



**KING COUNTY**

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

**Signature Report**

**January 31, 2011**

**Ordinance 17022**

**Proposed No. 2010-0627.2**

**Sponsors Phillips and Hague**

1           AN ORDINANCE relating to the sale of emissions credits  
2           held by the county; authorizing the county executive to  
3           enter into an agreement for the sale of emissions credits  
4           associated with purified landfill gas produced from the  
5           Cedar Hills regional landfill to Puget Sound Energy, Inc.;;  
6           and adding a new section to K.C.C. chapter 4.56.

7           BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

8           SECTION 1. Findings:

9           A. The solid waste division operates the Cedar Hills regional landfill, accepting  
10          municipal solid waste from unincorporated King County and thirty-seven cities.

11          B. Landfill gas is generated by the decomposing waste buried in the Cedar Hills  
12          regional landfill.

13          C. As authorized by Ordinance 15872, the solid waste division contracted with  
14          Bio Energy (Washington), LLC, to purchase landfill gas produced at the Cedar Hills  
15          regional landfill and to build and operate a purification and compressing plant to refine  
16          the landfill gas to meet quality standards required for sale in commercial natural gas fuel  
17          markets. The contract, the Amended and Restated Project Development and Gas Sales  
18          Agreement, was signed on February 29, 2008.

19 D. Bio Energy (Washington), LLC, subsequently entered into a contract with  
20 Puget Sound Energy to sell to Puget Sound Energy the resulting purified gas. The county  
21 is not a party to that contract, the Cedar Hills - Pipeline Quality Gas Purchase and Sale  
22 Agreement, dated October 9, 2008.

23 E. The landfill gas generated from decomposing waste buried in the Cedar Hills  
24 regional landfill is classified as a "renewable resource" as defined in RCW  
25 19.285.030(18) of chapter 19.285 RCW, the Energy Independence Act.

26 F. Under 4.13 of the Amended and Restated Project Development and Gas Sales  
27 Agreement, the solid waste division owns and retains any and all rights to any emissions  
28 credits attributable to the landfill gas produced at the landfill. If sold separately, these  
29 rights may have value, but, given the emerging nature of the marketplace, that value is  
30 not well-defined. When sold together with the gas, these rights can be used by electric  
31 utilities to produce renewable energy credits or other similar credits or certificates of  
32 proof, howsoever titled, that qualify towards meeting utilities' renewable energy quotas  
33 created under the Energy Independence Act or under the laws of other jurisdictions.

34 G. Puget Sound Energy approached King County to enter into a purchase and  
35 sale agreement to acquire that portion of the emissions credits attributable to or generated  
36 or otherwise provided in connection with the purification and compressing plant, the  
37 plant site or the generation or sale of gas.

38 H. Because Puget Sound Energy is already purchasing the purified gas generated  
39 from the landfill, it is the only entity with the demonstrated ability to capture the added  
40 market value associated with bundling the gas with the emissions credits attributable to  
41 the gas. Puget Sound Energy has experience with the sale of emissions and other

42 renewable energy credits or certificates of proof, howsoever titled, in the energy market.

43 King County does not have a comparable level of expertise.

44 I. The solid waste division evaluated the alternatives to selling the rights to  
45 emissions credits to Puget Sound Energy and determined that entering into a negotiated  
46 direct sale with Puget Sound Energy is the best alternative for the public.

47 J. The solid waste division retained an independent consultant to independently  
48 evaluate alternatives for selling the rights to emissions credits, and it reached the same  
49 conclusion as the division.

50 K. In addition, the solid waste division retained a second consultant to conduct a  
51 2010 market survey seeking similar transactions for comparison.

52 L. The consultants' reports support the division's conclusions that the proposed  
53 sale of the rights to emission credits to PSE presents the unique circumstances that there  
54 has been no directly comparable sale of rights to emissions credits and that currently  
55 there is no market for selling rights to the emission credits alone, without the gas. These  
56 unique circumstances mean no direct market price comparisons are available.

