



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 7, 2016

Ordinance 18355

Proposed No. 2016-0349.2

Sponsors Dembowski

1 AN ORDINANCE relating to the sale of environmental
2 attributes held by the county; authorizing the transit
3 division to enter into an agreement with Element Markets
4 Renewable Energy, LLC, for the sale of Renewable
5 Identification Numbers and other environmental attributes
6 associated with the transit division's electric trolley and
7 battery bus fleets.

8 STATEMENT OF FACTS:

- 9 1. The transit division operates a fleet of one hundred fifty-nine electric
10 trolley buses in the city of Seattle. In 2016, it will also operate three
11 battery buses and may operate significantly more in the future.
- 12 2. The electric trolley buses operated by the transit division have over
13 twenty million boardings per year and are a major component of the public
14 transportation system.
- 15 3. Under the United States Environmental Protection Agency's
16 Renewable Fuel Standards Program, consumption of renewably generated
17 electricity to power the trolley buses and the battery buses has the
18 potential to create Renewable Identification Numbers ("RINs"), which can

19 be sold to companies that blend gasoline for the retail market and have
20 Environmental Protection Agency-mandated Renewable Fuel Obligations.

21 4. The transit division's trolley bus fleet consumes an estimated eighteen
22 million kilowatt hours of electricity each year, which is equal to
23 approximately 797,600 RINs.

24 5. On March 19, 2015, the transit division issued a request for proposals
25 for the sale of RINs and other environmental attributes associated with the
26 transit division's electric trolley and battery bus fleets.

27 6. The transit division has negotiated a contract with an outside party for
28 the sale of RINs and other environmental attributes associated with the
29 transit division's electric trolley and battery bus fleets. The contract also
30 provides an option for the sale of RINS generated by other King County
31 departments and divisions. Finally, the contract allows other governments
32 to use the contract's terms and conditions for their own separate contracts
33 with Element Markets.

34 7. The contract for the sale of RINs and other environmental attributes
35 associated with the Metro Transit Division's electric trolley and battery
36 bus fleets with Element Markets Renewable Energy, LLC is in the best
37 interest of the county.

38 8. Other county departments or divisions may utilize this contract to sell
39 their RINs and other environmental attributes.

40 9. In accordance with the King County charter section 230.10.10,
41 revenues received by the transit division from the sale of RINs associated

42 with its electric trolley and battery bus fleets may only be used for
43 specified purposes.

44 10. Under K.C.C chapter 4.56, sales of rights, title or interests in
45 emissions credits, offsets or allowances or renewable energy certificates,
46 credits, benefits, environmental air quality credits and any similar rights,
47 title or interests held by the county are exempt from the real and personal
48 property requirements of this chapter when unique circumstances are
49 present. The sales may be made in the best interests of the public to a
50 person or entity through a direct agreement negotiated by the county
51 executive and approved by the county council.

52 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

53 SECTION 1. Findings: King County council hereby finds that the sale of
54 Renewable Identification Numbers and other environmental attributes held by the county
55 and associated with the transit division's electric trolley and battery bus fleets, or by other
56 King County departments and divisions is in the best interests of the public.

57 SECTION 2. The executive is hereby authorized to execute a Renewable Energy
58 Attributes Contract with Element Markets Renewable Energy, LLC, substantially in the
59 form of Attachment A to this ordinance.

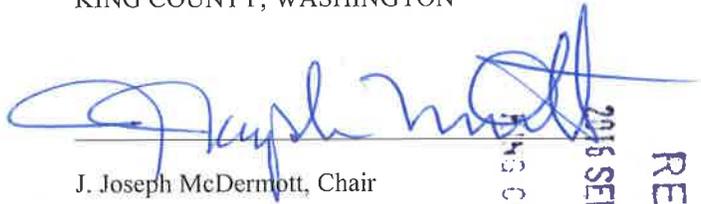
60 SECTION 3. Revenues from the sale of Renewable Identification Numbers shall
61 be allocated to the originating department or division and shall be used to further the

62 goals outlined in the 2015 Strategic Climate Action Plan as applicable to the originating
63 department or division.
64

Ordinance 18355 was introduced on 7/11/2016 and passed by the Metropolitan King County Council on 9/6/2016, by the following vote:

Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles
and Ms. Balducci
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



J. Joseph McDermott, Chair

ATTEST:



Anne Noris, Clerk of the Council

RECEIVED
2016 SEP 15 PM 4:03
CLERK
KING COUNTY COUNCIL

APPROVED this 15 day of SEPTEMBER, 2016.



Dow Constantine, County Executive

Attachments: A. Renewable Energy Attributes Contract, dated August 16, 2016

RENEWABLE ENERGY ATTRIBUTES CONTRACT (“Contract”)

THIS CONTRACT # _____ is entered into by King County, Washington by and through the Department of Transportation, Metro Transit Division (the “County” or “Metro”), and Element Markets Renewable Energy, LLC (“EM” or “Contractor”). The County is undertaking certain activities related to the sale of environmental attributes and the County desires to engage the Contractor to provide Work in connection with such undertakings of the County.

In consideration of payments, covenants, and agreements hereinafter mentioned, to be made and performed by the parties hereto, the parties covenant and do mutually agree as follows:

1. Contract Documents

The Contractor shall provide all Work described in this Contract, which consists of the following documents and attached exhibits, each of which are made a part hereof by this reference in the following order of precedence: 1) Contract Amendments; 2) Contract, including Exhibits A-1 and A-2 – Attestation Forms, Exhibit B – Consultant Disclosure Form, and Exhibit C – Certificate(s) of Insurance and Policy Endorsement; 3) King County’s Request for Proposals 1082-15 VLN; and 4) Contractor’s Proposal.

2. Certain Definitions

- 2.1. **Accepted**: (i) With respect to the Renewable Electricity Rights (RERs) delivered by EM hereunder, receipt by the County of the RERs in the applicable tracking system or via written attestation, as applicable; (ii) with respect to the Metro Percentage (defined in Section 2.14), receipt of the funds in accordance with Section 14, subject to audit as provided in Section 15.
- 2.2. **Cellulosic Waiver Credit**: The cellulosic biofuel waiver credit for the applicable compliance year determined and published by EPA under 40 C.F.R. §80.1456.
- 2.3. **Change in Law**: Defined in Section 4.0.
- 2.4. **Commencement Date**: Defined in Section 4.0.
- 2.5. Not used.
- 2.6. **Contract Amendment**: A written change to the Contract modifying, deleting or adding to the terms and conditions or scope of Work, signed by both parties, with or without notice to the sureties.
- 2.7. **Contract RIN(s)**: A RIN (or RINs, as applicable) generated by EM with respect to the PEV Load in accordance with the Pathways.
- 2.8. **Day**: Calendar day.
- 2.9. **Delivery Period**: Defined in Section 4.0.
- 2.10. **Excepted Expenses**: Defined in Section 12.0.
- 2.11. **Initial Delivery Period**: Defined in Section 4.0.
- 2.12. **Gross Revenue**: Revenue actually received by EM from the sale of Contract RINs (and Other EV Credits, as applicable) during a given period.
- 2.13. **KCC**: The King County Code.

