

## CLEAN FUEL STANDARD CREDIT AGGREGATOR SERVICES AGREEMENT

This contract ("Contract") is made between King County, through its Executive Climate Office (the "Seller"), and Energy Mission Control, Inc. dba FuSE (the "Consultant," and collectively, the "Parties")), who, in consideration of the mutual promises contained herein, agree to the following terms and conditions:

### i. TERM

All goods or services to be provided pursuant to the authority of this Contract shall be bound by the terms, conditions, prices, and discounts as set forth herein until the completion of the performance, notwithstanding the expiration of the initial term of this Contract or any extension thereof.

The initial term of this Contract will be three years effective from the date of full Contract execution, subject to the Termination provisions of . At King County's sole discretion, the Contract may be renewed for two (2) options for additional one-year periods.

### ii. SCOPE OF WORK

The Scope of Work is attached hereto as Exhibit A. Consultant shall perform work and/or sell products only as permitted within the Contract scope and shall not accept orders or provide services not within the Contract scope as it relates to this Contract.

### iii. EXTRA WORK

The Seller may request additional work or services other than that expressly provided for in the "Scope of Work" section of this Contract (Exhibit A). This will be considered extra work, supplemental to this Contract, and shall not proceed unless authorized by a written modification. Any costs incurred due to the performance of extra work prior to the execution of a written modification will not be reimbursed.

### iv. ERRORS AND OMISSIONS; DUTY TO CORRECT

The Consultant is responsible for the professional quality of all services rendered under this Contract. The Consultant, without additional compensation, will correct any errors or omissions immediately upon notice by the Seller. This obligation will survive the termination and expiration of this Contract.

### v. REVENUE SHARE PERCENTAGE COMPENSATION

Total compensation for this Contract is 4% of total revenues resulting from Clean Fuel Standard (CFS) credits sold, based on the protocol as detailed in section 1.3.5 of the Scope of Work. The Seller is not liable for any compensation to the Consultant in excess of this amount unless otherwise approved and agreed in writing by the Seller.

The revenue share percentage indicated above will remain constant throughout the term of the Contract – no escalation will apply regardless of market conditions.

### vi. NOTICE

Notices shall be transmitted electronically to:

King County: Executive Climate Office

Attn: Marissa Aho, Director

Email: [maaho@kingcounty.gov](mailto:maaho@kingcounty.gov)

Consultant: Energy Mission Control, Inc. dba FuSE

Attn: Todd Trauman, CEO

Email: [todd@usefuse.com](mailto:todd@usefuse.com)

Notices will be effective upon the earlier of (i) acknowledgment of receipt by the individual identified above or (ii) the next business day after emailing to the address above.

### vii. CONSULTANT EMPLOYEES

The Consultant will ensure that the employees assigned to this Contract are properly licensed, trained, and/or skilled. The Consultant must replace any employee who, in the reasonable opinion of the Seller, acts improperly, is not qualified or licensed, or is not needed to perform assigned work. All Consultant staff members and sub-consultants working on this Contract are required to comply with applicable King County resolutions and policies.

### viii. DIVERSITY PROGRAM REQUIREMENTS AND NONDISCRIMINATION

1. The Seller is committed to a policy of providing fair and representative employment and business

opportunities for minorities and women in the procurement of non-professional and professional services, consistent with King County's policies, procedures, and guiding principles for employment and contracting.

2. The Consultant shall fully comply with all federal, state, and local laws, regulations, and ordinances pertaining to non-discrimination, equal employment, and affirmative action, including but not limited to the Washington State "law against discrimination," Chapter 49.60 RCW. In addition, King County Code Chapters 12.16 through 12.19 apply to this Agreement and are incorporated by this reference as though fully set forth herein.

3. The Consultant shall not, on the basis of race, religion, color, creed, national origin, marital status, sex, sexual orientation, gender identity or expression, ancestry, age (except minimum age and retirement provisions and unless based upon a bona fide occupational qualification), religious affiliation, or the presence of any sensory, mental, or physical disability in an otherwise qualified person, deny any person the benefits of, or exclude any person from participation in, the award and performance of any work under this Contract and shall afford equal, non-discriminatory opportunities to potential joint venture partners, sub-consultants, subcontractors, and suppliers.

4. The Consultant shall implement and carry out the obligations regarding Equal Employment Opportunity (EEO) and nondiscrimination in employment provisions included in this Contract. The Consultant shall prepare and maintain records of employment, employment advertisements, application forms, and other pertinent data and records to demonstrate compliance with its EEO obligations under this Contract. The Consultant shall permit reasonable access by the Seller to such records. The Consultant shall provide periodic reports concerning its efforts related to EEO when such reports are requested by the Seller.

#### ix. PROHIBITED INTERESTS

No member, officer, or employee of the Consultant or its governing body, or of any of its component agencies during such person's tenure or one year thereafter, may have any interest, direct or indirect, in this Contract or the proceeds thereof, unless such interest has been disclosed in writing to the Seller and the Seller has determined that no prohibited conflicts of interest or ethical violations inherent in the circumstances exist.

#### x. INSURANCE REQUIREMENT

##### 1. Description

a. Except as otherwise specified, the Consultant, shall at its sole cost and expense, obtain and maintain during the entire term of this Contract the minimum insurance set below.

b. In the event the Consultant is a Joint Venture, these insurance requirements shall apply to each Joint Venture member separately.