57 M. Landfill emission credits from the Cedar Hills landfill are presently a novel  
58 form of intangible property that has economic value. The purchase and sale of such  
59 rights is a newly developing type of economic transaction and cannot readily be  
60 accomplished within the traditional framework of real or personal property surplus  
61 procedures, valuation, and sale or lease as presently set forth in the county code. For this  
62 reason, and because of the unique circumstances presented by this transaction, a  
63 negotiated direct sale is in the best interests of the public.

64            NEW SECTION. SECTION 2. There is hereby added to K.C.C. 4.56 a new  
65 section to read as follows:

66            Sales of rights, title or interests in emissions credits, offsets or allowances or  
67 renewable energy certificates, credits, benefits, environmental air quality credits and any  
68 similar rights, title or interests held by the county are exempt from the real and personal  
69 property requirements of this chapter when unique circumstances are present. Such sales  
70 may be made in the best interests of the public to a person or entity through a direct  
71 agreement negotiated by the county executive and approved by the county council.

72            SECTION 3. The King County council hereby finds that a direct negotiated sale  
73 of emissions credits and related rights attributable to or generated or otherwise provided  
74 in connection with the purification and compressing plant, the plant site or the generation  
75 or sale of gas produced from the Cedar Hills regional landfill to Puget Sound Energy in  
76 the best interests of the public.

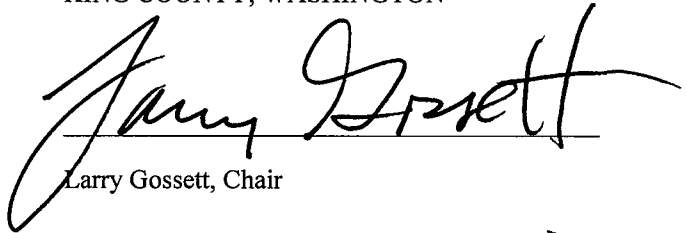
77            SECTION 4. The executive is hereby authorized to execute a purchase and sale

78 agreement with Puget Sound Energy substantially in the form of Attachment A to this  
79 ordinance.  
80


Ordinance 17022 was introduced on 12/13/2010 and passed by the Metropolitan King County Council on 1/31/2011, by the following vote:

Yes: 7 - Mr. Phillips, Mr. von Reichbauer, Mr. Gossett, Ms. Hague,  
Ms. Patterson, Ms. Lambert and Mr. McDermott  
No: 0  
Excused: 2 - Mr. Ferguson and Mr. Dunn


KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

  
Larry Gossett, Chair

ATTEST:

  
Anne Noris, Clerk of the Council

APPROVED this 1 day of FEBRUARY, 2011.

  
Dow Constantine, County Executive

RECEIVED  
2011 FEB - 1 PM 4:18  
KING COUNTY COUNCIL  
CLERK

**Attachments:** A. Purchase and Sale Agreement Between Puget Sound Energy and King County (dated 01/18/11)

**PURCHASE AND SALE AGREEMENT**  
**BETWEEN PUGET SOUND ENERGY AND KING COUNTY**

This PURCHASE AND SALE AGREEMENT (as amended pursuant to its terms, this "Agreement"), effective as of the date by which this Agreement is fully executed ("Effective Date"), is entered into by and between King County, Washington, a Washington municipal corporation, acting by and through its Solid Waste Division ("Seller"), and Puget Sound Energy, Inc., a Washington corporation ("Buyer"). Seller and Buyer may be referred to in this Agreement together as the "Parties" and each individually as a "Party." Capitalized terms used in this Agreement, unless otherwise defined herein, have the meanings set forth in the Landfill Gas Sales Agreement (as defined in Recital A).

**Recitals**

A. Seller and Bio Energy (Washington), LLC ("Bio Energy") are parties to the Amended and Restated Project Development and Gas Sales Agreement made as of February 29, 2008 (the "Landfill Gas Sales Agreement"), pursuant to Section 5.2.1 of which Seller sells to Bio Energy, and Bio Energy purchases from Seller, all Landfill Gas collected by the Collection Facilities or the Expansion Collection Facilities to the extent Seller retains the rights to such Landfill Gas or such rights revert to Seller at a future date.