- 2.14. Metro Percentage: The percentage of Net Revenue payable to the County under this Contract. In each twelve (12) month period of the Contract beginning on the Commencement Date, the Metro Percentage shall be 70% of Net Revenue until the aggregate total of Gross Revenue and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds \$400,000. Thereafter the Metro Percentage shall be 75% of Net Revenue for the remainder of the applicable twelve (12) month period.
- 2.15. Net Revenue: For a given period, Gross Revenue less Excepted Expenses.
- 2.16. Other EV Credit(s): Credits generated under a low carbon fuel standard program or any other program that emerges where the transaction contemplated in this Contract is eligible to generate tradable credit(s) in addition to RINs.
- 2.17. Plug-in Electric Vehicle ("PEV") Load: The electricity consumption of Metro's electric trolley and battery bus fleets, electric vehicle charging stations and any other electric vehicle load that qualifies as of the date hereof or in the future to generate RINs under the Renewable Fuel Standards program, metered in a manner permissible under the Renewable Fuel Standard Pathways II. PEV Load does not include electricity consumption from Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.
- 2.18. Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration.
- 2.19. Renewable Electricity Right or "RER": The environmental attributes and benefits resulting from the generation and delivery to the electricity grid of one (1) megawatt-hour (MWh) of renewable electricity generated from the combustion of biogas procured from a source facility chosen by EM and approved by the County, which approval shall not be unreasonably withheld.
- 2.20. Renewable Fuel Standard Pathways II or "Pathways": The requirements established by the U.S. Environmental Protection Agency (EPA) for RIN generation from renewable electricity under Renewable Fuel Standards program set forth in Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Misfueling Mitigation Requirements, 79 FR 42128 (July 18, 2014).
- 2.21. Renewable Identification Numbers or "RINs": A unique number generated to represent a volume of renewable fuel pursuant to 40 C.F.R. §§80.1425 and 80.1426.
- 2.22. Renewable Fuel Standards program or "RFS2": The renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010, as amended, restated or supplemented to date.
- 2.23. Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.
- 2.24. System: Collectively, Metro's electric trolley fleet, battery bus fleet, and electric vehicle charging stations, and any other electric vehicle load that qualifies for RIN generation under RFS2. System does not include Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.
- 2.25. Work: Everything to be provided and done by the Contractor or its Subcontractors for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.

3.0 Description of Transaction

EM will deliver RERs to Metro to be matched with the PEV Load in accordance with the Pathways in order to allow EM to generate the Contract RINs. Except as otherwise provided in Section 10.2, EM will sell the Contract RINs and EM and Metro will share the revenue generated from the sale of such Contract RINs as specified below, subject to satisfaction by Metro of the Ongoing Information Requirements (described in Section 8 below). For Other EV Credit(s), Metro may elect in writing to have EM generate such credits and EM and Metro will share the revenue generated from the sale of such Other EV Credit(s) under the fee structure in Section 14, unless the parties execute a written amendment to this Contract detailing how the revenue generated from the sale of Other EV Credits will be split between the parties. This language also applies where RERs are not involved, such as the sale of carbon offsets or other environmental credits and attributes not contemplated by this Contract as of the date executed by both parties.

4.0 Contract Term

This Contract shall become effective upon execution by the parties and shall expire at the end of the Initial Delivery Period (defined below), unless extended or terminated as provided herein.

EM shall commence delivery of RERs to Metro beginning on the "Commencement Date", defined as the first date upon which both (i) the source facility producing the biogas with which the RERs are associated is registered under RFS2 and (ii) a pathway for generation of the Contract RINs is approved by EPA. EM shall continue delivering RERs for three (3) years beginning on the Commencement Date (the "Initial Delivery Period"). Delivery of RERs under this Contract may be extended by Metro for up to two (2) additional one-year periods (each, a "Renewal Delivery Period" and collectively, with the Initial Delivery Period, the "Delivery Period") as Metro may determine in its sole discretion by providing written notice of renewal to EM at least thirty (30) days prior to the last day of the Initial Delivery Period or Renewal Delivery Period, as applicable.

If at any time during the Delivery Period a change occurs to RFS2 or the enforcement thereof which results in the inability to generate RINs from the PEV Load (a "Change in Law"), deliveries of RERs will cease until such time as RINs may be generated from the PEV Load. If the Change in Law is either permanent by its terms or EPA releases definitive guidance that the Change in Law will remain in effect for a period of at least six (6) months, either Contractor or Metro may terminate this Contract by providing written notice to the other of such termination; provided that the foregoing termination right will not be exercisable if any Other EV Credits are being generated or, if not currently being generated, could be generated under a renewables program from the matching of RERs to the PEV Load as contemplated in Section 3.0 of this Contract.

In the event there is a determination by EPA that Metro must be the generator of the RINs, EM shall provide assistance as requested by Metro to perform all the necessary actions to establish an account in the EPA Moderated Transaction System (EMTS) in Metro's name. Following generation, the parties agree that the Contract RINs will be transferred to an EM account in EMTS from which EM will market and sell the Contract RINs.

Metro will appoint EM as its agent to perform the generation of the Contract RINs for Metro, and following generation, the parties agree that the Contract RINs will be transferred to an EM account in EMTS from which EM will market and sell the Contract RINs.

EM's obligation to generate Contract RINs associated with RERs delivered to Metro prior to the last day of the Delivery Period and to remit the Metro Percentage of Net Revenue associated therewith will

survive termination until revenue from all RERs delivered to Metro is realized through the sale of the Contract RINs.

5.0 Quantity

The actual quantity of RERs delivered by EM to Metro in each month of the Delivery Period shall be equal to the actual PEV Load for that month.

6.0 Exclusivity

Metro hereby grants EM the exclusive right to (i) deliver RERs to be matched with Metro's PEV Load, (ii) generate RINs with respect to such PEV Load, and (iii) sell Contract RINs for the duration of the Delivery Period, except as provided in Section 10.2.

In the event the matching of the PEV Load with RERs is eligible to generate Other EV Credits or if Metro desires to generate RINs or Other EV Credits from other parts of Metro's transportation fleet other than the PEV Load, Metro may elect in writing to grant EM the exclusive right to (i) deliver RERs to be matched with the PEV Load (for the purpose of generating Other EV Credits) and (ii) generate Other EV Credits with respect to the PEV Load and (iii) sell Other EV Credits for the duration of the Delivery Period subject to a written amendment to this Contract detailing how the revenue generated from the sale of Other EV Credits will be split between Metro and EM and addressing other relevant payment terms.

