

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“Agreement”) is made as of December [REDACTED], 2024 (“Effective Date”), by and between **ARCHES H2 LLC**, a California limited liability company (“ARCHES”), and **CITY OF LANCASTER**, a California municipal corporation and charter city (“City”) (ARCHES and City are each a “Party” and collectively the “Parties”).

RECITALS

A. ARCHES is a statewide public-private partnership built on the State of California’s long-standing H2 and renewable energy leadership to serve as the applicant and organizer for a statewide H2 hub. The State of California—led by GO-Biz alongside other state agencies, the legislature, local governments, and the state’s institutions of higher education, including the University of California and two of its affiliated national laboratories—provides vision, leadership, oversight, accountability, and matching funds. Industry partners bring deep technical expertise, the capability for building a H2 network in California, and significant in-kind matching capacity. Local governments, environmental justice advocates, nonprofits, and organized labor bring a strong focus on community engagement, public health, environmental protection, workforce development, and other issues of critical importance to ARCHES.

B. ARCHES is anticipated to include major deployment clusters in the Los Angeles Basin and Bay Area and extend into the Central Valley, Inland Empire, and other regions (and possibly neighboring states) with high renewable resources, geologic storage possibilities, key transportation corridors, and need for clean energy and reduced pollution.

C. The United States Department of Energy (“DOE”) Office of Clean Energy Demonstrations (“OCED”) has awarded ARCHES a \$30,000,000 grant (Award No. DE-CD0000041) pursuant and subject to the terms and conditions of a Cooperative Agreement effective July 17, 2024 (“Award”). Under the terms of the Award, ARCHES will generally receive funding distributions on a reimbursement basis. Consequently, ARCHES is in need of working capital that it may use and repay with distributions it receives under the Award.

D. Subject to the terms and conditions of this Agreement, City will loan to ARCHES the principal amount of \$3,000,000 that ARCHES will use as working capital and repay with distributions it receives under the Award.

E. The City of Lancaster and the City of Industry are partnering to form the First Public Hydrogen Authority for the purpose of partnering with local government agencies to aggregate demand of hydrogen to facilitate the development of large-scale hydrogen projects.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein and constitute a substantive part of this Agreement.

2. Use of Defined Terms; Definitions. Defined terms may be used in the singular or the plural. When used in the singular preceded by “a,” “an,” or “any,” such term shall be taken to indicate one or more members of the relevant class. When used in the plural, such term shall be taken to indicate all members of the relevant class. Capitalized terms used, but not otherwise defined, herein shall have the respective meanings set forth in the Note defined below. The following terms as used herein shall have the following meanings:

(a) “Agreement” means this Agreement, as originally executed, or as may be hereafter supplemented or amended from time-to-time in writing.

(b) “Closing” means the disbursement of Loan proceeds, which shall occur within fifteen (15) days after all conditions set forth in Section 10 of this Agreement have been satisfied.

(c) “Closing Date” means the date of the Closing.

(d) “Default” means any event which, if it were to continue uncured, would, with notice or lapse of time or both, constitute an Event of Default (as such term is defined in Section 13 of this Agreement).

(e) “Event of Default” is defined in Section 13.

(f) “FPH2” is defined in Section 12(a).

(g) “FPH2 Member” or “FPH2 Members” shall mean one or more parties to that certain Joint Exercise of Powers Agreement for First Public Hydrogen Authority.

(h) “Governmental Authority” means any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court or administrative tribunal.

(i) “Include(s)” or “including” means including but not limited to.

(j) “Knowledge” means, when used to modify a representation or warranty, actual knowledge or such knowledge as a reasonable person under the circumstances should have after diligent inquiry and investigation.

(k) “Laws” means, collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations, including judicial opinions or precedential authority in the applicable jurisdiction.

(l) “Loan” means the Three Million Dollar (\$3,000,000.00) loan made by City to ARCHES pursuant to this Agreement.