B. Pursuant to Section 4.13 of the Landfill Gas Sales Agreement, Seller owns and specifically retains any and all rights to any Emission Credits attributable to or generated or otherwise provided in connection with the Plant, the Plant Site, or the generation or sale of Product Gas or otherwise attributable to or generated or otherwise provided in connection with the Landfill or the Landfill Site (collectively, "Landfill Emission Credits").

C. Buyer and Bio Energy are parties to the Cedar Hills – Pipeline Quality Gas Purchase and Sale Agreement dated October 9, 2008 (the "Pipeline Quality Gas Agreement"), pursuant to which, among other things, Bio Energy sells to Buyer, and Buyer purchases from Bio Energy, Pipeline Quality Gas and all Environmental Attributes (as each such term is defined in the Pipeline Quality Gas Agreement) associated with the Pipeline Quality Gas sold to Buyer under the Pipeline Quality Gas Agreement.

D. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the Product Gas Credits (as defined below), subject and pursuant to the terms and conditions set forth in this Agreement.

**1. TERM**

**1.1 Initial Term and Renewal Terms**

The term of this Agreement shall commence on the Effective Date and shall, unless sooner terminated pursuant to Section 6, continue until the end of the calendar year in which the eleventh (11th) anniversary of the Effective Date occurs ("Initial Term"). The Term shall automatically be extended as follows: (a) at the end of the Initial Term, for an additional period through the fifteenth (15th) anniversary of the Effective Date, and (b) on the fifteenth

anniversary of the Effective Date, for an additional five-year period (each such period, a "Renewal Term"); provided, that, subject to the provisions set forth below in this Section 1, either Party may terminate this Agreement as of the end of the then-current Initial Term or Renewal Term by providing written notice of such termination to the other Party not less than 180 days before the end of such Initial Term or Renewal Term. Notwithstanding the foregoing, the Term shall expire on the earliest to occur of (a) the twentieth (20th) anniversary of the Effective Date, (b) the effective date of termination of the Landfill Gas Sales Agreement, or (c) the effective date of termination of the Pipeline Quality Gas Agreement.

## **1.2 Waiver of Termination Rights**

Each Party shall be deemed to have waived its right to terminate this Agreement as of the end of the then-current Initial Term or Renewal Term if, prior to the end of such Initial Term or Renewal Term, Buyer shall have provided notice to Seller pursuant to Section 10.3 ("Transaction Notice") that Buyer has entered into one or more transactions for all of the Pipeline Quality Gas from the Plant (less applicable pipeline fuel to deliver gas, as established by applicable transporter's tariff,) (a) for (i) the sale of RECs at a price equal to or greater than \$13.00 per REC or (ii) the sale of Pipeline Quality Gas at a price per decatherm or MMBtu that is equivalent to or greater than a notional price of \$13.00 per REC (determined with reference to the then-current REC market) had PSE generated and sold RECs with such Pipeline Quality Gas or (iii) both (i) and (ii), and (b) the term of such transaction(s) extends beyond the end of such Initial Term or Renewal Term. Buyer shall specify in the Transaction Notice the term of each transaction and the number of RECs or renewable energy credits for which Buyer has transacted, and Buyer shall confirm in the Transaction Notice that the price or notional price, as applicable, is equal to or greater than \$13.00 per REC or renewable energy credit. Upon Seller's written request, Buyer shall cause the accuracy of the Transaction Notice to be verified by the Verifier (as defined in Section 3.3) and such verification to be provided to Seller.