7.0 Registration Information

EM will be responsible for registering the System with the U.S. Environmental Protection Agency ("EPA") or other regulating entity as applicable to generate RINs under RFS2 or to generate Other EV Credits under another applicable program, as applicable (each, a "Registration"). EM will complete registration requirements for Contract RIN sales pursuant to the terms of this Contract.

EM shall provide the County with copies of all documents filed with and received from EPA related to the System, Contract RINs, or Other EV Credits.

8.0 Ongoing Information Requirements

At its own expense, Metro will submit the following documentation and data to a data room or similar repository established by EM for each calendar month of the Delivery Period:

- System operation data and metered electricity consumption;
- Utility bills and/or statements evidencing electricity used by the System; and
- An attestation, either in the form attached to this Contract as Exhibit A-1 or via an electronic platform developed by EM or its service providers, in which an authorized representative of Metro attests to certain facts regarding the System, RERs, Contract RINs and/or Other EV Credits, including, without limitation, that Metro has not entered into any similar agreements that would enable or give any other party the right to make any claims with respect to the PEV Load or generation of the Contract RINs.

9.0 RIN/Other EV Credit Generation

The Contract RINs generated from Metro's PEV Load will be equal to the quantity of RINs permitted to be matched with the PEV Load pursuant to the Pathways, as amended from time to time. EM will seek the classification of the Contract RINs as D3 by the EPA or such other code if it will result in a higher RIN value and is permitted by the EPA. In the event that any Other EV Credits may be generated from the PEV Load, the Other EV Credits generated will be equal to the quantity permitted under the applicable statutes, rules or regulations.

10.0 Contract RIN Sales

10.1 The timing and manner of sale of the Contract RINs will be determined in EM's sole discretion provided that EM agrees that (i) EM shall use commercially reasonable efforts to sell any Contract RINs as they become available for sale during the Delivery Period; (ii) Contract RINs will be sold in transactions that include the sale of RINs generated by at least one other party, including but not limited to RINs sold pursuant to Section 10.4 or Section 32.0, if any; (iii) Contract RINs are sold no less frequently than every four months; (iv) no more than 25% of the Contract RINs sold in any four-month period of the Delivery Period may be sold in the forward market without prior written approval of the Project Manager; and (v) no Contract RIN shall be sold at a price that is less than the sum of the market price for a D5 RIN plus 50% of the published value of the Cellulosic Waiver Credit at the time of the Contract RIN sale.

10.2 Notwithstanding any provision to the contrary in this Contract, the County may elect to take a share of the Contract RINs equal to the Metro Percentage in-kind for any one or more months of the Delivery Period (such RINs, the "In Kind RINs") provided that the County provides EM with written notice at least seven (7) business days prior to the start of the applicable month in which the County wishes to receive In-Kind RINs. If the County elects to receive In-Kind RINs, it must take the entire amount equal to the Metro Percentage and establish and manage its EMTS account as required for such In-Kind RINs, and Contractor will have no obligation or responsibility with respect to management of the EMTS account for In-Kind RINs under this Contract. The County shall not have the right to present any In-Kind RINs for monetization at will. Any arrangement in which EM monetizes any In-Kind RINs for the County shall be a separate negotiated transaction not included under this Contract. The County may modify or rescind any election to receive In-Kind RINs given pursuant to this Section 10.2 provided that the County provides written notice to EM thereof at least seven (7) business days prior to the start of the applicable month. The effect of the County's rescission of such election to receive In-Kind RINs will be that EM will sell the Contract RINs as provided in Section 10.0 and the County will receive the Metro Percentage for the revenue generated from such sales.

If the County elects to receive In-Kind RINs, EM may also elect to receive the amount of any reimbursement to which EM is entitled pursuant to Section 12 below in the form of RINs by providing written notice of such election to the County. EM may revoke any such election by providing written notice of revocation to the County at any time, and any such election will be automatically revoked upon receipt of notice from the County that it wishes to rescind its election to receive In-Kind RINs as the Metro Percentage.

10.3 To the extent a Quality Assurance Program (QAP) for the Contract RINs is approved by EPA, Contractor shall engage a firm to perform a review of the Contract RINs under the approved QAP during the Initial Delivery Period unless the parties mutually agree that services under such EPA-approved QAP are not commercially reasonable. Contractor's expenses in connection with the Quality Assurance Program shall be considered Excepted Expenses pursuant to Section 12 and deductible under clause (ii) thereof.

10.4 Any County division or department may utilize this Contract to engage EM to sell its RINs. Such RINs will be sold in transactions in which Contract RINs are also sold, and the sale of any such RINs will be conducted by EM according to the terms and conditions of this Contract applicable to Contract RINs unless agreed upon otherwise in writing by EM and the County. If another County department or division engages EM to sell RINs pursuant to this section, the County shall provide

EM with applicable contact and payment information to the extent it is different than that provided herein.

11.0 This section intentionally left blank.

12.0 Expenses

12.1 Excepted Expenses. EM will be responsible for paying any and all expenses incurred and associated with the generation and sale of the Contract RINs and Other EV Credits for which EM is responsible pursuant to this Contract. However, the following expenses, subject to the limitation set forth below, will be deducted from Gross Revenue to determine Net Revenue hereunder (the "Excepted Expenses"):

- (i) Third-party costs for initial EPA registration;
- (ii) Quality Assurance Program costs and annual third party review under Section 15.0;
- (iii) Two (2) annual site visits to the renewable energy resource from which the RERs are procured;
- (iv) Travel expenses for third parties;
- (v) Charges from utilities for costs to generate RINs and to meet EPA and QAP audit and data requirements, but not including payments owed by EM for utility service to its facilities;
- (vi) RER procurement costs, provided that EM shall not be entitled to deduct or be reimbursed for the purchase price of any RER exceeding three dollars unless EM received prior approval in writing from the County for such purchase;
- (vii) Costs associated with the generation and sale of Other EV Credits, provided that the parties have executed the written amendment related to revenue for such credits described in Section 3;
- (viii) Tax payments associated with Contract RIN sales, but not including any income taxes for which EM is responsible;

provided that the aggregate amount of the expenses listed in clauses (i) through (iv) of this Section 12 deducted from Gross Revenue in any calendar year may not exceed the greater of 5% of that year's Gross Revenue or \$45,000 (the "Expense Cap").

If there is insufficient Gross Revenue from which deductions will reimburse EM, then the County will pay to EM the deficiency for any of the above expenses incurred in connection with performance of EM's obligations hereunder; provided that with respect to the expenses listed in clauses (i) through (iv), EM shall be responsible for all such expenses exceeding the Expense Cap in each calendar year.

