King County

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Meeting Agenda

Transportation, Economy and Environment Committee

Councilmembers: Rod Dembowski, Chair; Claudia Balducci, Vice Chair; Jeanne Kohl-Welles, Kathy Lambert, Joe McDermott, Dave Upthegrove, Pete von Reichbauer

Staff: Mary Bourguignon, Lead Staff (206-477-0873)
Angelica Calderon, Committee Assistant (206-477-0874)

9:30 AM | **Tuesday, August 16, 2016** | **Room 1001**

Pursuant to K.C.C. 1.24.035 A. and F., this meeting is also noticed as a meeting of the Metropolitan King County Council, whose agenda is limited to the committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to full council meetings.

To show a PDF of the written materials for an agenda item, click on the agenda item below.

1. Call to Order

2. Roll Call

3. Approval of Minutes pp. 5-10

Minutes of July 19, 2016 meeting.

4. Public Comment

Consent

5. Proposed Motion No. 2016-0321 pp. 11-16

A MOTION confirming the executive's appointment of David Johnson, who resides in council district six, to the King County transit advisory commission.

Renita Borders, Council Staff

Discussion and Possible Action

6. Proposed Ordinance No. 2016-0155 pp. 17-90

AN ORDINANCE relating to comprehensive planning and permitting; amending Ordinance 8421, Section 3, as amended, and K.C.C. 14.56.020, Ordinance 8421, Section 4, as amended, and K.C.C. 14.56.030, and Ordinance 13147, Section 19, amended, and K.C.C. 20.18.030, Ordinance 10870,

Sign language and communication material in alternate formats can be arranged given sufficient notice (296-1000).
TDD Number 296-1024.
ASSISTIVE LISTENING DEVICES AVAILABLE IN THE COUNCIL CHAMBERS.

Section 330, as amended, and K.C.C. 21A.08.030, Ordinance 10870, Section 332, as amended, and K.C.C. 21A.08.050, Ordinance 10870, Section 333, as amended, and K.C.C. 21A.08.060, Ordinance 10870, Section 334, as amended, and K.C.C. 21A.08.070, Ordinance 10870, Section 335, as amended, and K.C.C. 21A.08.080, Ordinance 10870, Section 336, as amended, and K.C.C. 21A.08.090, Ordinance 10870, Section 337, as amended, and K.C.C. 21A.08.100, Ordinance 13274, Section 4, as amended, and K.C.C. 21A.37.020, Ordinance 13733, Section 10, as amended, and K.C.C. 21A.37.110, adding new sections to K.C.C. chapter 21A.06, adding new sections to K.C.C. chapter 21A.42, decodifying K.C.C. 20.54.010 and repealing Ordinance 8421, Section 2, and K.C.C. 14.56.010, Ordinance 3064, Section 2, and K.C.C. 20.54.020, Ordinance 3064, Section 3, as amended, and K.C.C. 20.54.030, Ordinance 3064, Section 4, as amended, and K.C.C. 20.54.040, Ordinance 3064, Section 5, and K.C.C. 20.54.050, Ordinance 3064, Section 6, as amended, and K.C.C. 20.54.060, Ordinance 3064, Section 7, as amended, and K.C.C. 20.54.070, Ordinance 3064, Section 8, as amended, and K.C.C. 20.54.080, Ordinance 3064, Section 9, as amended, and K.C.C. 20.54.090, Ordinance 3064, Section 10, as amended, and K.C.C. 20.54.100, Ordinance 3064, Section 11, as amended, and K.C.C. 20.54.110, Ordinance 3064, Section 12, and K.C.C. 20.54.120, Ordinance 3064, Section 13, and K.C.C. 20.54.130 and Ordinance 7889, Section 4, as amended, and K.C.C. 26.08.010

Sponsors: Mr. Dembowski

Christine Jensen, Council Staff

7. Proposed Ordinance No. 2016-0159 pp. 17-90

AN ORDINANCE relating to comprehensive planning; adopting the 2016 King County real property asset management plan in response to the 2015/2016 Biennial Budget Ordinance, Ordinance 17941, Section 121, as amended by Ordinance 18110, Section 55, Proviso P1 and to K.C.C. 20.12.100; and amending Ordinance 10810, Section 1, as amended, and K.C.C. 20.12.100.