(m) “Loan Documents” means this Agreement, the documents and instruments listed in Section 6 of this Agreement, any documents amending, restating, replacing, extending,

(m) or otherwise modifying this Agreement and/or the documents listed in Section 6 of this Agreement, and all the documents given to City from time-to-time to evidence the Loan.

(n) “Loan Maturity Date” means the date that is 540 days after the last signature on this Agreement.

(o) “Member” means any member of ARCHES.

(p) “Note” means the promissory note described in Section 6 of this Agreement, as originally executed or as may be hereafter supplemented or amended from time-to-time in writing.

3. Representations and Warranties of ARCHES. To induce City to execute this Agreement and perform the obligations of City hereunder, ARCHES hereby represents and warrants to City follows:

(a) No litigation or proceedings are pending, or to ARCHES’ knowledge are threatened in writing, against ARCHES or any Member: (i) which might affect the ability of ARCHES to perform its obligations pursuant to and as contemplated by the terms and provisions of this Agreement and the other Loan Documents; or (ii) which could materially affect the operations or financial condition of ARCHES.

(b) The execution, delivery and performance of this Agreement and the other Loan Documents have not constituted (and will not, upon the giving of notice or lapse of time or both, constitute) a breach or default under any other agreement to which ARCHES is a party or may be bound or affected.

(c) This Agreement and the other Loan Documents constitute legal, valid and binding obligations of ARCHES, and are enforceable in accordance with their respective terms subject to the effect of bankruptcy, insolvency, reorganization, moratorium or similar laws affecting enforcement of creditors’ rights generally and limitations imposed by general principles of equity.

(d) No brokerage fees or commissions are payable by or to any person in connection with this Agreement or the Loan to be disbursed hereunder.

(e) No Default or Event of Default has occurred and is continuing.

(f) No event has occurred and no circumstance exists as a result of which the information concerning ARCHES or any Member that has been provided to City in connection herewith would include an untrue statement of a material fact or omit to state any material fact or any fact necessary to make the statements contained therein, in the light of the circumstances under which they were made, not misleading.

(g) ARCHES shall use the Loan proceeds for operating capital to implement the purposes described in Section 12 hereof, and for no other purpose.

4. Survival of Representations and Warranties. ARCHES agrees that the representations and warranties set forth in Section 3 of this Agreement and elsewhere in this Agreement will be true at the Closing Date and shall survive the making of the Loan.

5. Agreement to Borrow and Lend; Use of Proceeds. Subject to all of the terms, provisions and conditions set forth in this Agreement, City agrees to make, and ARCHES agrees to accept, the Loan. ARCHES agrees to and shall use the Loan proceeds for working capital and for no other purpose.

6. Loan Documents. In consideration of City's entry into this Agreement and City's agreement to make the Loan, ARCHES agrees that it will, in sufficient time for review by City and its counsel prior to the Closing Date, execute and deliver or cause to be executed and delivered to City the following documents and instruments in form and substance acceptable to City:

(a) A promissory note from ARCHES payable to the order of City in the original principal amount of Three Million Dollars (\$3,000,000.00) in substantially the form attached hereto as Exhibit "A" ("Note");

(b) Such other papers and documents as may be required by this Agreement or as City may reasonably require.

7. Interest Rate. The Loan will bear interest for the period and at the rate set forth in the Note.

8. Term of the Loan. The unpaid principal balance, all accrued and unpaid interest and all other sums due and payable under the Note or other Loan Documents, if not sooner paid, shall be paid in full on the Loan Maturity Date.

9. Prepayment. ARCHES shall have the right to make prepayments of the Loan in whole or in part at any time prior to the Loan Maturity Date.