EM shall provide the County with an invoice and supporting documentation as required by the County for such expenses. The County shall pay the invoice within ninety days of receipt of the invoice and the required supporting documentation.

12.2 Suspension for Insufficient Revenue. If (A) the aggregate amount of expenses paid by or reimbursed by a Party pursuant to this section ("Expense Amount") exceeds the aggregate amount of Net Revenue received by such Party (the "Net Revenue Amount") during any three consecutive months of the Delivery Period in which Gross Revenue is greater than zero (such period, a "Measurement Period") and (B) as of the date of the suspension notice, the Party's Expense Amount exceeds the Net Revenue Amount for the preceding six-month period in the aggregate, the applicable party may submit a notice of suspension to the other Party. Any suspension will become effective as of the first day of the month following the date the suspension notice is received. Notwithstanding any suspension under this Section, each Party will remain responsible for any of its obligations under this Contract pertaining to

RINs or Other EV Credits generated from RERs delivered prior to the suspension. If the Contract is suspended pursuant to this Section, the suspending Party may reinstate the Contract by submitting a notice of reinstatement to the non-suspending Party. If suspension under this Section 12.2 remains effective for six months or more, either Party may terminate the Contract by providing written notice of termination to the other Party; provided that the foregoing termination will not be exercisable if any Other EV Credits are being generated or could be generated under a renewables program as contemplated by Section 3.0 of this Contract.

12.3 Procurement Cost Suspension. If the County does not provide EM with the approval contemplated by Section 12.1(vi) within [fifteen days] of EM's request for such approval, this Contract will be deemed suspended as of the date such approval was requested. Suspension pursuant to this Section 12.3 will remain in effect until the month following the month in which approval is granted by the County. If suspension under this Section 12.3 remains effective for six months or more, EM may terminate this Contract by providing written notice of termination to the County.

13.0 Delivery of RERs

RERs will be delivered by EM or a designee thereof previously identified to Metro in writing to Metro's account in a renewable energy credit registry or by delivery of an attestation in the form attached as Exhibit A-2 to this Contract.

14.0 Payment

14.1 In exchange for Metro granting EM the exclusive right to deliver RERs, generate and sell Contract RINs and Other EV Credits from the PEV Load as provided herein, EM will pay Metro the applicable Metro Percentage of Net Revenue on a monthly basis in accordance with this section. Additionally, EM will review payments made during each completed twelve month period and pay the County any additional amounts that may be owed with respect to the completed twelve month period within thirty days of the end of that period.

14.2 For each month of the Delivery Period in which Contract RINs or Other EV Credits are generated and sold, as applicable, EM will prepare and provide Metro with a document showing: (i) Gross Revenue for the Contract RINs or Other EV Credits sold during such month; (ii) the gross revenue attributable to RINs sold pursuant to each Section 32 Agreement as identified by the specific Counterparty ; (iii) the Net Revenue from such Contract RINs or Other EV Credits, as applicable; (iv) an itemized list of all Excepted Expenses deducted from Gross Revenue; (v) the Metro Percentage, (vi) the date of sale and price per unit for all Contract RINs or Other EV Credits sold during such month, (vii) the number of Contract RINs or Other EV Credits generated and remaining unsold, if any and (ix) the number of RERs delivered to Metro with respect to the PEV Load for such month and the number of Contract RINs or Other EV Credits generated or to be generated therefrom.

14.3 At least once per month during the Delivery Period, EM shall provide the County with the market price per unit for RINs that are comparable to Contract RINs, as obtained from publicly available sources such as Argus or OPIS or from independent broker quotes, if no public source is available. While EM will make commercially reasonable efforts to supply the County with the foregoing information, the parties acknowledge that as of the date of this Contract a market price does not exist, and failure to provide such information to the extent it is not reasonably available will not result in or constitute a default or breach of this Contract by EM.

14.4 By March 31 of each year of the Delivery Period, EM shall provide the County with a report of the prior year's Contract RINs sales as compared to market sales using a benchmark price equal to

the average of the daily mean prices set forth in the OPIS price assessment range for D5 RINs plus fifty percent (50.0%) of the Cellulosic Waiver Credit, or another benchmark as may be mutually agreed by the parties. EM will present statistical information relating the prices received by Metro with these prices.

14.5 Submittal of the payment documentation described in Section 14.1 and 14.2 and payment of the Metro Percentage with respect to each month is due before the fifteenth (15th) business day after the month in which the funds from the sale of the Contract RINs are actually received by EM. All funds to be paid to Metro hereunder shall be rendered in the form of immediately available funds (U.S. Dollars) by wire transfer or in such other form as agreed to by the parties. If EM fails to remit any amount payable by it when due, interest on such unpaid portion shall accrue at a rate equal to the prime interest rate in effect as of the date the payment is due as published in *The Wall Street Journal* plus two percent (2%) from the date payment is due to the date of payment.

15.0 Contract RINs and Other EV Credits Annual Review

EM shall be responsible for the costs of an annual third party review of Contract RINs and Other EV Credits. The review may be conducted by one or more third parties which are approved by the County, such approval not to be unreasonably withheld, delayed or conditioned, and at a minimum shall include written verification and audit of: (1) RERs delivered compared to Contract RINs and/or Other EV Credits generated; (2) the accounting of Contract RINs and/or Other EV Credits created, sold and retained; and (3) the sales price for the Contract RINs or Other EV Credits, as applicable, sold, compared to the Metro Percentage. The audit shall be completed by March 31 of the year following the year reviewed. A copy of the written review which shall be specific to the County and shall include the audit, shall be provided by EM to the County within fifteen (15) Days after they are received by EM.

16.0 Mutual Representations and Warranties

Each party represents and warrants to the other party as of the date of this Contract, and as of the date of each delivery of RERs that (i) it has, and at all times during the term of this Contract will have, all necessary power and authority to execute, deliver, and perform its obligations under this Contract; (ii) the execution, delivery, and performance of this Contract has been duly authorized by all necessary action and does not violate any of the terms or conditions of its governing documents, or any contract to which it is a party, or any law or other legal or regulatory determination applicable to it; (iii) there is no pending or (to its knowledge) threatened litigation, arbitration, or administrative proceeding that materially adversely affects its ability to perform its obligations under this Contract and (iv) there is no provision of governing law that would limit either (a) the enforceability of this Contract against it or (b) the exercise of any rights or remedies of the other party set forth herein.

