the purchase and sale of certain real property located in the County of Kings, State of California (the “Property”), a legal description of which is described in Exhibit “A” to the PSA; and

WHEREAS, the Property was used by Seller as a municipal burn dump from the 1950s through approximately 1974, and it was also used as a dump prior to that time prior to Seller’s incorporation; and

WHEREAS, in order to offset Seller’s potential future costs related to the investigation and/or remediation of hazardous materials on the Property that may exist on the Property (the presence of which are currently unknown), in order to ensure that at least some funds will be available for this purpose if needed, and as additional consideration for the purchase and sale of the Property, Buyer has agreed to provide \$500,000.00 to be held in trust for Seller’s use to investigate, remove and/or remediate hazardous materials or conditions on the Property that are attributable to its prior use as a dump if Seller is ordered to do so by any Regulatory Agency (as defined below) following Buyer’s failure to comply with a Remediation Order (as defined below), under the terms and conditions set forth herein; and

WHEREAS, this Addendum is intended to amend the PSA;

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. Creation of Trust. No later than fifteen (15) days following the execution of the PSA and this Addendum, and as a condition to Seller’s obligations under the PSA and this Addendum, Buyer shall form a business trust (the “Trust”) to further the purposes, terms and conditions of this Addendum. The form of the documents creating the Trust shall be reasonably acceptable to Seller. The settler of the Trust shall be Buyer; the beneficiaries of the Trust shall be the City of Lemoore and Buyer; and the trustee of the Trust shall be a third-party bank to be chosen by Buyer. No later than three (3) days after the formation of the Trust document, and as a condition to Seller’s obligations hereunder, Buyer shall deposit \$500,000.00 USD into one or more accounts established for the Trust (“Trust Accounts”).

2. Trustee Fees and Interest. The trustee's fees for administering the Trust shall be paid from the interest earned on the Trust Accounts. If the interest alone is insufficient, then the trustee's fees shall be paid from the principal. Any remaining interest earned by the Trust Accounts shall not be used for any purpose and shall be paid to Buyer or its successors at the time the Trust and the Trust Accounts are terminated as provided in this Addendum.

3. Purpose of Trust. The sole purpose of the Trust and the Trust Accounts will be to provide funds for costs incurred by Seller for the investigation and remediation of Hazardous Materials (as defined below) on the Property that are reasonably necessary to satisfy any orders or directives for the investigation and/or remediation of hazardous materials on the Property that are attributable to the Property's former use as a dump, which are issued by any federal, state or local regulatory agency with authority over the remediation of hazardous materials at the Property. Trust funds shall only be released to Seller upon satisfaction of all of the following conditions:

(a) A federal, state or county agency with authority to regulate hazardous materials at the Property (a "Regulatory Agency") has issued an order or other directive requiring the investigation and/or remediation of hazardous materials on the Property, which order may include site characterization, sampling, and related cleanup or remediation actions ("Remediation Order").

(b) Whether or not a Remediation Order directed at the Property names Seller as a responsible party, Buyer shall control, in its sole discretion, the investigation and remediation of the Property and all other actions necessary to comply with the Remediation Order. In the event that Buyer fails to comply with a Remediation Order, Seller shall have the right to do so if Seller is named as a responsible party under the Remediation Order.

(c) The Hazardous Materials that are the subject of a Remediation Order must currently exist and must have originated from one or more locations on the Property; the Trust funds may not be used for investigation or remediation activities related to hazardous materials that leached or flowed onto or under the Property from other property, and the Trust funds may not be used for investigation or remediation activities related to hazardous materials on the Property attributable to the Property's former use as a dump that leached or flowed onto or under other property.

(d) Trust funds may only be used to pay for, indemnify, or reimburse the following costs or liabilities: soil, air and water sampling, site characterization and analysis, remediation consulting and planning, environmental review, actual, physical cleanup and/or remediation activities, and agency enforcement, government oversight, and/or administrative costs required by the agency that issues the Remediation Order.

(e) Unless Buyer otherwise agrees in writing, the Trust funds shall not be used to pay, reimburse or indemnify Seller for any costs Seller incurred during any period in which: (1) Buyer is conducting investigation or remediation or related activities in response to a Remediation Order; or (2) a Remediation Order has been temporarily stayed, enjoined, or suspended by the agency issuing the Remediation Order or by a court of competent

jurisdiction; or (3) a Remediation Order has been permanently rescinded, withdrawn, voided or cancelled by the agency issuing it or by a court of competent jurisdiction.

(f) The Trust funds may only be used for the purposes specified in this Addendum and in the document creating the Trust. All interest earned by the Trust shall be added to the principal and retained in the Trust.

4. Administration of the Trust. The Trust shall be administered by the trustee. The trustee of the Trust shall be instructed to make payments to Seller only after a written claim for payment or reimbursement is made by Seller, which is supported by adequate documentation (including a Remediation Order, and including but not limited to invoices by consultants, contractors or the enforcement agency), and provided the claim otherwise conforms to the terms and conditions of this Addendum and any additional requirements contained in the document creating the Trust.