10. Conditions Precedent to Closing. ARCHES agrees that ARCHES will perform and satisfy all of the following conditions precedent before Closing, and ARCHES agrees that City's obligation to disburse the proceeds of the Loan is conditioned upon the following:

(b) No Default by ARCHES shall have occurred under this Agreement or any of the Loan Documents, and ARCHES shall have timely complied with and performed all of ARCHES's covenants, agreements and obligations hereunder which by their terms are required to have been complied with and performed by ARCHES, and no material adverse change shall have occurred in the financial condition of ARCHES.

(c) ARCHES shall have furnished to City the following in sufficient time for review by City and its counsel prior to the Closing Date, all of which shall be in form and substance satisfactory to City and its counsel:

(i) Evidence satisfactory to City that the Loan is authorized and that the individuals executing this Agreement and the other Loan Documents on behalf of

ARCHES have been duly authorized by all appropriate action to execute and deliver this Agreement and the Loan Documents on behalf of ARCHES.

(ii) A copy of the organizational documents for ARCHES.

(c) ARCHES shall have complied with all other applicable requirements of this Agreement.

11. ARCHES's Covenants. ARCHES further covenants and agrees as follows:

(a) City's Attorney's Fees and Expenses. If at any time hereafter prior to repayment of the Loan in full, City employs counsel for advice or other representation (whether or not any suit has been or shall be filed and whether or not other legal proceedings have been or shall be instituted and, if such suit is filed or legal proceedings instituted, through all administrative, trial, and appellate levels) with respect to the Loan, this Agreement or any of the Loan Documents, or to enforce any rights of City, or any obligations of ARCHES, or any other person, firm or corporation which may be obligated to City by virtue of this Agreement or any other agreement, instrument or document heretofore or hereafter delivered to City by or for the benefit of ARCHES, or to negotiate any proposed restructuring of the Loan, then, in any such event, all of the attorney's fees and expenses arising from such services, and all expenses, costs and charges relating thereto, shall be paid by ARCHES on demand and if ARCHES fails to pay such fees, costs and expenses, payment thereof by City shall be deemed to constitute additional indebtedness evidenced by the Note and the other Loan Documents (even if the total amount of indebtedness would exceed the face amount of the Note).

(b) Documents of Further Assurance. ARCHES shall, from time-to-time, upon City's request, execute, deliver, record and furnish, or cause to be executed, delivered, recorded and furnished, such documents as City may reasonably deem necessary or desirable to: (a) correct any errors of a typographical nature or inconsistencies which may be contained in any of the Loan Documents; and (b) consummate fully the transaction contemplated under this Agreement.

(c) Indemnification. ARCHES shall indemnify, defend and hold City, and its elected officials, officers, directors, employees, and agents, harmless from and against all claims, injury, damage, loss, costs (including attorney's and expert witness fees and costs) and liability of any and every kind to any persons or property by reason of: (i) any action or inaction by, or matter which is the responsibility of, ARCHES; and (ii) the breach of any representation or warranty or failure to fulfill any obligations of ARCHES under this Agreement or any other Loan Document.

(d) Compliance with Laws. ARCHES shall promptly comply with all applicable Laws of any Governmental Authority having jurisdiction over ARCHES.

(e) Organizational Documents. Without the prior written consent of City, ARCHES shall not permit or suffer any amendment or modification of ARCHES's organizational documents.

(f) Lost Note. ARCHES shall, if the Note is mutilated, destroyed, lost, or stolen, promptly deliver to City, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest.

12. ARCHES' H2 Ecosystem for Purposes of the Award. ARCHES agrees to and shall allocate and spend grant funds received under the Award with FPH2 and/or FPH2 Members on a first priority basis pursuant to this Section 12.

(a) FPH2 Joint Powers Authority Implementation of Award. City shall create or cause the creation of First Public Hydrogen Authority ("FPH2") as a joint exercise of powers authority pursuant to the Joint Exercise of Powers Act (Cal. Gov't Code §§ 6500-6599.3). ARCHES agrees to and shall provide grants to FPH2 and/or FPH2 Members on a first priority basis for purposes of implementing the Award, which shall include ARCHES providing funds it receives, or is entitled to receive, under the Award to FPH2 (and/or FPH2 Members) in order to fund and/or purchase transit equipment, port operation equipment, logistics equipment, fueling facilities, and/or fuel subsidies.