17.0 Representations and Warranties of EM

EM represents and warrants to Metro that as of the date of each transfer hereunder (i) each RER meets the specifications set forth in this Contract; (ii) EM has good and marketable title to the RERs; (iii) all right, title and interest in and to the RERs are free and clear of any liens, taxes, claims, security interests, or other encumbrances; (iv) EM did not sell, market, or otherwise represent as renewable energy the electrical energy that was generated with the RERs; (v) RERs that EM transfers to Metro meet the requirements of 42 U.S.C. §7546 for the generation of RINs neither EM nor any other party, to the knowledge of EM following reasonable inquiry, used the electrical energy that was generated with the RERs to meet any federal, state, or local renewable energy requirement, renewable energy procurement standard, renewable portfolio standard, or other renewable energy mandate; and (vii) EXCEPT FOR ANY WARRANTIES EXPRESSLY MADE IN THIS CONTRACT, EM EXCLUDES ALL WARRANTIES,

EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

18.0 Termination Default

18.1 Termination for Default. If the Contractor does not perform the Work, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A “notice to cure” shall be served on the Contractor by certified or registered first class mail in accordance with Section 24. The Contractor shall have ten (10) Days from the date of receipt to cure the default or provide the County with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, acting reasonably, the County may terminate the Contract by serving a “notice of termination” in accordance with Section 24 setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work performed and Accepted less any damages to the County caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the County to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall neither relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

18.2 Termination for Non-Appropriation

A. If expected or actual funding is withdrawn, reduced or limited in any way prior to Termination of this Contract, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part for lack of appropriation. Such termination shall be in addition to the County’s rights to terminate for default. In the event of termination under this section the following shall apply:

1. Subject to subsection 2., the County will be liable only for payment in accordance with the terms of this Contract for Work performed prior to the effective date of termination;
2. Payment, if any, associated with such termination shall not exceed the appropriation for the biennium in which termination occurs; and
3. The Contractor shall be released from any obligation to provide further Work under the Contract affected by the termination.

B. Notwithstanding subsection A., funding of this Contract beyond the current biennium is conditional upon the appropriation by the County Council of sufficient funds to support the Work described in this Contract. Otherwise, the Contract shall terminate on December 31 of the current biennium.

19.0 Retention of Records, Audit Access and Proof of Compliance with Contract

19.1 Retention of Records. The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting

principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

19.2 Audit Access. The Contractor shall provide access to its facilities, including those of any Subcontractors, to the County, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work provided under this Contract. The County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

19.3 Audit Exception. The Contractor agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception that occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall survive the expiration or termination of this Contract for six (6) years after the date of final remittance of the Metro Percentage to the County under the Contract.

19.4 Public Records Requests.

This Contract shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, chapter 42.56 RCW (the "Act").

If the Contractor considers any portion of any record provided to the County under this Contract, whether in electronic or hard copy form, to be protected under law, the Contractor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Act. If the County determines that the material is subject to disclosure, the County will notify the Contractor of the request and allow the Contractor ten (10) business days to obtain a court order preventing the County from releasing such material. If the Contractor fails or neglects to take such action within said period, the County will release the portions of record(s) deemed by the County to be subject to disclosure. The County shall not be liable to the Contractor for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Contractor as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

20.0 Legal Relations; Indemnity and Insurance

20.1 Independent Status of Contractor. In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent contractor relationship shall be created by this Contract. The Contractor shall be responsible for all federal and/or state tax, industrial insurance, wages, benefits, or other compensation by or on behalf of the Contractor and its employees except as otherwise provided herein. The Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

20.2 Indemnification and Hold Harmless. To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the Work provided by or on behalf of the Contractor. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act,

disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the County and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such Work; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. In the event that the County incurs any judgment, award and/or expense or cost, including attorney fees, arising from the provisions of this Indemnification Section, or to enforce the provisions of this Indemnification Section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor. For the avoidance of doubt, any differences between the amounts realized from the sale of Contract RINs or Other EV Credits and any benchmark or other market pricing data or the amount of Gross Revenue or Net Revenue generated from the sale of Contract RINs or Other EV Credits relative to any benchmark are not considered losses subject to this Section 20.2. The indemnification obligation of Contractor under this Section 20.2 applies only to the portion of such loss, cost, penalty or other claim to which the County would not have been subject in the absence of Contractor's Work under this Contract.

The indemnification, hold harmless, protection and defense obligations contained herein shall survive the expiration, abandonment or termination of this Contract. Nothing contained within this Indemnification Section shall affect and/or alter the application of any other section contained within this Contract.

20.3 Insurance. Upon execution of this Contract, the Contractor, at its own cost, shall have procured and will maintain for the duration of this Contract, insurance as specified in the Minimum Scope and Limits of Insurance. The Contractor shall furnish the County with certificates of insurance and endorsements required by this Contract. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

Each insurance policy shall be written on an "occurrence" form; except that professional liability/errors and omissions will be acceptable on a "claims made" form.

If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the Work which is the subject of this Contract.

By requiring such minimum insurance coverage, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

A. Minimum Scope and Limits of Insurance

The Contractor shall maintain limits no less than,

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations. Professional Liability, Errors and Omissions: \$1,000,000 Per Claim and in the Aggregate

2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition.
3. Workers' Compensation: Statutory requirements of the State of residency, and
4. Employers' Liability or "Stop Gap" coverage: \$1,000,000

B. Other Insurance Provisions and Requirements

The insurance coverage(s) required in this Contract are to contain, or be endorsed to contain the following provisions:

All Liability Policies except Workers Compensation and Professional Liability:

1. The County, its officers, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. **The County requires this Endorsement to complete the Contract.**

All Policies:

- a. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- b. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor
- c. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) Days prior written notice, has been given to the County.
- d. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability/Errors and Omissions insurance coverage may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

C. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract not provided by the Contractor, shall be subject to all of the requirements stated herein.

21.0 Conflicts of Interest and Non-Competitive Practices

21.1 Conflict of Interest. (1) Except as provided in Section 21.1.(2), by entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or officers hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to

the County. The County shall require that the Contractor take immediate action to eliminate the conflict.

(2) Notwithstanding anything herein to the contrary, the County hereby acknowledges that:

- (i) EM and certain of its affiliates are in the business of acquiring, divesting, marketing and generating renewable credits, including renewable transportation credits (RINs), in some cases in transactions similar to those contemplated in this Contract;
- (ii) Nothing in this Contract is meant to limit or prevent EM or its affiliates from conducting its respective businesses; and
- (iii) Neither EM nor any affiliate or Subcontractor thereof is acting as a fiduciary to the County with respect to any products or services provided to the County under or in connection with this Contract.

21.2 Contingent Fees and Gratuities. By entering into this Contract to perform Work, the Contractor represents (or, in the case of item 3 below, acknowledges,) that:

1. No Brokers. No Persons or companies except as designated by Contractor shall be employed or retained as a broker to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No Gratuities. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its officers, agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
3. Any Person having an existing contract with the County or seeking to obtain a contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current contracts with the County canceled and shall not be able to bid on any other County contracts for a period of two (2) years.