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

d. The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of the Consultant, including without limitation, liability under the indemnity provisions of this Contract. Damages recoverable by the Seller shall not be limited to the amount of the required insurance coverage.

e. Each insurance policy shall be written on an "occurrence" basis/form; excepting insurance for professional liability (errors and omissions) and/or cyber liability (technology errors and omissions). Professional liability (errors and omissions) and cyber liability (technology errors and omissions) required by this Contract is acceptable on a "claims made" basis/form.

f. If coverage is approved and purchased on a "claims made" basis/form, the coverage provided under that insurance shall be maintained through: (i) consecutive policy renewals for not less than three (3) years from the date of completion of the Work which is subject of this Contract or, if such renewals are unavailable, (ii) the purchase of a tail/extended reporting period for not less than three (3) years from the date of completion of the Work which is the subject of this Contract. All insurance written on a "claims made" basis/form must have its policy inception or retroactive date be no later than the Effective Date of the Contract, unless otherwise approved in writing by the Seller's Office of Risk Management Services.

##### 2. Insurance Coverages

a. Commercial General Liability: Commercial General Liability for bodily injury including death, personal injury, and property damage, with contractual and completed operations liability endorsements, and Employer's Liability coverage, utilizing insurers and coverage forms acceptable to the Seller, with limits of at least \$2,000,000 per occurrence and \$2,000,000 general aggregate, with \$2,000,000 products and completed operations coverage. Coverage shall be at least as broad as that afforded under ISO form number CG 00 01. Such insurance shall

include coverage for, but not limited to premises liability, products and completed operations, ongoing operations, and contractual liability.

b. **Workers Compensation:** The Consultant will secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. The Consultant will be responsible for Workers' Compensation insurance for any sub-consultant who provides work under subcontract. If the Consultant is qualified as a self-insurer under Chapter 51.14 of the Revised Code of Washington, it will so certify to the Seller by submitting a letter signed by a corporate officer, indicating that it is a qualified self-insurer, and setting forth the limits of any policy of excess insurance covering its employees.

c. **Professional Liability:** This Contract includes "professional services". The Consultant shall maintain the appropriate Professional Liability insurance, with limits of liability of at least \$2,000,000 per claim, for damages sustained by reason of or in the course of operations under this Contract, whether occurring by reason of acts failing to meet the standard of care required by this Contract, negligent acts, errors, or omissions of the Consultant.

d. **Cyber Liability (Technology Errors and Omissions):** Coverage at a minimum limit of \$1,000,000 per claim or occurrence and in the aggregate. Coverage shall include loss resulting from data security/privacy breach, or other unauthorized access or related violations including identity fraud and privacy law violations, denial of service attacks, introduction of virus and malicious code, extortion, dissemination or destruction of electronic data, business interruption, privacy law violations, disclosure of non-public, personal or confidential information, identity fraud, loss of income due to system crashes, breach of contract, and acts by rogue employees. Coverage shall include notification and other expenses incurred in remedying a privacy breach as well as costs to investigate and restore data.

e. **FuSE agrees to obtain Fidelity, Theft, Disappearance & Destruction Liability / Employee Dishonesty coverage,** including ISO forms CR 20 15 10/10 (Joint Loss Payable) and CR 20 17 10/10 (Provide Required Notice of Cancellation to Another Entity), with a minimum limit of \$200,000 per occurrence, within thirty (30) days of contract execution.

f. **Other Insurance:** Other insurance as may be deemed appropriate to cover the specified risk and exposure of the scope of work or changes to the Scope of Work evaluated by the Seller. The costs of which shall be borne by contracting parties as mutually agreed.

### 3. Evidence and Cancellation of Insurance

a. Prior to execution of the Contract, the Consultant shall furnish the Seller certificates of insurance and endorsements certifying the issuance of all insurance required by this Contract. All evidence of insurance shall be signed by a properly authorized officer, agent, general agent or qualified representative of the insurer(s), shall certify the name of the insured(s), the type and amount of insurance, the location and operations to which the insurance applies, the inception and expiration dates, contract or RFP number, shall specify the form number of any endorsements issued to satisfy this Contract's insurance requirements, and shall state that the Seller shall receive notice at least thirty (30) Days prior to the effective date of any cancellation, lapse or material change in the policy. Similar documentation confirming renewal of required insurance shall be provided on each insurance renewal date. All insurance renewal certificates shall be sent pursuant to Section F above.

b. In the event of a loss, the Seller reserves the right to require complete, certified copies of all required insurance policies, including all endorsements and riders, which may be redacted of any confidential or proprietary information. Consultant shall deliver such policies to the Seller within five (5) days of Seller's request.

c. Failure to provide such insurance in a timeframe acceptable to the County shall enable the Seller to suspend or terminate the Consultant's Work hereunder in accordance with Contract provision regarding "Termination for Convenience/Default/Non-appropriation."

d. The Seller's receipt or acceptance of Consultant or any subcontractor's evidence of insurance at any time without comment or objection, or Seller's failure to request certified copies of such insurance, does not waive, alter, modify, or invalidate any of the insurance requirements set forth in this Section or, consequently, constitute Seller's acceptance of the adequacy of Consultant's or any subcontractor's insurance or preclude or prevent any action by Seller against Consultant for breach of the requirements of this Section.