(b) H2 Procurement and Development Strategy. City, together with FPH2, shall create a strategy for the initial procurement and/or development of H2. Such strategy may include soliciting FPH2's constituent members to purchase H2, procuring large scale H2 for FPH2's constituent members, providing for the delivery of H2 to FPH2's constituent members, and any other action needed to create a viable H2 ecosystem for ARCHES use of the Award.

13. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default," as such term is used herein:

(a) If ARCHES fails to repay principal under the Note when due at maturity;

(b) If ARCHES defaults in the performance of any of its other covenants, agreements and obligations under this Agreement involving the payment of money and fails to cure such default within five (5) days;

(c) If ARCHES defaults in the performance of any of its nonmonetary covenants, agreements and obligations under this Agreement and fails to cure such default within thirty (30) days after written notice thereof from City except that if such default is susceptible of cure but cannot be cured within thirty (30) days, it shall not constitute an Event of Default if ARCHES promptly commences the cure of such default and diligently and continuously pursues such cure to completion with completion occurring not later than sixty (60) days after the initial notice;

(d) If at any time or times hereafter any representation or warranty (including the representations and warranties of ARCHES set forth in this Agreement), statement, report or certificate now or hereafter made by ARCHES, is not true and correct in any material respect;

(e) If all or substantially all of the assets of ARCHES are attached, seized, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the

benefit of creditors, and the same is not vacated, stayed, dismissed, set aside or otherwise remedied within sixty (60) days after the occurrence thereof;

(f) If a notice of lien, levy or assessment is filed of record with respect to all or any part of the property of ARCHES or by any Governmental Authority, which could affect the performance of the obligations of such parties hereunder or under the Loan Documents, as the case may be, or if any proceeding is filed or commenced seeking to enjoin, restrain or in any way prevent the foregoing parties from conducting all or a substantial part of their respective business affairs and failure to vacate, stay, dismiss, set aside or remedy the same within thirty (30) days after the occurrence thereof;

(g) If ARCHES fails, within three (3) days after City's written request therefor, to pay City any amount by which the indebtedness under this Agreement may, at any time, exceed the face amount of the Note;

(h) If any petition is filed by or against ARCHES under the United States Bankruptcy Code or any similar state or federal Law, whether now or hereafter existing (and, in the case of involuntary proceedings, failure to cause the same to be vacated, stayed or set aside within thirty (30) days after filing);

(i) If there is any material adverse change in the financial condition of ARCHES;

(j) If any assignment, pledge, encumbrance, transfer, hypothecation or other disposition is made in violation of this Agreement; and

(k) If a default occurs under any of the Loan Documents and continues beyond the applicable grace period if any, contained therein.

14. City Remedies Upon Event of Default. Upon the occurrence of any Event of Default, City shall, in addition to all remedies conferred upon City by Law and by the terms of the Note and the other Loan Documents, have the right but not the obligation to pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that all such remedies shall be cumulative and that no such remedy shall be to the exclusion of any other:

(a) Take any action whatever which, in City's sole judgment, is necessary or appropriate to fulfill the covenants, agreements and obligations of ARCHES under this Agreement and the Loan Documents;

(b) Declare the Note to be immediately due and payable without notice to ARCHES;

(c) Use and apply any monies deposited by ARCHES with City, regardless of the purpose for which the same was deposited, to cure any such default or to apply on account of any indebtedness under this Agreement which is due and owing to City; and

(d) Exercise or pursue any other right or remedy permitted under this Agreement or any of the Loan Documents or conferred upon City by operation of Law.