Sponsors: Mr. Upthegrove

Christine Jensen, Council Staff

8. Proposed Ordinance No. 2016-0339 pp. 91-152

AN ORDINANCE relating to the sale of biomethane and related environmental attributes held by the county; authorizing the wastewater treatment division to enter into an agreement for the sale of biomethane and environmental attributes associated with purified biomethane produced at the South wastewater treatment plant to IGI Resources, Inc.

Sponsors: Mr. Dembowski

Mike Reed, Council Staff

9. Proposed Ordinance No. 2016-0349 pp. 153-272

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

Sponsors: Mr. Dembowski

Greg Doss and Jenny Giambattista, Council Staff

10. Proposed Ordinance No. 2016-0387 pp. 273-296

AN ORDINANCE relating to public transportation; requiring a transit restructure impact study for certain transit service changes that require approval by ordinance, and making technical corrections; amending Ordinance 11033, Section 5 and K.C.C. 28.94.020, adding new sections to K.C.C. chapter 28.92, adding a new section to K.C.C. chapter 28.94 and repealing Ordinance 11962, Section 3, and K.C.C. 28.92.050.

Sponsors: Mr. Dembowski

Paul Carlson, Council Staff

Other Business

11. Grant Alerts pp. 297-308

16-039 Foothills Trail and Bridge Development
16-040 Cougar Mountain Precipice Trailhead Development
16-041 Skyway Parks Revitalization
16-042 Lake to Sound Trail Development Segment A
16-045 PSAR Large Cap - Lower Russell Road Levee Setback and Habitat Restoration

Adjournment

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King County

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Meeting Minutes

Transportation, Economy and Environment Committee

Councilmembers: Rod Dembowski, Chair; Claudia Balducci, Vice Chair;
Jeanne Kohl-Welles, Kathy Lambert, Joe McDermott, Dave Upthegrove, Pete von Reichbauer

Staff: Mary Bourguignon, Lead Staff (206-477-0873)
Angelica Calderon, Committee Assistant (206-477-0874)

9:30 AM | **Tuesday, July 19, 2016** | **Room 1001**

REVISED AGENDA

Pursuant to K.C.C. 1.24.035 A. and F., this meeting is also noticed as a meeting of the Metropolitan King County Council, whose agenda is limited to the committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to full council meetings.

1. Call to Order

Chair Dembowski called the meeting to order at 9:30 a.m.

2. Roll Call

Present: 7 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Mr. von Reichbauer, Ms. Kohl-Welles and Ms. Balducci

3. Approval of Minutes

Councilmember Balducci moved the approval of the minutes of the July 5, 2016 Special meeting. Seeing no objections, the minutes were approved as presented.

4. Public Comment

The following people were present to offer public comment:

1. Alex Zimmerman, (Chair called Mr. Zimmerman 3 times, did not appear)
2. Michael Fuller
2. Queen Pearl

Consent

5. Proposed Motion No. 2016-0320

A MOTION confirming the executive's appointment of Andrew Martin, who resides in council district four, to the King County transit advisory commission.

Sponsors: Ms. Kohl-Welles

This item passed out of committee subject to signature.

This item was expedited to the July 25, 2016 Council Agenda.

A motion was made by Councilmember Balducci that this Motion be Recommended Do Pass Consent. The motion carried by the following vote:

Yes: 6 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci

Excused: 1 - Mr. von Reichbauer

6. Proposed Motion No. 2016-0322

A MOTION confirming the executive's appointment of Zachary Howard, who resides in council district four, to the King County transit advisory commission.

Sponsors: Ms. Kohl-Welles

This item passed out of committee subject to signature.

This item was expedited to the July 25, 2016 Council Agenda.