### 4. Other Insurance Provisions and Requirements

a. All insurance policies purchased and maintained by Consultant and any subcontractor required in this Contract shall contain, or be endorsed to contain the following provisions:

With respect to all liability policies except professional liability (errors and omissions), cyber liability (technology errors and omissions, and workers compensation):

- i. King County, its officials, employees and agents shall be covered as additional insured for full coverage and policy limits as respects liability arising out of activities performed by or on behalf of the Consultant, its agents, representatives, employees, contractor(s), or subcontractor(s) in connection with this Contract. Additional Insured status shall include products-completed operations CG 20 10 11/85 or its substantive equivalent. The Seller requires a copy of the additional insured endorsement(s) to complete the Contract.

With respect to all liability policies (except workers compensation):

- i. Coverage shall be primary insurance as respects the Seller, its officials, employees, and agents. Any insurance and/or self-insurance maintained by the Seller, its officials, employees or agents shall not contribute with any Consultant's or subcontractor's insurance or benefit the Consultant or any subcontractor, or their respective insurers in any way.
- ii. Insurance shall expressly state that it applies separately to each insured and additional insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of insurer's liability.

5. Deductibles/Self-Insured Retentions

Any deductible and/or self-insured retention of the policies shall not in any way limit Seller's right to coverage under the required insurance, or to Consultant's or any Subcontractor's liability to the Seller, and shall in all instances be the sole responsibility of Consultant and any Subcontractor, even if no claim has actually been made or asserted against Consultant or Subcontractor.

6. Acceptability of Insurers

Unless otherwise approved by the Seller, insurance is to be placed with insurers with an A.M. Best rating of no less than A:VIII.

Professional Liability (errors and omissions) insurance may be placed with insurers with an A.M. Best rating of no less than B+:VII.

If at any time any of the foregoing policies fail to meet the above stated requirements, Consultant shall promptly obtain a new policy, and shall submit the same to the Seller, with the appropriate certificates and endorsements, for review.

7. Subcontractors

Consultant shall include all subcontractors as insureds under its policies or, alternatively, the Consultant must require each of its Subcontractors to procure and maintain appropriate and reasonable insurance coverage and insurance limits to cover each of the subcontractor's liabilities given the subcontractor's scope of work and the services being provided herein. To the extent reasonably commercially available, insurance maintained by any subcontractor must comply with the specified requirements of Section J, including the requirement that all liability insurance policies (except professional liability and workers compensation) provided by the subcontractor(s) must include King County, its officials, agents and employees as additional insured for full coverage and policy limits. Consultant is obligated to require and verify that each subcontractor maintains the required insurance and ensure Seller is included as additional insured. Upon request by the Seller, and within five (5) business days, Consultant must provide evidence of each subcontractor(s) insurance coverage, including endorsements.

8. General Provisions

a. **Certificates and Policies:** Prior to the commencement of the Scope of Work for this Contract, upon request, the Consultant shall provide the Seller with certificates of insurance showing insurance coverage in compliance with the foregoing paragraphs. All insurance coverage outlined above shall be written by insurance companies meeting the Seller's financial security requirements, (A.M. Best's Key Rating A-; VII or higher). The Consultant will provide 30 calendar days advance written notice to the Seller in the event the Consultant's insurance policies are canceled, not renewed, or materially reduced in coverage. Should the Consultant neglect to obtain and maintain in force any of the insurance required in this Section, the Seller may suspend or terminate this Contract. Suspension or termination of this Contract shall not relieve the Consultant from insurance obligations hereunder.

b. Taking into account the scope of work and services to be performed by a subcontractor and/or sub-consultant, the Consultant shall prudently determine whether, and in what amounts, each subcontractor and/or sub-consultant shall obtain and maintain commercial general liability and any other insurance coverage. Any insurance required of subcontractors and/or sub-consultants shall, where appropriate and/or applicable, name the

Seller as an additional insured.

c. Consultant's insurance for General Liability, Automobile Liability, and Railroad Protective Liability (if applicable) shall be primary with respect to the Seller, and any other insurance maintained by the Seller shall be excess and not contributing insurance with the Consultant's insurance.

d. The Consultant and its insurers shall require that the applicable insurance policy(ies) be endorsed to waive their right of subrogation against the Seller. The Consultant and its insurers also waive their right of subrogation against the Seller for loss of their owned or leased property or property under their care, custody, and control.

e. The Consultant shall provide the Seller with a Certificate of Insurance and endorsements to comply with the insurance requirements in this Contract, including, but not limited to, the Additional Insured Endorsement(s) required, the Waiver of Subrogation Endorsements, Primary and Non-Contributory Endorsements, Products and Completed Operations Endorsement, and any other endorsements.

f. No provision in this Section shall be construed to limit the liability of the Consultant for work not performed in accordance with the Contract, or express or implied warranties. The Consultant's liability for the work shall extend as far as the appropriate periods of limitation provided by law and up to any legal limits.

g. The Consultant may obtain any combination of coverage or limits that effectively provides the same or better amounts and types of coverage as stipulated above, subject to review and approval by King County.