21.3 Disclosure of Current and Former County Employees. To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this Contract may result in termination of this Contract. Contractor hereby represents and warrants that there are no current or former County employees involved in the anticipated performance of Work by Contractor.
3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

22.0 INTELLECTUAL PROPERTY

22.1 Patents, Copyrights and Rights in Subject data

Any patentable result or materials suitable for copyright arising out of this Contract shall be owned and retained by the County, with the exception of (i) any material or result previously created or prepared by Contractor; and (ii) any intellectual property or proprietary materials of Contractor ("Contractor Materials"). The County in its sole discretion shall determine whether it is in the public's interest to release or make available any patent or copyright.

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the County, with the exception of (i) any material or result previously created or prepared by Contractor; and (ii) any intellectual property or proprietary materials of Contractor; in each case excluding any data pertaining specifically to the County ("Contractor Data").

Subject to the terms and conditions of this Contract, County hereby grants to Contractor a worldwide, revocable, nonexclusive, royalty free, transferable license to use, reproduce and create derivative works of any material or result created under this Contract. The County also grants to Contractor a worldwide, revocable, royalty free license to reproduce, distribute, publicly perform and publicly display the materials or results created under this Contract, and to sublicense to third parties the rights to reproduce, distribute, publicly perform and publicly display the materials and results created under this Contract or any derivative works.

For the rights granted above, Contractor shall disclose and make available to the County any derivative work of such material or result without any additional cost to the County upon thirty (30) days of the County's request.

Should Contractor sublicense to third parties, Contractor shall enter into legally enforceable contracts that:

- (i) stipulate that materials or results created under this Contract are licensed, not sold and that title to and ownership of said materials or results or derivative works remain with the County; and
- (ii) disclaim all express and implied warranties on behalf of the County, and exclude liability of the County and its officials, employees, agents and assigns for any special, indirect, exemplary, incidental, special, punitive or consequential damages, even if the County was informed or knew or should have known of the possibility of such damages and loss; and the County's sole liability for damages will be limited to direct damages in the amount of \$100.

To the extent any intellectual property created by Contractor is developed without incorporating or otherwise using the materials or results created under this Contract, Contractor shall retain all right, title, and interest in such intellectual property.

Any Contractor Materials or Contractor Data, and any Subject Data furnished by Contractor pursuant to this Contract, other than documents exclusively for internal use by the County, shall carry such notations on the front cover or a title page (or in such case of maps, in the name block), as may be requested by the County. **The Contractor shall also place its endorsement on all Contractor-furnished Subject Data. All such identification details shall be subject to approval by the County prior to printing.**

The Contractor shall ensure that the substance of foregoing subsections is included in each subcontract for the Work under this Contract, by amendment, addendum or otherwise.

22.2 Nondisclosure of Data. Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractor shall not utilize nor distribute the County data in any form

without the prior express written approval of the County; provided that distribution to EPA or other regulatory bodies as required to perform Contractor's obligations under this Contract is permitted with the prior written consent of the County, not to be unreasonably withheld, delayed or conditioned. Contractor shall include this provision in all its subcontracts and require its subcontractors to strictly comply with its terms.

22.3 Non-Disclosure Obligation. While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish any information marked "Confidential", "Proprietary" or "Business Secret" to any third party with the exception of (i) its Affiliates, advisors and agents who (a) have a need to know such information in connection with Contractor's obligations under this Contract and (b) have agreed in writing to obligations of confidentiality and non-disclosure with respect to such information and (ii) to the EPA or other governing body, consultants or agents thereof as reasonably necessary or required to generate the Contract RINs or Other EV Credits (including registration, verification and compliance filings). Contractor shall notify the County of any such required disclosure and cooperate with the County to limit such disclosure and/or obtain confidential treatment of such information. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

23.0 Nondiscrimination and Payment of a Living Wage

23.1 Nondiscrimination in Employment. During performance of this Contract, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

23.2 Equal Employment Opportunity Efforts. The Contractor will undertake, and require all Subcontractors to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age. Equal employment opportunity efforts shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Contractor agrees to post, and to require Subcontractors to post in conspicuous places available to employees and applicants for employment notices setting forth this nondiscrimination clause. In accordance with KCC 12.16.010.J, "equal employment opportunity efforts" shall mean active efforts to ensure equal opportunity in employment that is free from all forms of discrimination. Ref: KCC 12.16.020.

23.3 Equal Benefits to Employees with Domestic Partners. In accordance with King County Ordinance 14823, as a condition of award of a contract valued at \$25,000 or more, the Contractor agrees that it shall not discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners during the performance of this Contract. Absent authorization for delayed or alternative compliance, failure to comply with this provision shall be considered a material breach of this Contract, and may subject the Contractor to administrative sanctions and remedies for breach.

When the contract is valued at \$25,000 or more, by signing the Contract the Contractor is indicating compliance with this requirement or with the terms of an authorization for delayed or alternative compliance.

23.4 Nondiscrimination in Subcontracting Practices. During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

23.5 Compliance with Laws and Regulations. The Contractor and all Subcontractors shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit discrimination. These laws include, but are not limited to, Chapter 49.60 RCW, Titles VI and VII of the Civil Rights Act of 1964, the American with Disabilities Act, and the Restoration Act of 1987. KCC chapters 12.16, 12.17 and 12.18 are incorporated herein by reference and the requirements in these code sections shall specifically apply to this Contract. The Contractor and all Subcontractors shall further comply fully with any equal opportunity requirements set forth in any federal regulations, statutes or rules included or referenced in the contract documents.

23.6 Small Contractors and Suppliers Policy.

Policy

It is King County policy that Small Contractors and Suppliers (SCS) have equitable opportunities to participate in the performance of goods and services contracts issued by King County, and that contractors and subcontractors shall afford equal opportunity in employment while providing supplies and services for and to King County.

Inquiries and Information Regarding King County Certified SCS Firms

Direct inquiries on how to apply for SCS certification, or to obtain a list of King County Certified Firms to the King County Business Development and Contract Compliance (BDCC) office by telephone at 206-263-9734. Information about becoming a King County Certified SCS Firm, as well as a Directory of King County Certified Firms is available at: <http://www.kingcounty.gov/bdcc>.

Definitions

The following definitions shall apply throughout this Section.

1. "Administrator" means the Director of Finance.
2. "Certified SCS Firm" means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SCS by the King County BDCC office.
3. "Small Contractor or Supplier" or "(SCS)" means that a business and the person or persons who own and control it are in a financial condition, which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Contracting

Opportunities Program is based on a dollar ceiling for standard business classifications that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS), and an Owners' Personal Net Worth less than \$750,000 dollars.