## **2. PURCHASE AND SALE**

Seller hereby sells to Buyer, and Buyer hereby purchases from Seller, during the Term that portion of the Landfill Emission Credits attributable to or generated or otherwise provided in connection with the Plant, the Plant Site, or the generation or sale of Product Gas ("Product Gas Credits"). Seller hereby acknowledges and agrees that Seller does not retain any rights, title or interests in or to any RECs, certificates, credits, benefits, emissions reductions, environmental air quality credits, or emissions reductions credits, offsets or allowances, howsoever entitled and howsoever arising (through federal, state or local legislation, regulation or otherwise), resulting from the avoidance of the emission of any gas, chemical or other substance, in each case attributable to or generated or otherwise provided in connection with the Plant, the Plant Site, or the generation or sale of Product Gas, and Seller agrees that all such rights, title and interests heretofore retained by Seller, together with any Reporting Rights and Marketing Rights associated therewith, are by this Agreement sold and transferred to Buyer. For purposes of this Agreement, the following terms have the meanings set forth below:

(a) "REC" means a certificate of proof, issued through the Western Renewable Energy Generation Information System (together with its successor entity or any other entity mutually

agreed-upon by the Parties, "WREGIS"), that one megawatt-hour of electricity was generated by using Pipeline Quality Gas.

(b) "Marketing Rights" means the exclusive right to claim and advertise to customers and to the public that the specific MWhs of energy associated with the RECs purchased and sold under this Agreement were generated by the Plant. "Marketing Rights" does not mean the right to make oral or written statements relating to the Landfill Gas Agreement, or that certain Amended and Restated Plant Site Lease between Seller and Bio Energy dated February 29, 2008. Seller shall not hold itself out as the owner of Product Gas Credits or RECs purchased and sold under this Agreement.

(c) "Reporting Rights" means the exclusive right to report ownership of the Product Gas Credits, RECs and Indistinguishable Attributes (as defined below) purchased and sold hereunder to any agency, authority or other party under any emissions trading, tracking or reporting program, public or private (whether voluntary or involuntary).

(d) "Renewable energy credits" means RECs, certificates, credits, benefits, emissions reductions, environmental air quality credits, or emissions reductions credits, offsets or allowances, howsoever entitled and howsoever arising (through federal, state or local legislation, regulation or otherwise), resulting from the avoidance of the emission of any gas, chemical or other substance, in each case attributable to or generated or otherwise provided in connection with the Plant, the Plant Site, or the generation or sale of Product Gas.

### **3. PURCHASE PRICE**

#### **3.1 Calculated Price**

On or before April 1 of each calendar year during the Term, Buyer shall calculate, and shall provide such calculations to Seller, of each of the prices referred to in subsections (a) and (b) below (to the extent Buyer has entered into one or more transactions of the type described in subsection (a) or (b) or both such subsections):

(a) Renewable energy credits. The weighted average price per renewable energy credit Buyer received for the sale of renewable energy credits in transactions (entered into by Buyer in Buyer's sole discretion, if any) with third parties during the immediately preceding full or partial calendar year of the Term. For purposes of such calculations, if Buyer did not sell any renewable energy credits during any full calendar year, the proxy price for that calendar year shall be determined based on the average of prices quoted by two independent brokers of renewable energy credits mutually selected by Buyer and Seller;

(b) Qualified renewable gas. The average price (stated in dollars per decatherm or per MMBtu) received by Buyer in transactions (entered into by Buyer in Buyer's sole discretion, if any) with third parties during the immediately preceding full or partial calendar year of the Term for the purchase of Pipeline Quality Gas from Buyer either at wholesale or for use in generating electricity, less the sum of (i) the price per decatherm or MMBtu paid by Buyer to Bio Energy for such Pipeline Quality Gas, plus (ii) the price



(stated in dollars per decatherm or per MMBtu) to store and deliver the Pipeline Quality Gas to such third party, as established by applicable transporter's tariff.

The weighted average price or such proxy price, as applicable, referred to in Section 3.1(a) and the price referred to in Section 3.1(b) are each referred to elsewhere in this Agreement as a "Calculated Price."