#### 9. Claims Management

The Consultant agrees to the following claims management terms and conditions. The Consultant further agrees to include the following terms and conditions in its contract(s) with its subcontractors.

a. The Consultant, after the full execution of this Contract and upon request, shall provide the contact information of the individual(s) employed by the Consultant who handles insurance matters and notifies insurance companies of claims. This individual(s) will be the primary contact for communications between the King County Office of Risk Management and the Consultant and its Subcontractors. If the individual(s) change, the Consultant shall notify the King County Risk Management Division of the replacement.

b. The Consultant shall provide written notice of any claim made arising out of the Scope of Work to the Seller.

c. If King County receives a claim from a third party related to the Scope of Work, the Seller will tender such claim to the Consultant through the established claim management process for handling and resolution. Upon receipt of a third-party claim from the Seller, the Consultant shall acknowledge in writing to the Seller that:

i. The Consultant received and accepted the Seller's claim tender,

ii. The Consultant shall notify its Commercial General Liability insurance company and any other applicable insurance company (ies) of the claim as per the Seller's insurance requirements that it is named as Additional Insured, under the Commercial General Liability policy and as stipulated in the Contract between the Seller and the Consultant.

iii. The Consultant shall provide the Seller with copies of any/all Acknowledgements of Claim Receipts issued by its Commercial General Liability or other applicable insurance company(ies).

iv. The Consultant and its insurance company(ies) shall indemnify and defend the Seller, as an Additional Insured, against any/all claims related to the project.

v. The Consultant's General Liability and other applicable insurance company(ies) will investigate and process the claim, provide a coverage determination, an objective disposition, and claim resolution for either denial or settlement.

vi. The Consultant shall provide copies of any/all documentation related to a claim's disposition and resolution, such as, but not limited to, acknowledgments, settlement agreements, releases, claim denial letters, judgments, payments, and satisfaction of judgments.

d. The Consultant shall provide the Seller quarterly status reports on all open and closed claims related to the project that implicates the Seller. The report shall include the assigned adjusters, policy numbers, claim numbers, and at least the following:

i. A description of the claim handling activities during the quarter,

ii. Any changes to the assigned and/or investigating adjuster, and, if so, the name and contact information of the newly assigned adjuster(s),

iii. A description of the next steps in the claims adjusting process,

iv. A description of the disposition and resolution of any claim, and

v. Copies of any pertinent documents, including, but not limited to, expert reports, reports on investigations, photographs, settlement agreements, releases, claim denial letters, judgments, payments, and satisfaction of judgments.

The Consultant shall notify the Seller of their final resolution, or the applicable insurance company's(ies') final resolution, of any/all claims related to the project, which King County Office of Risk Management can review and document as a formal notification from the Consultant, or its insurance company(ies) that the claims have been fully dispositioned and closed.

#### xi. TERMINATION

##### 1. Termination for Default

The Seller may terminate this Contract, in whole or in part, in writing if the Consultant substantially fails to fulfill any or all of its obligations under this Contract through no fault of the Seller. Insofar as practicable, the Consultant will be given: (1) not less than 10 calendar days' written notice of intent to terminate; and, (2) an opportunity for consultation with the Seller before termination. An opportunity for consultation shall not mean the Consultant can prohibit the Seller's termination of the contract.

##### 2. Termination for Convenience

The Seller may terminate this contract in writing, in whole or in part, for its convenience and/or lack of appropriations.

If the Seller terminates for convenience, the Seller will pay an amount for services satisfactorily performed to the date of termination, pursuant to Section E of this Contract.

#### xii. INDEMNIFICATION AND HOLD HARMLESS

1. The Consultant must comply with all applicable federal, state, and local laws, regulations, ordinances, and resolutions applicable to the performance of services under this Contract.

2. Consultant and its sub-consultants, employees, agents, and representatives will be independent consultants and will not be deemed or construed to be employees or agents of the Seller.

3. To the maximum extent permitted by law or the provisions of this section, the Consultant agrees to release, indemnify, defend (with counsel acceptable to the Seller), and save harmless the Seller, its successors and assigns, and its and their shareholders, officers, officials, directors, contractors, and employees, (collectively "the Indemnified Parties") from and against any liability including any and all suits, claims, actions, losses, costs, penalties, response costs, attorneys' fees, expert witnesses' fees, and damages of whatsoever kind or nature to the extent arising out of, in connection with, or incident to the Consultant's performance of this contract or the work; provided, however, that if the provisions of RCW 4.24.115 apply to the work and any such injuries to persons or property arising out of performance of this contract are caused by or result from the concurrent negligence of the Consultant or its subconsultants, agents or employees, and an Indemnified Party, the indemnification applies only to the extent of the negligence of the Consultant, its subconsultants, agents or employees.