Required Submittals During Work. The Contractor shall collect, enter, submit and update the submittals listed below for itself, its Subcontractors and any sub tier Subcontractors and suppliers to BDCC using the Contracts and Apprenticeship Report Tracking Services (CARTS) online reporting website located at <http://www.kingcounty.gov/bdcc>. Report forms are available on the website. Assistance may be obtained by contacting BDCC staff at 206-263-9734.

1. Subcontractor List. The Contractor shall create and maintain a master list of all Subcontractors on this Contract, the Contractor shall continually maintain the Subcontractors and Suppliers.
2. Contractor Payments. The Contractor shall enter and submit the amount received from the County for itself and the amounts paid by the Contractor to all Subcontractors, including Certified SCS Firms. Entries shall be entered in CARTS on a monthly basis.
3. Final Affidavits of Amounts Paid. Upon completion of the Work and as a condition precedent to final payment, the Contractor shall upload a Final Affidavit of Amounts Paid electronically using CARTS. Identify amounts paid to each firm that performed Work on this Contract.

23.7 Compliance with Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) and the American with Disabilities Act of 1990 as amended (ADA).

Pursuant to Title II of the ADA, and Section 504, King County must not discriminate against people with disabilities in providing services, programs or activities even if those services, programs or activities are carried out by contractors. The Contractor agrees that it shall provide all programs, services, and activities to County employees or members of the public under this Contract in the same manner as King county is obligated to under Title II of the ADA, and Section 504 and shall not deny participation of the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with this Section 7.1.H shall be a material breach of, and grounds for the immediate termination of, this Contract.

The Contractor agrees to provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16.

The Contractor shall not discriminate against persons with disabilities in providing the Work. In any subcontracts for the programs, activities and services under their Contract, the Contractor shall include the requirement that the Subcontractor provide to persons with disabilities access to programs, activities and services provided under the Contract, as required by the disability access laws as defined by KCC 12.16; that the Subcontractor shall not discriminate against persons with disabilities in providing the Work under the Contract; and that the Subcontractor shall provide that the County is a third party beneficiary to that required provision.

23.8 Requirements of King County Living Wage Ordinance. In accordance with King County Ordinance 17909, as a condition of award for contracts for services with an initial or amended value of \$100,000 or more, the Contractor agrees that it shall pay and require all Subcontractors to pay a living wage as described in the ordinance, to employees for each hour the employee performs a Measurable Amount of Work on this Contract. The requirements of the ordinance, including payment schedules, are detailed at <http://www.kingcounty.gov/operations/procurement/Resources/ordinance-17909.aspx>.

Violations of this requirement may result in disqualification of the Contractor from bidding on or being awarded a County contract for up to two years; contractual remedies including, but not limited to, liquidated damages and/or termination of the Contract; remedial action as set forth in public rule; and other civil remedies and sanctions allowed by law.

23.9 Sanctions for Violations. Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of Contract, for which the Contractor may be subject to damages, withholding payment and any other sanctions provided for by Contract and by applicable law.

24.0 Notices

All notices, demands, and other communications hereunder shall be effective only if given in writing and shall be deemed given (i) when delivered in person; (ii) when delivered by private courier (with confirmation of delivery); or (iii) five (5) business days after being deposited in the United States mail, first-class, registered or certified, return receipt requested, with postage paid. For purposes hereof, all notices, demands and other communications shall be sent to the contacts and addresses below (or to such other address furnished in writing by one party to the other party).

<p><u>Element Markets Renewable Energy, LLC</u> Contract Administration Contract Manager – Randy Lack 3555 Timmons Lane Suite 900 Houston, TX 77027 Telephone Number: (281) 207-7200 Fax Number: (281) 207-7211 E-mail: ContractAdmin@elementmarkets.com</p>	<p><u>King County</u> Metro Transit Division Project Manager – Gary Prince King Street Center 201 S. Jackson Street Seattle, WA 98104 Telephone Number: (206) 477-6017 Fax Number: (206) 684-1778 E-mail: gary.prince@kingcounty.gov</p>
--	--

25.0 Assignment

This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may transfer or assign this Contract, in whole or in part, without the other party’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Upon any transfer or assignment permitted pursuant to this paragraph, the assignor shall not be released from its obligations hereunder .

Notwithstanding the foregoing paragraph, Metro agrees to provide such consent to an assignment by EM to another wholly-owned subsidiary of Element Markets, LLC, subject to receipt of documentation evidencing, in Metro’s reasonable discretion, that such affiliate (i) has the relevant registrations, qualifications and resources to perform EM’s obligations under this Contract; which will be deemed to be satisfied in the event such affiliate is utilizing the same personnel and obtains the same licenses or registrations held by EM; and (ii) agrees to assume all rights and obligations of EM hereunder. Upon any transfer or assignment permitted pursuant to this paragraph, the assignor shall be released from its obligations hereunder to the extent such obligations are assumed by the assignee.

26.0 Amendment

This Contract may be amended at any time, but only by a written agreement signed by both parties.

27.0 No Waiver

No delay or omission by a party in the exercise of any right under this Contract shall be taken, construed, or considered as a waiver or relinquishment thereof. If any of the terms and conditions

herein are breached and thereafter waived in writing by a party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

28.0 Severability

If any provision or portion of this Contract is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

29.0 Complete Agreement

This Contract represents the parties' final and mutual understanding concerning its subject matter. It replaces and supersedes any prior agreements or understandings with respect to its subject matter, whether written or oral.

30.0 Mediation or Arbitration

If a dispute arises out of or relates to this Contract, or the breach thereof, including any Contractor claim, that is not resolved through direct negotiation between the parties, the parties shall, as a condition precedent to litigation, endeavor to settle the dispute in an amicable manner through mediation or other agreed form of alternative dispute resolution.

31.0 Applicable Law and Forum

This Contract shall be governed by and construed according to the laws of the State of Washington. Any claim or suit between the parties arising out of this Contract may only be filed and prosecuted in King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

32.0 Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract if agreeable to that entity and EM, by executing an agreement in the form attached as Section 32.0 to this Contract. Any such agreement is between the federal, state, county or local entity (referred to as "Counterparty" in the attached Section 32.0 Agreement form) and EM only and the County does not accept any responsibility or involvement in the agreement.

33.0 Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, terrorism, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event to perform or comply with any obligation or condition of this Contract except the obligation to pay money to the other party, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including termination for default.

34.0 Recycled Products Policy

Contractors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

The Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the Contract and shall, whenever practicable, use both sides of the paper.

Ref: KCC 10.16 & King County Executive Policy CON 7-1-2.

35.0 No Third Party Beneficiary

This Contract is for the sole and exclusive benefit of the County and the Contractor and shall not create a contractual relationship with, or cause of action in favor of, any third party.