A motion was made by Councilmember Balducci that this Motion be Recommended Do Pass Consent. The motion carried by the following vote:

Yes: 6 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci

Excused: 1 - Mr. von Reichbauer

7. Proposed Motion No. 2016-0356

A MOTION confirming the executive's appointment of Jaqueline Garcia Castillo, who works in council district eight, to the King County waterworks grant ranking committee, as the district eight representative.

Sponsors: Mr. McDermott

This item passed out of committee subject to signature.

This item was expedited to the July 25, 2016 Council Agenda.

A motion was made by Councilmember Balducci that this Motion be Recommended Do Pass. The motion carried by the following vote:

Yes: 6 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci

Excused: 1 - Mr. von Reichbauer

8. Proposed Ordinance No. 2016-0370

AN ORDINANCE establishing the time of payment, interest, and penalties to be imposed on delinquent annual special assessment for lake management district No. 2 in the Lake Geneva watershed; and declaring an emergency.

Sponsors: Mr. von Reichbauer

This item passed out of committee subject to signature.

This item was expedited to the July 25, 2016 Council Agenda.

A motion was made by Councilmember Balducci that this Ordinance be Recommended Do Pass Consent. The motion carried by the following vote:

Yes: 6 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci

Excused: 1 - Mr. von Reichbauer

Discussion and Possible Action

9. Proposed Motion No. 2016-0288

A MOTION authorizing the King County executive to accept a donation of three hundred ninety-two thousand dollars from Forterra to aid King County in acquiring land for conservation and passive recreation purposes.

Sponsors: Mr. Dembowski, Mr. Dunn and Ms. Kohl-Welles

Mary Bourguignon, Council Staff, briefed the Committee on the legislation and answered questions of the members.

This item passed out of committee subject to signature.

A motion was made by Councilmember Balducci that this Motion be Recommended Do Pass. The motion carried by the following vote:

Yes: 6 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci

Excused: 1 - Mr. von Reichbauer

Briefing

10. Briefing No. 2016-B0146

2017 Recommendations from Conservation Futures Citizens' Committee

Mary Bourguignon, Council Staff, introduced the panel. Terry Lavender, Chair and Mark Johnsen, King County Conservation Futures Citizens Committee were present to brief the Committee with a PowerPoint Presentation and answered questions of the members.

This matter was Presented

Discussion and Possible Action

11. Proposed Ordinance No. 2016-0340

AN ORDINANCE relating to school impact fees; and amending Ordinance 11621, Section 114, and K.C.C. 21A.43.050.

Sponsors: Mr. Dembowski

Lise Kaye, Council Staff, briefed the Committee on the legislation and answered questions of the members.

This item passed out of committee subject to signature.

A motion was made by Councilmember Balducci that this Ordinance be Recommended Do Pass Consent. The motion carried by the following vote:

Yes: 6 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Mr. von Reichbauer and Ms. Balducci

Excused: 1 - Ms. Kohl-Welles

12. Proposed Motion No. 2016-0097

A MOTION accepting receipt of a report related to the plan to stabilize closed landfills in accordance with the 2015/2016 Biennial Budget Ordinance, Ordinance 17941, Section 55, Proviso P1.

Sponsors: Mr. Dembowski

Mike Reed, Council Staff, briefed the Committee on the legislation and answered questions of the members. Councilmember Balducci moved amendment 1. The amendment was adopted.

This item was expedited to the July 25, 2016 Council Agenda.

A motion was made by Councilmember Balducci that this Motion be Recommended Do Pass Substitute Consent. The motion carried by the following vote:

Yes: 6 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci

Excused: 1 - Mr. von Reichbauer

13. Proposed Ordinance No. 2016-0289

AN ORDINANCE approving the grant funding allocation for the projects funded through the WaterWorks grant program, Round 1, in accordance with Ordinance 18031.

Sponsors: Mr. Dembowski

Mike Reed, Council Staff, briefed the Committee on the legislation and answered questions of the members. Sharman Herrin, Government Relations Administrator, WTD commented and answered questions of the members.

This matter was expedited to the July 25, 2016 Council Agenda.