**THE CONSULTANT SPECIFICALLY ASSUMES POTENTIAL LIABILITY FOR ACTIONS BROUGHT BY THE CONSULTANT'S OWN EMPLOYEES OR FORMER EMPLOYEES AGAINST ANY INDEMNIFIED PARTY, AND FOR THAT PURPOSE THE CONSULTANT SPECIFICALLY WAIVES ALL IMMUNITY AND LIMITATIONS ON LIABILITY UNDER THE WORKERS COMPENSATION ACT, RCW TITLE 51, OR ANY INDUSTRIAL INSURANCE ACT, DISABILITY BENEFIT ACT OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION THAT WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH CLAIM. THIS INDEMNITY OBLIGATION SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR CONSULTANT OR A SUBCONSULTANT UNDER WORKERS' COMPENSATION, DISABILITY BENEFIT OR OTHER EMPLOYEE BENEFITS LAWS. THE CONSULTANT RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO AND WAS THE SUBJECT OF MUTUAL NEGOTIATION. PROVIDED, HOWEVER, CONSULTANT'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS PARAGRAPH EXTENDS ONLY TO CLAIMS AGAINST CONSULTANT BY THE SELLER, AND DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY CONSULTANT'S EMPLOYEE(S) DIRECTLY AGAINST CONSULTANT.**

4. In the event of litigation between the Parties to enforce the rights under this section, reasonable attorney fees will be allowed to the prevailing party.
5. The foregoing indemnities and duties to defend shall survive the termination of this Contract and final payment hereunder.
6. The Consultant may not assign any interest, obligation, or benefit in this Contract or transfer any interest in the same without prior written consent by the Seller.

#### xiii. INTELLECTUAL PROPERTY AND WORK PRODUCT

1. All work (preliminary, draft, and final) performed by the Consultant under this Contract is the property of the Seller. The Seller will own any and all data, documents, working papers, photographs, and other material produced by the Consultant pursuant to this Contract, and the Consultant hereby assigns and transfers to the Seller any and all intellectual property rights for such materials. Upon request, the Consultant will provide the Seller with copies of all such materials including, without limitation, any research memoranda prepared under this contract.
2. The Consultant must indemnify, pay the defense costs of, and hold the Seller harmless from any and all claims, demands, costs, liabilities, losses, expenses, and damages (including attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with this Contract that sounds in an intellectual property claim (including but not limited to patent, copyright, trademark, trade name, or trade secret infringement).
3. This Section will survive any expiration or termination of this Contract.

#### xiv. AUDIT AND ACCESS TO RECORDS

For a period of six years following the final payment by the Seller to the Consultant under this Contract, the Consultant must maintain all books, records, documents, and other evidence related to the performance of the services under this contract. The Seller and its authorized representatives will have access to such materials for the purpose of inspection, copying, cost review, and audit during the Consultant's normal business hours. Substantially all of the foregoing paragraphs must be included in each subcontract agreement.

#### xv. RECYCLED PRODUCTS

To the extent practicable, the Consultant will provide a competitive preference for recycled products to be used in performing the services pursuant to the U.S. EPA Guidelines at 40 CFR Parts 247-253. Where practical, the Consultant will use both sides of paper sheets and recycled/recyclable products.

#### xvi. PRIVACY ACT

To the extent it applies, the Consultant and its sub-consultants, or their employees must comply with the Privacy Act of 1974, 5 USC § 552a.

If the Scope of Work involves the operation of a system of records on individuals to accomplish a government function, the Seller and any consultants, third-party consultants, sub-consultants, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Contract will render this Contract subject to termination.

The Consultant agrees to include this clause in all subcontracts awarded under this Contract that require the design, development, or operation of a system of records on individuals subject to the Act.

#### xvii. CHANGES IN GOVERNMENTAL REGULATIONS

1. In the event local, state, or federal laws or regulations that were not announced or enacted at the time of submittal of Proposals, and such laws or regulations make standards more stringent or compliance more costly under this contract, the Consultant must notify the Seller in writing of such changes and their effects on the pricing or delivery schedule promptly after the Consultant first became aware of the changes and prior to incurring any such expenses.
2. The Seller will make a determination as to whether the Consultant should be reimbursed for any such expenses or any time extensions should be granted in accordance with the provisions of Paragraph B, Scope of Work.
3. The Consultant shall be deemed to have had notice of any Federal, state, or local law or regulation announced or enacted at the time of Contract award, even though such law or regulation did not take effect or become operative until some date after the Contract award.

4. The Consultant must, immediately upon becoming aware of any such imposition or change of requirement, provide the Seller with full and detailed particulars of the changes required in the equipment and of costs involved therein, or it will be deemed to have waived any rights under this Section. In the event any governmental requirements are removed, relaxed, or changed in any way after the date of Contract award so as to make the Consultant's performance less expensive, or less difficult, then the Seller will have the option either to require the Consultant to perform pursuant to the more rigorous requirements or to receive a reduction in the price for all savings in direct costs which may be realized by the Consultant by reason of such change and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the Consultant. The Seller will give the Consultant notice of the Seller's determination, and anticipated savings.

#### xviii.FORCE MAJEURE

The Consultant will not be responsible for delays in delivery of the Work due to a force majeure event, provided the Consultant notifies the Project Manager immediately and in writing, of such pending or actual delay. A "force majeure event means an event that is unforeseeable at the time of Contract execution, and that is beyond the reasonable control of the Consultant, and is limited to: (1) A natural disaster declared by the Governor of Washington or President of the United States, or declared an emergency by the King County Executive including, but not limited to, earthquakes; (2) Acts or omissions of any government entity acting within its governmental capacity; (3) Fire and/or flood for which the Consultant or its subcontractors are not responsible; (4) Quarantine, epidemic, or pandemic; (5) Strike or defensive lockout; and, (6) Unusually severe weather conditions.