36.0 Counterparts

This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. Facsimile or PDF transmission of any signed original document, and retransmission of any facsimile or PDF transmission, will be the same as delivery of any original document.

By signing below, the parties agree to be bound by the terms and conditions contained in this Contract.

Element Markets Renewable Energy, LLC	King County Department of Transportation, Metro Transit Division
<i>Signature:</i> _____ <i>Date:</i> _____	<i>Signature:</i> _____ <i>Date:</i> _____
<i>Printed Name:</i> _____ <i>Title:</i> _____	<i>Printed Name:</i> _____ <i>Title:</i> _____

**Schedule 32.0
FORM OF AGREEMENT**

AGREEMENT

This AGREEMENT ("**Agreement**"), dated as of [DATE] is made by and between [NAME OF PUBLIC AGENCY], a [STATE/AGENCY DESCRIPTION] ("**Counterparty**") and ELEMENT MARKETS RENEWABLE ENERGY, LLC, a Delaware limited liability company ("**Consultant**"). Capitalized terms used but not otherwise defined herein have the meanings assigned to such terms in that certain Renewable Energy Attribute Contract, dated as of [DATE], by and between King County, Washington by and through the Department of Transportation, Metro Transit Division ("**Metro**") and Consultant (the "**Metro Contract**").

WHEREAS, pursuant to Section 32.0 of the Metro Contract[*and OTHER STATUTE/RULE, IF APPLICABLE*], Counterparty is permitted to use the terms and conditions of the Metro Contract to govern its contractual relationship with Consultant;

WHEREAS, each of Counterparty and Consultant desire to enter into an agreement for the purchase and sale of RERs with the same terms and conditions as the Metro Contract, other than as such terms and conditions may be modified below;

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, Counterparty and Consultant agree as follows:

1. **Agreement.** Except to the extent provided in Section 2 of this Agreement, Counterparty hereby agrees to be bound by all the terms, conditions, covenants, obligations, liabilities and undertakings to which Metro is subject under the Metro Contract, all with the same force and effect as if Counterparty were to have executed the Metro Contract in place of Metro. Any representations and warranties made by Metro in the Metro Contract are deemed made by Counterparty to Consultant as of the date of this Agreement. The terms and conditions of the Metro Contract, attached as Exhibit A hereto, are hereby incorporated by reference and made a part of this Agreement as if fully restated in this Agreement. In consideration of using this Agreement, the Counterparty does not object to the Consultant providing Metro with data from the sales of RINS or other EV credits made under this Agreement, as contemplated by Section 14 of the Metro Contract.
2. **Modifications to Metro Contract.** For the purposes of this Agreement, the following terms and conditions will modify the terms of the Metro Contract as follows:

[LIST MODIFICATIONS/ADDITIONS TO CONTRACT]

3. **Nature of Agreement.** Counterparty will be solely responsible for any liabilities, obligations and undertakings to Consultant under this Agreement. Metro is not a party to this Agreement and nothing in this Agreement creates, or is intended to create, an obligation of any kind on the part of Metro to either Counterparty or Consultant.

4. **Severability.** The provisions of this Agreement are independent of and separable from each other. If any provision hereof is held to be invalid or unenforceable for any reason, the validity and enforceability of any other provision hereof will not be affected and this Agreement will be construed as if such invalid or unenforceable provision was never included herein.

5. **Counterparts.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which constitutes an original, but together constitute a single contract. Delivery of an executed counterpart of this Joinder Agreement by facsimile or in electronic format is of equal effect as delivery of a manually executed or original counterpart.

6. **Governing Law.** This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby and thereby are governed by and construed in accordance with the laws of [STATE].

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective authorized signatories.

[COUNTERPARTY]

By: _____

Name:

Title:

AGREED TO AND ACCEPTED:

ELEMENT MARKETS RENEWABLE
ENERGY, LLC

By: _____

Name:

Title:

Exhibit A-1

Sample Form of Metro Attestation

I, _____ (name), _____ (title) and authorized signatory of the King County Department of Transportation, Metro Transit Division (“Metro”) hereby attest to the following on behalf of Metro with respect to the generation of renewable identification numbers (“RINs”) associated with electricity used as transportation fuel in the month of [____], [2016] (the “Attestation Period”) pursuant to the applicable rules and regulations promulgated by the U.S. Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 80, Subpart M (the “Renewable Fuels Standard” or “RFS2”) under the Clean Air Act, 42 U.S.C. § 7401 et seq.

- (1) Metro accepted delivery of [____] renewable energy rights (“RERs”) from Element Markets Renewable Energy, LLC or its designee (“EM”), representing the environmental attributes and benefits resulting from the generation and delivery to the electricity grid of the equivalent number of megawatt-hours (MWh) of renewable electricity generated from the combustion of biogas of an equivalent quantity to the number of megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses (the “System”).
- (2) Metro has not sold or transferred the RERs, and will not sell or transfer, the RERs in whole or in part (including the right to generate RINs from the underlying renewable energy) to any party.
- (3) Metro has not generated, and will not generate, any RINs associated with the electricity consumed by the System during the Attestation Period.
- (4) Metro has not transferred the right to generate RINs associated with the electricity consumed by the System during the Attestation Period to any party other than EM.

The foregoing is attested to as of this __ day of _____, [2016].

KING COUNTY DEPARTMENT OF TRANSPORTATION, METRO TRANSIT DIVISION

By: _____

Name:

Title:

Exhibit A-2

Form of RER Delivery Attestation

RENEWABLE ENERGY RIGHTS SUPPLIER ATTESTATION

I, _____, authorized signatory of Element Markets Renewable Energy, LLC ("EM"), hereby attest to the following on behalf of EM with respect to the [_____] megawatt-hours (MWh) of Renewable Energy Rights delivered to during the month of **[choose a month]** **[choose a year]** under that certain Renewable Energy Attributes Contract, dated as of [_____, 2016], by and between EM and King County, Washington, by and through the Department of Transportation, Metro Transit Division (the "Contact"). Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the Contract

- (i) The Renewable Energy Rights were produced through the conversion of organic matter at a landfill, manure digester or sewage waste treatment facility.
- (ii) The electricity to which the Renewable Energy Rights relate was generated from landfill gas consisting of a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure.
- (iii) The Renewable Energy Rights have not been sold by EM to any party and have not been used by EM for any purpose other than conveyance to Metro in accordance with the Contract.
- (iv) Title to the Renewable Energy Rights was transferred from EM to Metro immediately prior to Metro matching the Renewable Energy Rights with the megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses during the Attestation Period pursuant to the Contract.

I further attest, warrant and represent that the information provided herein is true and correct as of the date set forth below.

Signed: _____

Name: _____

Title: _____

Date: [Click here to enter a date.](#)