### **3.2 Purchase Price**

(a) On or before July 1 of each calendar year during the Term, Buyer shall pay to Seller, as full compensation for all Product Gas Credits sold to Buyer during the immediately preceding full or partial calendar year of the Term,

(i) with respect to any Calculated Price determined pursuant to Section 3.1(a), an amount equal to the product of (A) twenty-five percent (25%) of the such Calculated Price multiplied by (B) the number of RECs or other renewable energy credits attributable to the generation of electricity when the Pipeline Quality Gas from the Plant is nominated to one of Buyer's gas-fired generators during the immediately preceding full or partial calendar year of the Term, and

(ii) with respect to any Calculated Price determined pursuant to Section 3.1(b), an amount equal to the product of (A) twenty-five percent (25%) of the such Calculated Price multiplied by (B) the quantity (expressed in decatherms or MMBtus) of Pipeline Quality Gas purchased from Buyer either at wholesale or for use in generating electricity, during the immediately preceding full or partial calendar year of the Term, and

(iii) in case of any sale of any renewable energy credits independent of any gas or electric energy commodity, an amount equal to 25% of the proceeds of any sale.

The Parties agree that Buyer shall not enter into any transaction involving Pipeline Quality Gas from the Plant that does not result in compensation for Seller under subsections (i), (ii) or (iii) above.

(b) Should there be any change in the regulatory requirements for Washington State or for any applicable future federal program or standard such that Product Gas Credits and RECs become legally combined into a single, indistinguishable environmental attribute ("Indistinguishable Attribute") with respect to any full or partial calendar year during the Term, then in lieu of the payment pursuant to Section 3.2(a)(i) for such full or partial calendar year, Buyer shall pay Seller an amount equal to the product of (i) thirty percent (30%) of the Calculated Price multiplied by (ii) the number of Indistinguishable Attributes attributable to or generated or otherwise provided in connection with the Plant, the Plant Site, or the generation or sale of Product Gas and actually received by Buyer during such full or partial calendar year of the Term. The timing of such payment shall be as set forth in Section 3.2(a).

### **3.3 Audit**

On or before May 1 of each calendar year, Buyer shall cause the accuracy of (i) the calculations

provided by Buyer to Seller on or before the immediately preceding April 1 pursuant to Section 3.1, (ii) the number of RECs or renewable energy credits pursuant to Section 3.2(a)(i), (iii) the Calculated Price pursuant to Section 3.2(a)(ii), and, if applicable, (iv) the number of Indistinguishable Attributes pursuant to Section 3.2(b), together with the source data for such calculations, to be verified by an audit performed by an independent third party reasonably satisfactory to both Seller and Buyer ("Verifier"). Audits shall include verification of the source data basis and calculations of both Calculated Price and Purchase Price, including, but not limited to, the applicable pipeline fuel to deliver gas, as established by applicable transporter's tariff, directly to Buyer's generation resources, into and out of storage or to a third party; and the quantity of RECs and Indistinguishable Attributes. Buyer shall cause such third party to provide such verification, in writing and containing a description of the source data reviewed and methodology employed, to Seller on or before June 1 of such calendar year.

#### **4. WREGIS TRACKING; PRODUCT VERIFICATION**

##### **4.1 WREGIS Account Transfer**

Seller shall cooperate with Buyer's efforts to register, record and track the transfer of all RECs and, to the extent applicable, Product Gas Credits and Indistinguishable Attributes from Seller's account to Buyer's account on the WREGIS renewable energy registry and tracking system ("WREGIS Tracking System") promptly following the generation or provision thereof, all in accordance with the WREGIS Operating Rules and any and all applicable WREGIS requirements.