#### xix.COOPERATIVE PURCHASING

Pursuant to the Washington State Interlocal Cooperative Act RCW 39.34.080, other governmental agencies contracting with the Seller may purchase goods and services on this solicitation or contract in accordance with the terms and prices indicated therein.

#### xx.DISCLOSURE OF RECORDS

The Consultant acknowledges that the Seller is subject to Chapter 42.56 RCW and that this Contract and materials provided hereunder shall be public records, as defined in Chapter 42.56 RCW, and with limited exceptions will be available for inspection and copying by the public. The Consultant must specifically designate and clearly label as "CONFIDENTIAL" any and all materials or portions thereof they deem to contain trade secrets or other proprietary information, which is exempt from public inspection and copying. The Consultant must provide the legal basis for the exemption to the Seller upon request. If a request is made for disclosure of material or any portion marked "CONFIDENTIAL," the Seller will determine whether the material should be made available under the law. If the Seller determines that the material is not exempt and may be disclosed, the Seller will notify the Consultant of the request and allow the Consultant 10 working days to take appropriate action pursuant to RCW 42.56.540. If the Consultant fails or neglects to take such action within the said period, the Seller may release the portions of the material deemed subject to disclosure. To the extent that the Seller withholds from disclosure all or any portion of Consultant's documents at Consultant's request, Consultant shall indemnify, defend, and hold harmless the Seller from all damages, penalties, attorneys' fees, and costs the Seller incurs related to withholding information from public disclosure. Consultant consents to the procedure outlined in this paragraph and shall have no claim against the Seller by reason of actions taken under this procedure.

#### xxi.DATA SECURITY AND CONFIDENTIALITY

##### 1. STANDARD OF CARE

a. The Consultant acknowledges and agrees that, in the course of its engagement by the Seller, the Consultant may receive or have access to the Seller Information. The Consultant shall comply with the terms and conditions set forth in this Contract in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of such the Seller Information and be responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of the Seller Information under its control or in its possession by all Authorized Employees/Authorized Persons.

i.The Consultant shall be responsible for, and remain liable to, the Seller for the actions and omissions of all Authorized Persons that are not Authorized Employees concerning the treatment of the Seller Information as if they were the Consultant's own actions and omissions.

ii.Personal Information is deemed to be Confidential Information of the Seller and is not Confidential Information of the Consultant. In the event of a conflict or inconsistency between this Section and the confidentiality/compliance with laws sections of this Contract, the terms and conditions set forth in this Section shall govern and control.

b. In recognition of the foregoing, the Consultant agrees and covenants that it shall:



- i. keep and maintain all the Seller Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
- ii. not create, collect, receive, access, or use the Seller Information in violation of law;
- iii. use and disclose the Seller Information solely and exclusively for the purposes for which the Seller Information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available to the Seller information for the Seller's prior written consent; and
- iv. not, directly or indirectly, disclose the Seller Information to any person other than its Authorized Employees/Authorized Persons, including any, subcontractors, agents, outsourcers or auditors (an "Unauthorized Third Party"), without express written consent from the Seller unless and to the extent required by Government Authorities or as otherwise, to the extent expressly required, by applicable law, in which case, the Consultant shall (i) use best efforts to notify the Seller before such disclosure or as soon thereafter as reasonably possible; (ii) be responsible for and remain liable to the Seller for the actions and omissions of such Unauthorized Third Party concerning the treatment of such the Seller Information as if they were the Consultant's own actions and omissions; and (iii) require the Unauthorized Third Party that has access to the Seller Information to execute a written agreement agreeing to comply with the terms and conditions of this Contract relating to the treatment of the Seller Information.

## 2. OVERSIGHT OF SECURITY COMPLIANCE

a. Upon the Seller's written request, the Consultant shall promptly and accurately complete The Seller Vendor Risk Assessment (VRA) regarding the Consultant's business practices and information technology environment in relation to the Seller and its employees' data being handled and/or services being provided by the Consultant to the Seller pursuant to this Contract. The Consultant shall fully cooperate with such inquiries. The Seller shall treat the information provided by the Consultant in the security questionnaire as the Consultant's Confidential Information. In the event, that material security deficiencies are identified as a result of the VRA, the Consultant may be required to remedy identified deficiencies.

b. Upon the Seller's written request, to confirm Consultant's compliance with this Contract, as well as any applicable laws, regulations, and industry standards, Consultant grants the Seller or, upon the Seller's election, a third party on the Seller's behalf, permission to perform an assessment, audit, examination, or review of all controls in Consultant's physical and/or technical environment in relation to all Confidential Information being handled and/or services being provided to the Seller pursuant to this Contract. Consultant shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, and application software that processes, stores, or transports Confidential Information for the Seller pursuant to this Contract. In addition, upon the Seller written request, Consultant shall provide the Seller with the results of any audit by or on behalf of Consultant performed that assesses the effectiveness of Consultant's information security program as relevant to the security and confidentiality of Confidential Information shared during the course of this Contract.

c. Additionally, upon the Seller's written request, the Consultant shall make available to the Seller for review all of the following, as applicable: the Consultant's WebTrust, Systrust, and Statement on Standards for Attestation Engagements (SSAE) No. 18 audit reports for Reporting on Controls at a Service Organization and any reports relating to its ISO/IEC 27001 certification. The Seller shall treat such audit reports as the Consultant's Confidential Information under this Contract. Any exceptions noted on the SSAE report or other audit reports will be promptly addressed with the development and implementation of a corrective action plan by the Consultant's management.