15. Non-Waiver of Remedies. No waiver of any breach or default hereunder shall constitute or be construed as a waiver by City of any subsequent breach or default or of any breach or default of any other provision of this Agreement.

16. General Provisions.

(a) Captions. The captions and headings of various Sections of this Agreement and Exhibits pertaining hereto are for convenience only and are not to be considered as defining or limiting in any way, the scope or intent of the provisions hereof.

(b) Merger. This Agreement and the Loan Documents and instruments delivered in connection herewith, as may be amended from time-to-time in writing, constitute the entire agreement of the parties with respect to the Loan, and all prior discussions, negotiations and document drafts are merged herein and therein. Neither City nor any employee of City has made or is authorized to make any representation or agreement upon which ARCHES may rely unless such matter is made for the benefit of ARCHES and is in writing signed by an authorized officer of City. ARCHES agrees that it has not and will not rely on any custom or practice of City, or on any course of dealing with City, in connection with the Loan unless such matters are set forth in this Agreement or the Loan Documents or in an instrument made for the benefit of ARCHES and in a writing signed by an authorized officer of City.

(c) Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered, if sent by reputable overnight courier (effective the business day following delivery to such courier) or if mailed (effective two business days after mailing) by United States registered or certified mail, postage prepaid, return receipt requested:

To City: City of Lancaster
44933 Fern Avenue
Lancaster, California 93534
Attn: City Manager

Copy To: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attn: Allison E. Burns

To ARCHES: ARCHES H2 LLC
1111 Franklin Street, 8th Floor
Oakland, California 94607
Attn:

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other fashion shall be deemed effective only upon receipt.

(d) Modification, Waiver. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

(e) Governing Law. This agreement shall be governed by and construed under the laws of the State of California.

(f) Acquiescence Not to Constitute Waiver of City's Requirements. Each and every covenant and condition for the benefit of City contained in this Agreement may be waived by City, provided, however, that to the extent that City may have acquiesced in any noncompliance with any conditions precedent to the Closing or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by City of such requirements with respect to any future disbursements of Loan proceeds.

(g) Disclaimer by City.

(i) This Agreement is made for the sole benefit of ARCHES and City, and no other person or persons shall have any benefits, rights or remedies under or by reason of this Agreement, or by reason of any actions taken by City pursuant to this Agreement. City shall not be liable for any debts or claims accruing in favor of any such parties against ARCHES or others. ARCHES shall not be an agent of City for any purpose. Except as expressly set forth in the Loan Documents, City is not and shall not be an agent of ARCHES for any purpose. City, by making the Loan or any action taken pursuant to any of the Loan Documents, shall not be deemed a partner or a joint venturer with ARCHES or fiduciary of ARCHES; and

(ii) By accepting or approving anything required to be observed, performed, fulfilled or given to City pursuant to the Loan Documents, including any certificate, statement of profit and loss or other financial statement, City shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by City.

(h) Right of City to Make Advances to Cure Defaults. If ARCHES shall fail to perform in a timely fashion any of its covenants, agreements or obligations contained in this Agreement or any of the Loan Documents, City may (but shall not be required to) perform any of such covenants, agreements and obligations.

(i) Definitions Include Amendments. Definitions contained in this Agreement which identify documents, including the Loan Documents, shall be deemed to include all

amendments and supplements to such documents from the date hereof, and all future amendments and supplements thereto entered into from time-to-time to satisfy the requirements of this Agreement or otherwise with the consent of City. Reference to this Agreement contained in any of the foregoing documents shall be deemed to include all amendments and supplements to this Agreement.

(j) Time is of the Essence. Time is hereby declared to be of the essence of this Agreement and of every part hereof.

(k) Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(l) Waiver of Consequential Damages. In no event shall City be liable to ARCHES for consequential damages, whatever the nature of a breach by City of its obligations under this Loan Agreement, or any of the Loan Documents, and ARCHES hereby waives all claims for consequential damages.