##### **4.2 Product Verification**

During the Term and for a period of four (4) years following the end of the Term, Seller shall maintain records as identified by Buyer, of the RECs and Product Gas Credits and Indistinguishable Attributes purchased and sold under this Agreement. Upon Buyer's request, Seller shall provide Buyer with information possessed by or known to Seller regarding the Plant, the RECs and Product Gas Credits and Indistinguishable Attributes purchased and sold hereunder as reasonably necessary for Buyer to comply with (a) the requirements of any applicable federal or state laws or regulations and (b) the rules, regulations, orders and requirements of the Washington Utilities and Transportation Commission. Upon Buyer's request, Seller shall promptly provide to Buyer documentation substantiating the generation and sale to Buyer of the RECs, Product Gas Credits and Indistinguishable Attributes purchased and sold hereunder. Seller hereby consents to Buyer's use of any information described in this Section 4.2 for the purpose of documenting to any governmental, quasi-governmental, regulatory, certifying or standard-setting authority, agency or body that Buyer obtained title to, and ownership of, such RECs, Product Gas Credits and Indistinguishable Attributes purchased and sold hereunder. Seller hereby consents to Buyer's disclosure of any information provided to Buyer by Seller described in this Section 4.2.

## **5. REPRESENTATIONS AND WARRANTIES**

### **5.1 General**

Each Party represents and warrants to the other Party that (a) it is duly authorized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (b) it has the power and authority and the legal right to enter into, deliver, and perform its obligations under this Agreement; (c) the execution, delivery and performance of this Agreement by such Party has been authorized by all necessary action on its part and does not contravene any provision of its certificate of incorporation, bylaws, or other constitutive documents; and (d) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms (except as may be limited by any law affecting the enforceability of creditors' rights generally and subject to equitable principles of general application).

### **5.2 By Seller**

Seller represents and warrants to Buyer that (a) Seller owns and has good and legal title, free and clear of all liens, claims, encumbrances and rights of others, to all RECs, Product Gas Credits and Indistinguishable Attributes purchased and sold hereunder, and has the exclusive right to use, sell, dispose of, assign or transfer all of such RECs, Product Gas Credits and Indistinguishable Attributes, and (b) upon the full execution of this Agreement, Buyer will own and will have good and legal title, free and clear of all liens, claims, encumbrances and rights of others, to all RECs, Product Gas Credits and Indistinguishable Attributes, and will have the exclusive right to use, sell, dispose of, assign or transfer all of such RECs, Product Gas Credits and Indistinguishable Attributes.

## **6. TERMINATION**

This Agreement is subject to termination as follows:

(a) Either Party shall have the right to terminate this Agreement pursuant to the terms of Section 7, in the event of a Default of the other Party.

(b) If, during the Term of this Agreement, any judicial, regulatory or legislative action or change renders performance of this Agreement impossible or illegal, the Parties shall use reasonable efforts to revise this Agreement so that this Agreement, as revised, preserves, to the maximum extent possible, the Parties' respective commercial positions and performance under the Agreement is no longer impossible or illegal. If the Parties cannot agree on revisions to this Agreement to achieve the foregoing within thirty (30) days following a Party's notice to the other Party that such an event has occurred, then either Party may, by written notice thereof to the other Party, terminate this Agreement.

(c) Either Party shall have the right to terminate this Agreement immediately upon providing written notice to the other Party in the event that such other Party: (i) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (ii) makes a general assignment, arrangement, or composition with or for the benefit of its creditors; (iii) institutes or has instituted against it a proceeding seeking a judgment

of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed, or restrained in each case within thirty (30) calendar days of the institution or presentation thereof; (iv) passes a resolution for its dissolution, winding-up, or liquidation; (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, or other similar official for it or for all or substantially all of its assets; (vi) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration, or other legal process levied, enforced, or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed, or restrained, in each case within thirty (30) calendar days thereafter; (vii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an effect analogous to any of the events specified in clauses (i) through (vi), inclusive; or (viii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

## **7. DEFAULT**

### **7.1 Definition**

It shall be a "Default" of a Party under this Agreement if (a) such Party fails to perform any material obligation or material covenant imposed upon such Party under this Agreement or (b) any representation or warranty made by such Party in this Agreement is materially incorrect when made. The Party in Default under this Agreement shall be referred to as the "Defaulting Party," and the other Party shall be referred to as the "Non-Defaulting Party."