## 3. DEFINITIONS: Capitalized terms used herein shall have the meanings set forth in this Section.

a. "Authorized Employees" means the Consultant's employees who have a need to know or otherwise access the Seller Information to enable the Consultant to perform its obligations under this Contract.

b. "Authorized Persons" means (i) Authorized Employees; and (ii) the Consultant's contractors, agents, outsourcers, and auditors who have a need to know or otherwise access the Seller Information to enable the Consultant to perform its obligations under this Contract, and who are bound in writing by confidentiality obligations sufficient to protect the Seller Information in accordance with the terms and conditions of this Contract.

c. "Confidential Information" means information or data intended to be held in confidence or kept in secret, it includes any data classified by the Seller as Restricted or Sensitive.

d. "Highly-Sensitive Personal Information" means (i) an individual's government-issued identification number (including social security number, driver's license number, state-issued identified number, or passport number);

(ii) financial account number, credit card number, debit card number, credit report information, with or without any required security code, access code, personal identification number or password, that would permit access to an individual's financial account.

e. "Personal Information" means information provided to the Consultant by or at the direction of the Seller, or to which access was provided to the Consultant by or at the direction of the Seller, in the course of the Consultant's performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, answers to security questions and other personal identifiers), in case of both subclauses (i) and (ii), including, without limitation, all Highly- Sensitive Personal Information. The Seller's business contact information is not by itself deemed to be Personal Information.

f. "The Seller Information" means the information provided to the Consultant by or at the direction of the Seller, or to which access was provided to the Consultant by or at the direction of the Seller, in the course of the Consultant's performance under this Contract that includes any discreet or combination of the following: (i) Confidential Information; (ii) Highly-Sensitive Personal Information; (iii) Personal Information; and/or (iv) any information specifically created for the Seller or provided by the Seller that requires limited access or security safeguards.

g. "Security Breach" means (i) any act or omission that compromises either the security, confidentiality, or integrity of Sensitive Information or the physical, technical, administrative, or organizational safeguards put in place by the Consultant (or any Authorized Persons), or by the Seller should Consultant have access to the Seller's systems, that relate to the protection of the security, confidentiality, or integrity of Sensitive Information, or (ii) receipt of a complaint in relation to the privacy and data security practices of Consultant (or any Authorized Persons) or a breach or alleged breach of this Contract relating to such privacy and data security practices. Without limiting the foregoing, a compromise shall include any unauthorized access to or disclosure or acquisition of Sensitive Information.

## xxii. RIGHT TO BARGAIN

The Consultant will respect the right of employees to bargain collectively. The Consultant will also commit to remain neutral in labor organizing drives.

## X. MISCELLANEOUS PROVISIONS

1. Modifications: Modification of this Contract must be in writing and signed by both parties.
2. Remedies Cumulative: Rights under this Contract are cumulative and nonexclusive of any other remedy at law or in equity.
3. Severability: If any term or provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract will not be affected thereby, and each term and provision of this Contract will be valid and enforceable to the fullest extent permitted by law.
4. Waiver: No covenant, term or condition or the breach thereof will be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition will not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.
5. Entire Contract: This document, along with any exhibits and attachments, constitutes the entire Contract between the parties with respect to the Scope of Work.
6. Negotiated Contract: The parties acknowledge that this is a negotiated Contract, that they have had the opportunity to have this Contract reviewed by their respective legal counsel, and that the terms and conditions of this Contract are not to be construed against any party on the basis of such party's draftsmanship thereof.
7. Governing Law/Venue: The laws of the State of Washington shall govern the interpretation of this Contract or any disputes arising out of it, and the jurisdiction and venue of any action relating hereto shall be in the Superior Court for King County, Washington.
8. The person signing this Contract is authorized to sign this Contract on behalf of the Consultant.

In consideration of the terms and conditions contained herein, the Parties have executed this contract by signing below.

Consultant	Energy Mission Control, Inc. dba FuSE
Signature	
Name	
Title	

King County	
Signature	
Name	
Title	
Date	
Approved as to Form:	
Signature	
Name	
Title	

## EXHIBIT A

### SCOPE OF WORK

#### 1 SCOPE OF WORK

The Consultant shall provide all the labor/personnel, equipment, supplies, facilities, transportation, tools, materials, supervision, and other items necessary to perform items to ensure successful reporting and sale of Clean Fuel Standard (CFS) credits. The Consultant shall accomplish the performance objectives and general product requirements as listed below.

##### 1.1 PERFORMANCE OBJECTIVES

###### 1.1.1 Baseline Evaluation

Under Washington State's Clean Fuel Standard, to be administered by the Washington Department of Ecology, King County (the "Seller") has several means of generating CFS credits. The Consultant will work with the Seller to identify relevant sources of data for ongoing documentation and reporting to the Washington Department of Ecology for credit generation purposes. The Consultant will additionally identify any data deficiencies that must be remedied in order to satisfy CFS reporting requirements.