(m) Claims Against City. City shall not be in default under this Agreement, or under any other Loan Documents, unless a written notice specifically setting forth the claim shall have been given to City within thirty (30) days after ARCHES first had knowledge of, or reasonably should have had knowledge of, the occurrence of the event which ARCHES alleges gave rise to such claim and City does not remedy or cure the default, if any there be, promptly thereafter. If it is determined in any proceedings that City has improperly failed to grant its consent or approval, where such consent or approval is required by this Loan Agreement or any other Loan Documents, the sole remedy of ARCHES shall be to obtain declaratory relief determining such withholding to have been improper, and ARCHES hereby waives all claims for damages or set off against City resulting from any withholding of consent or approval by City.

(n) Severability. The Parties intend and believe that each provision in this Agreement comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Agreement is found by a court of law to be in violation of any applicable local, state, or federal law, statute, ordinance, administrative or judicial decision, or public policy, and if such courts declare such portion, provision, or provisions of this Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision, or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, and that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable portion, provision, or provisions were not contained therein, and that the rights, obligations, and interests of the Parties under the remainder of this Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.

CITY:

CITY OF LANCASTER,

a California municipal corporation and charter city

By: _____

Name: _____

Its: _____

ARCHES:

ARCHES H2 LLC,

a California limited liability company

By: _____

Name: _____

Its: _____

**EXHIBIT “A”
PROMISSORY NOTE**

\$3,000,000.00
December [REDACTED], 2024
Lancaster, California

FOR VALUE RECEIVED, ARCHES H2 LLC, a California limited liability company (“Maker”), promises to pay on or before [REDACTED] [REDACTED], 2026 (“Maturity Date”), to **City of Lancaster**, a California municipal corporation and charter city (“Holder”), or order, the principal sum of Three Million Dollars (\$3,000,000.00) with interest in an amount equal to the average of the average monthly effective yields of the Local Agency Investment Fund (“days

”), as published by the California State Treasurer, for the period commencing upon disbursement to Maker of the funds documented by this Note and ending on the Maturity Date; provided, however, that in the event of prepayment, the interest period shall end the month preceding such prepayment.

Maker shall make all payments in lawful money of the United States of America and in immediately available funds. This Note may be prepaid in whole or in part, without penalty, at the option of Maker and without the consent of Holder. All payments under this Note shall be paid to Holder at 44933 Fern Avenue, Lancaster, California, or at such other address as Holder shall direct Maker in writing. Should Maker default in the payment of principal when due, the whole sum of principal due under this Note shall be immediately due and payable without further demand or notice and shall bear interest at the rate set forth in the previous paragraph or seven percent (7%) per annum, whichever is greater.

This Note shall be governed by the laws of the State of California excluding its conflict of laws rules. The exclusive jurisdiction and venue of any legal action instituted by any party to this Note shall be Los Angeles County, California. Maker waives presentment, protest and demand, notice of protest, notice of demand and dishonor, and notice of nonpayment of this Note. Maker expressly agrees that this Note or any payment under this Note may be extended by Holder from time to time without in any way affecting the liability of Maker. Maker shall pay all costs and expenses, including attorney fees, incurred: (i) in collecting payment on this Note; (ii) in connection with any dispute that arises as to its enforcement, validity, or interpretation, whether or not legal action is instituted or prosecuted to judgment; or (iii) in enforcing any judgment obtained in any related legal proceeding.

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If any provision or any word, term, clause, or part of any provision of this Note shall be invalid for any reason, the same shall be ineffective, but the remainder of this Note and of the provision shall not be affected and shall remain in full force and effect. Any of the terms or conditions of this Note may be waived by Holder, but no such waiver shall affect or impair the rights of Holder to require observance, performance, or satisfaction, either of that term or condition as it applies on a subsequent occasion or of any other term or condition of this Note.

MAKER:

ARCHES H2 LLC,

a California limited liability company

By: _____

Name: _____

Its: _____