### **7.2 Notice of Default; Opportunity to Cure**

Following receipt of written notice of a Default describing such Default in reasonable detail, the Defaulting Party may cure such Default within ten (10) business days after receipt of such notice. If, within such ten-business day cure period, the Defaulting Party does not cure the Default, the Non-Defaulting Party may exercise the remedies set forth in this Section 7.

### **7.3 Rights Upon Default**

Upon the Defaulting Party's failure to cure a Default within the ten-business day cure period provided for in Section 7.2, the Non-Defaulting Party shall have the right (but not the obligation) to terminate this Agreement by providing written notice of termination to the Defaulting Party.

### **7.4 Remedies Not Exclusive**

Each and every right and remedy specifically provided to a Non-Defaulting Party under this Agreement shall be in addition to every other right and remedy now or hereafter available to the Non-Defaulting Party at law or in equity and shall be cumulative, so that the exercise of one right

or remedy shall not waive the right to exercise any other right or remedy. No delay or omission in the exercise of any right or remedy, and no renewal or extension of any performance due under this Agreement, shall impair any such right or remedy or operate to waive any default.

## **8. CONFIDENTIALITY; PUBLICITY**

### **8.1 Confidentiality**

This Agreement shall be considered a public document and will be available for inspection and copying in accordance with the Public Records Act, chapter 42.56 of the Revised Code of Washington (the "Act"). If Buyer considers any record, in whole or in part, provided to Seller under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under the Act, Buyer shall clearly identify each such record with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such record, Seller will determine whether the material should be made available under the Act. If Seller determines that the material is subject to disclosure, Seller will notify Buyer of the request and allow Buyer ten (10) business days to take whatever action it deems necessary to protect its interests. If Buyer fails or neglects to take such action within said period, Seller will release the record(s) or portions thereof reasonably deemed by Seller to be subject to disclosure. Seller shall not be liable to Buyer for inadvertently releasing records pursuant to a disclosure request not clearly identified by Buyer as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET."

### **8.2 Publicity**

**8.2.1 General.** Seller may release oral or written statements relating to this Agreement including but not limited to statements concerning the general environmental benefit associated with the generation and sale of Product Gas, and Seller's role in adopting public policies that promote environmental stewardship, such as its participation in projects that convert landfill gas to pipeline quality gas.

**8.2.2 Non-Ownership.** Notwithstanding Section 8.2.1, Seller shall not report that it is, claim to be, market itself as, otherwise hold itself out as, or make any statement that it is, the owner of Product Gas Credits or RECs purchased and sold under this Agreement (collectively, "Ownership Statements"). At Buyer's request, Seller shall correct any Ownership Statements and provide copies of such correction to those third parties as Buyer may identify. Seller further agrees to include the following statement on the King County Department of Natural Resources and Parks website in conjunction with any webpage entry relating to the Landfill Gas Sales Agreement:

Pursuant to a purchase and sale agreement executed in 2011, King County has conveyed to Puget Sound Energy the exclusive right to use, sell, dispose of, report on, assign or transfer any renewable energy certificates or credits and any other certificates, credits, offsets and allowances arising in connection with the generation of gas produced by the Bio Energy plant

that is pipeline quality and suitable for injection into any pipeline interconnected to the plant or the electric energy produced from such gas.

## **9. ALTERNATIVE DISPUTE RESOLUTION**

Before any form of litigation may proceed with respect to any dispute between the Parties under this Agreement, a representative appointed by each Party (each, a "Representative") shall meet to attempt to resolve such dispute, either in person or by telephone, within five (5) business days after the written request of either Party. If the Representatives are unable to resolve such dispute within thirty (30) days after their initial meeting (in person or by telephone), either Party may proceed to exercise any other right or to seek any other remedy it may have at law or otherwise.