A motion was made by Councilmember Balducci that this Ordinance be Recommended Do Pass Consent. The motion carried by the following vote:

Yes: 6 - Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Ms. Kohl-Welles and Ms. Balducci

Excused: 1 - Mr. von Reichbauer

Other Business

There was no other business to come before the committee.

Adjournment

The meeting adjourned at 10:45 a.m.

Approved this _____ day of _____.

_____

Clerk's Signature

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King County

Transportation, Economy and Environment Committee

STAFF REPORT

Agenda Item:	5	**Name:**	Renita Borders
Proposed No.:	2016-0321	**Date:**	August 16, 2016

SUBJECT

Proposed Motion 2016-0321 would confirm the appointment of David Johnson, of district six, to the Transit Advisory Commission (TAC) for a two-year term to expire on August 31, 2018.

BACKGROUND

Transit Advisory Commission. As established in the King County Code (KCC 2.124), the TAC is a permanent body that advises the Transit Division, the Executive, the County Council, local jurisdictions and subarea transportation forums on transit issues and policy, including matters of concern to the elderly and persons with disabilities. TAC members are recruited by the King County Department of Transportation, appointed by the County Executive and approved by the County Council for two-year terms.

The TAC is comprised of 18 King County residents. Nine are transit riders, recruited to reflect the diversity and geographic distribution of County residents. Nine represent transit stakeholder groups, including persons with disabilities, elderly persons, or individuals associated with agencies that work with disabled and elderly persons, recruited to reflect the diversity of the communities they represent and types of disabilities, as well as consideration of the geographic distribution of County residents.

The TAC meets monthly from 6:00 to 8:00 p.m. on the third Tuesday of each month in downtown Seattle.

Appointee. Mr. David Johnson is a Senior Program Manager at Microsoft. He has been a member of four King County Metro Transit Sounding Boards including: Rapid Ride B, Eastside (twice), and U-Link Eastside Realignment. Additionally, Mr. Johnson has volunteered with the city of Redmond's Transit Planning Project and has been involved with leadership opportunities within Microsoft.

As someone who is visually impaired and unable to drive, Mr. Johnson notes that he counts on public transportation. He notes that public transit is key to the community and

his mobility. Mr. Johnson's priority concerns as a TAC member are service levels, route sounding boards, route and region investment criteria, and regional transit planning.

ATTACHMENTS

1. Proposed Motion 2016-0321 (attachments A, B and D available upon request)
2. Transit Advisory Commission Board Profile (Attachment C to Motion)

Pursuant to K.C.C.3.04.110, which allows for confidentiality, the required Financial Disclosure Statements have been distributed to Council members only.

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

August 12, 2016

Motion

Proposed No. 2016-0321.1 **Sponsors**

A MOTION confirming the executive's appointment of David Johnson, who resides in council district six, to the King County transit advisory commission.

BE IT MOVED by the Council of King County:

The county executive's appointment of David Johnson, who resides in council

district six, to the King County transit advisory commission, for a two-year term to expire on August 31, 2018, is hereby confirmed.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

Attachments: A. Application, B. Financial Disclosure Statement, C. Board Profile, D. Appointment Letter

KING COUNTY TRANSIT ADVISORY COMMISSION

ATTACHMENT C

May 2016
TOTAL NUMBER OF MEMBERS: 18
LENGTH OF TERM: 2 Years

* ***King County seeks to create an inclusive and accessible process for individuals who wish to serve on a King County board or commission. We strive to ensure that King County boards and commissions are representative of the communities we serve.***

BOARD MEMBERS APPOINTED:

	Name	KC Dist.	Profession / Represents	Date 1st Appt.	Term Expires	Number of Appointed Terms
1	Jacob Struiksma	2	Active member of the National Federation of the Blind, transit advocate	11/19/14	8/31/18	2 Full
2	Jenny Schmitz	8	Bus rider, wheelchair user	5/6/16	8/31/17	1 Partial
3	Lucas Simons	2	Campaign and community organizer, active in transportation advocacy	11/19/14	8/31/18	2 Full
4	VACANT				8/31/17	
5	Andrew Martin	4	Senior Data Scientist at Zillow; Transit Rider; Legally Blind	5/6/16	8/31/17	1 Partial
6	David Johnson	6	Senior Program Manager at Microsoft. Visually impaired.	5/6/16	8/31/18	1 Full
7	Judy Daufney-Stenberg	6	Retired from career in communications and alternative dispute resolution	11/19/14	8/31/16	2 Full
8	Zachary Howard	4	Transit Program Specialist at UW Transportation Department. Transit Rider.	5/6/16	8/31/17	1 Partial
9	David Wiggins	2	Cartographer at Expedia, former member of various transportation advisory groups in Seattle	12/12/12	8/31/15	1 Partial / 1 Full
10	Matt Koltnow	1	Bridge tournament organizer	12/12/12	8/31/14	1 Full
11	VACANT				8/31/17	
12	VACANT				8/31/16	
13	VACANT				8/31/17	
14	VACANT				8/31/17	
15	Gale Shinozaki	4	Retired from federal government work, resident of magnolia	5/8/14	8/31/17	2 Full

	Name	KC Dist.	Profession / Represents	Date 1st Appt.	Term Expires	Number of Appointed Terms
16	VACANT				8/31/17	
17	VACANT				8/31/16	
18	VACANT				8/31/17	

APPOINTED, NOT YET CONFIRMED:

	Name	KC Dist.	Profession / Represents	Date 1st Appt.	Term Expires	Number of Appointed Terms
1	Jacob Struiksma	2	Active member of the National Federation of the Blind, transit advocate	11/19/14	8/31/18	2 Full
2	Jenny Schmitz	8	Bus rider, wheelchair user	5/6/16	8/31/17	1 Partial
3	Lucas Simons	2	Campaign and community organizer, active in transportation advocacy	11/19/14	8/31/18	2 Full
5	Andrew Martin	4	Senior Data Scientist at Zillow; Transit Rider; Legally Blind	5/6/16	8/31/17	1 Partial
6	David Johnson	6	Senior Program Manager at Microsoft. Visually impaired.	5/6/16	8/31/18	1 Full
7	Judy Daufney-Stenberg	6	Retired from career in communications and alternative dispute resolution	11/19/14	8/31/16	2 Full
8	Zachary Howard	4	Transit Program Specialist at UW Transportation Department. Transit Rider.	5/6/16	8/31/17	1 Partial
15	Gale Shinozaki	4	Retired from federal government work, resident of magnolia	5/8/14	8/31/17	2 Full

King County

Metropolitan King County Council
Transportation, Economy and Environment Committee

STAFF REPORT

Agenda Item:	6, 7	**Name:**	Christine Jensen
Proposed No.:	2016-0155 2016-0159	**Date:**	August 16, 2016

SUBJECT

A briefing on the proposed 2016 update to the King County Comprehensive Plan (KCCP).

SUMMARY

This year marks a four-year, "major" update to the KCCP, which allows for consideration of substantive policy changes to the Plan and potential revisions to the Urban Growth Area (UGA). The Executive transmitted the proposed 2016 KCCP to the Council on March 1. The Council is in the process of reviewing and deliberating on the Executive's proposal. The Council's review thus far has included eight briefings in the Transportation, Economy and Environment Committee (TrEE). Three more TrEE briefings are scheduled over the next month, which will lead up to possible action in TrEE on September 20 and possible final adoption at the full Council in late 2016.

Today's briefing will be a follow-up on issues identified in:

- Previous TrEE briefings across all KCCP chapters,
- The development code ordinance (Proposed Ordinance 2016-0155), and
- The Real Property Asset Management Plan ordinance (Proposed Ordinance 2016-0159).

Follow-up on land use proposals will be discussed at the August 24 special TrEE meeting.

BACKGROUND

The KCCP is the guiding policy document for land use and development regulations in unincorporated King County, as well as for regional services throughout the County, including transit, sewers, parks, trails, and open space. The King County Code dictates the allowed frequency for updates to the KCCP.