###### 1.1.2 Fuel Pathways

The Consultant will provide guidance on fuel pathway issues and ensure that the Seller takes advantage of its low carbon-intensity electricity to maximize credit generation.

###### 1.1.3 Ongoing Reporting Requirements

- The Consultant will be expected to manage quarterly and annual reporting of credit-generating activity to the Department of Ecology, as mandated under the Washington Clean Fuel Standard adopted rule. The Seller and the Consultant will work together to ensure quarterly data is entered into the Ecology database system at least three (3) calendar days before the quarterly Department of Ecology deadlines (Exhibit B).
- The Consultant will also be expected to provide the Seller with quarterly written reports and an annual summary report. The Seller will work with the Consultant to finalize agency reporting requirements and ensure that any reporting adequately documents credit-generating activity to be prepared in case of a potential audit. Required quarterly reporting will include, but is not limited to:
  - Credit generation and sales data, including any relevant information on sales strategy
  - Detailed quarterly and annual revenue reports
  - Updates regarding any changes to reporting requirements, reporting infrastructure, or changes in the credit marketplace
  - Any state or national policy changes that may impact the credit marketplace
- In addition to quarterly written reports, the Consultant will make themselves available to meet with the Seller's staff quarterly to review relevant reports.

###### 1.1.4 Registration and Auditing

Upon execution of the Contract, the Consultant shall audit, validate, and update data regarding existing fuel supply equipment currently registered with the Department of Ecology. In addition, on an ongoing basis and as needed, the Consultant shall audit and validate newly online fuel supply equipment for purposes of registering said fuel supply equipment. The Seller will ensure appropriate points of contacts coordinate with the Consultant to schedule site visits as needed. The Consultant shall maintain an updated master fuel supply equipment list for the Seller.

### **1.1.5 Credit Sales and Market Interactions**

The Consultant will manage credit sales and all necessary interactions with the Washington CFS marketplace. The Consultant will register an account for the Seller in the online CFS marketplace. The Consultant will manage interactions with credit purchasers and seek to maximize credit revenue. The Consultant will provide transparency to the Seller regarding credit generation and sales data with information on who credits were sold to as part of quarterly reporting. The Consultant will additionally provide transparency to the Seller around credit generation strategies and receive approval from the Seller for that credit generation strategy. This strategy shall be submitted to the Seller for approval within thirty (30) days of full Contract execution and on an annual basis thereafter. The Seller retains the discretion to approve or reject credit sales strategies.

The Consultant will transfer credit sales revenue, minus its commission, to the Seller on a quarterly basis. The net revenue will be transferred via a medium (e.g. wire transfer, check) of the Seller's choosing.

### **1.1.6 Program Developments**

The Department of Ecology's Clean Fuel Standard rule (Chapter 173-424 WAC) went into effect January 1, 2023. The Consultant shall stay apprised of program developments and adapt to dynamic conditions surrounding reporting requirements, reporting infrastructure, the credit marketplace, etc. The Consultant will meet periodically with the Seller to discuss relevant programmatic developments.

The Consultant will ensure the ability to use this contract to participate in new markets for the sale of credits, such as RINs or other more complex financial products that may be available now or in the future.

### **1.1.7 Institutional Knowledge Retention**

During the course of the Contract, the Consultant will provide instruction to the Seller staff on key processes and practices pertaining to CFS marketplace participation. The Seller's staff turnover may necessitate the training of additional staff.

In the event that the Seller elects not to renew the service agreement at the completion of its term, the Consultant will transfer all relevant information and materials (e.g., logins, passwords, process documents, etc.) to the Seller to maintain continuity of agency participation in the Clean Fuel Standard program.

## **1.2 OTHER PERFORMANCE REQUIREMENTS**

### **1.2.1 The Seller's Responsibilities**

The Seller will provide all necessary information about agency operations to establish a reporting baseline. The Seller's staff will provide transportation fueling data to the Consultant in a timely manner, agreed upon by the Seller and the Consultant, to facilitate effective CFS reporting.

### **1.2.2 Schedule**

An implementation schedule will be established following the awarding of the Contract. However, the Consultant will ideally be able to provide services on a timeline that allows the Seller to capture revenue from all credit generation opportunities that have occurred to date as of the date of full Contract execution.

## **EXHIBIT B**

### **Washington Department of Ecology Clean Fuel Standard Reporting and Incentive Payment Timelines**

#### **1. REPORTING AND INCENTIVE PAYMENT TIMELINES**

Program participants are expected to report all fuel transactions each quarter. Refer to the Washington State

Department of Ecology website for the current reporting schedule. Anticipated timing for reporting and issuance of incentive payments each quarter is provided below.

#### Existing Accounts

Reporting Quarter	Fleet Data Submission Deadline	Quarterly Report Submission Deadline	Incentive Payments Issued
Quarter 1	April 30	June 30	By July 31
Quarter 2	July 30	September 30	By October 31
Quarter 3	October 30	December 31	By January 31
Quarter 4	January 30	March 31	By April 31

#### New Accounts

Reporting Quarter	Fleet Data Submission Deadline	Quarterly Report Submission Deadline	Incentive Payments Issued
Quarter 1	March 31	June 30	By July 31
Quarter 2	June 30	September 30	By October 31
Quarter 3	September 30	December 31	By January 31
Quarter 4	December 31	March 31	By April 31