## **10. MISCELLANEOUS**

### **10.1 Trading System**

In the event that a Regulatory Requirement (as defined below) is imposed or enacted, pursuant to which the transfer of any of the RECs, Product Gas Credits or Indistinguishable Attributes purchased and sold hereunder is required to be documented or recorded on any exchange or trading system other than WREGIS (including, without limitation, in order for Buyer to make marketing claims regarding such RECs, Product Gas Credits or Indistinguishable Attributes or to use such RECs, Product Gas Credits or Indistinguishable Attributes in a green pricing program), then the Seller shall cooperate in Buyer's efforts to transfer, and record the transfer of, such RECs, Product Gas Credits or Indistinguishable Attributes from Seller to Buyer on such exchange or trading system. For purposes of this Agreement, "Regulatory Requirement" means any federal or state statute, regulation, order or other requirement of any governmental, regulatory or quasi-governmental authority (including, without limitation, any regional transmission operator or similar entity) having jurisdiction.

### **10.2 Assignment**

Neither Party shall assign or transfer this Agreement or any of its rights or obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any assignment in violation of this Section 10.2 shall be void and shall have no force or effect. Subject to the foregoing restrictions on assignment, this Agreement shall be binding upon, and shall inure to the benefit of, the respective successors and permitted assigns of the Parties.

### **10.3 Notices**

Any notice or communication required under this Agreement shall be in writing and shall be (a) delivered in person, (b) sent by United States mail (certified with return receipt requested) or by overnight courier and addressed to the intended recipient at the address set forth below; or (c) sent by facsimile if confirmed in writing by the Party receiving notice, to the address set forth below (or at such other address of which a Party is notified from time-to-time): if to the Buyer, at Puget Sound Energy, Inc., Attn: Environmental Markets Manager, 10885 NE 4<sup>th</sup> Street (PSE-04S), Bellevue, WA 98004-5591, Fax: 425-462-3010; if to the Seller, at Department of Natural

Resources, King Street Center, 201 South Jackson, Suite 701, Seattle, WA 98104-3855, Attn: Solid Waste Division Director, Fax: 206-205-0197. Notices shall be deemed effective upon receipt.

#### **10.4 Amendment**

This Agreement shall not be amended, changed or modified except by a written agreement hereafter signed by duly authorized representatives of both Parties. The Parties agree that this Agreement shall not be amended, changed or modified by any course of dealing or course of performance between the Parties.

#### **10.5 No Waiver**

No failure or delay of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any other right under this Agreement, and no course of dealing or performance with respect thereto, shall be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect. The express waiver by either Party of any right or remedy under this Agreement in a particular instance or circumstance shall not constitute a waiver thereof in any other instance or circumstance.

#### **10.6 Relationship of Parties**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Further, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.

#### **10.7 No Third Party Beneficiary**

There are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on any person or entity other than the Parties, their respective successors and permitted assigns.

#### **10.8 Governing Law**

This Agreement shall be governed by, construed and enforced in accordance with, the laws of the state of Washington, without giving effect to such state's choice of law principles to the contrary.

#### **10.9 Further Assurances**

Each Party agrees to execute and deliver to the other Party such other instruments, documents, and statements including, without limitation, instruments and documents of recordation,

assignment, transfer, conveyance and clarification and take all other actions reasonably necessary to carry out the purposes of this Agreement.

#### **10.10 Severability**

In the event any of the terms, covenants or conditions of this Agreement shall be held to be invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of this Agreement not adversely affected thereby shall remain in force and effect; provided, however, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision, the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

#### **10.11 Headings**

Section headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

#### **10.12 Counterparts**

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and all of which, taken together, shall constitute a single instrument. Facsimile signatures shall have the same effect as original signatures.

#### **10.13 Entire Agreement**

This Agreement sets forth the Parties' entire agreement with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, understandings and communications between the Parties, oral or written, regarding that subject matter.

[Remainder of page intentionally left blank.]



IN WITNESS WHEREOF, the Parties have each caused this Agreement to be executed by their duly authorized representatives as of the dates set forth below.

**PUGET SOUND ENERGY, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**KING COUNTY, WASHINGTON,  
acting by and through its Solid Waste Division**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_