5. Termination of the Trust. Upon the first to occur of the following events, the Trust, and all Trust Accounts, shall be terminated, and all remaining funds in the Trust, including interest, shall revert to and be immediately returned to Buyer:

(a) The Property is granted a “clean closed” designation (or its future equivalent), by the California Department of Resources Recycling and Recovery (“CalRecycle”) (or its successor agency), or by the United States Environmental Protection Agency (“EPA”) (or its successor agency); or

(b) A remediation conducted pursuant to a Remediation Order has been completed and the agency issuing the Remediation Order issues a “no further action” letter or equivalent determination; or

(c) The principal held in the Trust has been exhausted; or

(d) Thirty (30) years have expired from the date both parties have executed this Addendum; or

(e) If, for any reason whatsoever, the PSA is terminated or the escrow established for the sale of the Property pursuant to the PSA is closed without the sale being completed; or

(f) Seller and Buyer mutually agree in writing to terminate the Trust.

6. Indemnification. In the event that Buyer fails to comply with a Remediation Order under which Seller is a responsible party, Buyer agrees to defend, indemnify and hold harmless Seller, from any and all costs, liabilities, damages, expenses (including, without limitation, reasonable attorneys’ fees) and remediation costs resulting from or incurred in connection with Seller’s performance of any obligations under such Remediation Order. Seller shall have the right to use any of the funds in the Trust Accounts in satisfying the foregoing obligations. The provisions of this Section shall survive the Close of Escrow.

7. Duty to Cooperate Re Clean Closure. Seller shall cooperate with Buyer's efforts to obtain "clean closed" status for the Property from CalRecycle and/or the U.S. EPA. Seller shall provide Buyer with any material or information requested by CalRecycle and/or the U.S. EPA, that is in Seller's possession or control and is reasonably necessary to obtain "clean closed" status. Seller shall provide such material or information in a reasonably timely manner at its own cost.

8. Characterization of Funds. No funds in the Trust shall be considered the Seller's monies for any purposes unless and until they are paid to Seller pursuant to this Addendum, and Seller shall not include the funds in the Account in Seller's financial statements.

9. Definition of Hazardous Materials. For purposes of this Addendum, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of California, or the United States. Hazardous Materials include, without limitation, the following: (1) any pollutant, oil, or hazardous substance, identified or listed pursuant to Sections 307, 311, or 502 of the Federal Water Pollution Control Act (33 USC §§1317, §1321, and §1362); (2) any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 USC §9602); (3) any substance or material having the characteristics identified under or listed pursuant to Section 3001 of the Comprehensive Recovery Act (RCRA) (42 USC §6921); (4) any petroleum, crude oil, or any fraction of either that is not otherwise specifically listed or designated under items (1)-(3); (5) any hazardous waste, extremely hazardous waste, hazardous substance, or hazardous material, as defined or listed pursuant to Sections 25115, 25117, 25122.7, 25141, 25316, or 25501 of the California Health & Safety Code; and (6) any waste or material, including asbestos and lead, which is listed or meets any identification or toxicity criterion in Division 4.5 of Title 22 of the California Code of Regulations.

10. Notices. Any notice, request, demand or other communication given or required to be given hereunder ("Notice") shall be in writing and personally delivered, or sent by United States registered or certified mail, return receipt requested, postage prepaid, or sent by a nationally recognized courier service such as Federal Express, addressed as follows:

SELLER: City Manager
City of Lemoore
119 Fox Street
Lemoore, CA 93721
Facsimile No. _____
Phone No. _____

WITH A COPY TO: _____

Lemoore, CA 93721
Attn: _____
Facsimile No. _____
Phone No. _____

BUYER: Full Circle Renewables, LLC
1416 Broadway Street
Fresno, CA 93721
Facsimile No. (559) 237-2867
Phone No. (559) 217-8335

WITH A COPY TO: Berliner Cohen
2844 Park Avenue
Merced, CA 95348
Lisa Goreki, Esq.
Facsimile No. (209)-385-3789
Phone No. (209)-385-0700

11. Further Assurances. Buyer and Seller shall each promptly sign and deliver all additional documents and perform all acts reasonably necessary to perform its obligations and carry out the intent expressed in this Addendum.

12. Severability. If any part of this Addendum is invalid or unenforceable, then the remainder of this Addendum shall remain valid and enforceable and in force and effect.

13. No Waiver. A waiver by either party of a default by the other party is effective only if it is in writing and shall not be construed as a waiver of any other default.

14. Conflicts with PSA. Except as expressly modified herein or modified in a prior, fully-executed addendum or amendment, all of the provisions of the PSA shall remain in full force and effect. In the case of any inconsistencies between the PSA and this Addendum, the terms of this Addendum shall control.

“BUYER”

FULL CIRCLE RENEWABLES, LLC
a _____

By: _____
Name: _____
Title: _____

“SELLER”

CITY OF LEMOORE
a _____

By: _____
Name: _____
Title: _____