Annual cycle. On an annual basis, only technical changes and other limited amendments to the KCCP are allowed to be adopted.[1] This is known as the "annual cycle." While the Code states that the KCCP "may be amended" annually,[2] it is not required to be reviewed or amended on an annual basis.

Four-year cycle. Substantive changes to policy language and amendments to the UGA boundary[3] are only allowed to be considered once every four years.[4,5] This is known as the "four-year cycle." The Code requires the County to complete a "comprehensive review" of the KCCP once every four years in order to "update it as appropriate" and ensure continued compliance with the Growth Management Act (GMA).[6] The Code requires the Executive to transmit to the Council a proposed ordinance amending the KCCP once every four years.[7] However, the Code does not require the Council to adopt a KCCP update during the four-year cycle.[8] This year's four-year review of the KCCP is the fifth major review since 2000.

GMA update requirements. It is worth highlighting how the County's KCCP cycles fit into the GMA planning cycles. The GMA requires cities and counties to update their comprehensive plans once every eight years.[9] The GMA authorizes, but does not require, cities and counties to amend their comprehensive plans annually.

For King County, the GMA-established plan update deadlines are in 2015 and 2023. For the purposes of the GMA, the 2012 update to the KCCP[10] satisfied the State's requirement to update the County's comprehensive plan by 2015. The GMA does not require the County to complete another comprehensive update until 2023. Under the County's current policies and Code, the County will complete this update in the 2020 four-year cycle.

Under the County's policies and regulations, the 2016 review of the KCCP constitutes a "four-year amendment." However, under GMA requirements, the County's 2016 review is subject to the rules applicable to an "annual amendment," which is not a required action.

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[1] K.C.C. 20.18.030

[2] K.C.C. 20.18.030(B)

[3] Note that Four-to-One UGA proposals may be considered during the annual cycle (see K.C.C. 20.18.030(B)(10), 20.18.040(B)(2), 20.18.170, and 20.18.180).

[4] From year 2000 and forward. Substantive updates to the KCCP can be considered on a two-year cycle, but only if: "the county determines that the purposes of the KCCP are not being achieved as evidenced by official population growth forecasts, benchmarks, trends and other relevant data" (K.C.C. 20.18.030(C)). This determination must be authorized by a motion adopted by the Council. To date, this option has not been used by the County.

[5] The annual Capital Improvement Plan (CIP), Transportation Needs Report (TNR), and school capital facilities plans are elements of the KCCP but are adopted in conjunction with the County budget, and thus follows separate timeline, process, and update requirements (see K.C.C. 20.18.060 and 20.18.070).

[6] K.C.C. 20.18.030(C)

[7] K.C.C. 20.18.060

[8] If the Council decides not to adopt a four-year update, the County may still need to formally announce that it has completed the required review; the mechanism to do that, whether legislatively or not, would need to be discussed with legal counsel.

[9] Revised Code of Washington (RCW) 36.70A.130

[10] Ordinance 17485

Actions to date for the 2016 KCCP. In May 2015, the Council adopted the Scoping Motion[11] for the 2016 KCCP update, a link to which is provided at the end of the staff report. The Scoping Motion outlined the key issues the Council and Executive identified for specific consideration in the forthcoming KCCP update. While the scope of work approved through the Scoping Motion was intended to be as thorough as possible, it does not establish the absolute limit on the scope of issues that can be considered. Based on subsequent public testimony, new information, or Council initiatives, other issues may also be considered by the Executive or the Council – except for UGA expansion proposals, which must follow the limitations of KCCP policy RP-107[12] as discussed in the Area Zoning Studies and Land Use Map Amendments section of the March 15 staff report.[13]

King County Code (K.C.C.) 20.18.160 and RCW 36.70A.140 call for "early and continuous" public engagement in the development and amendment of the KCCP and any implementing development regulations. As part of that public engagement process, the Executive published a Public Review Draft (PRD) of the KCCP on November 6, 2015, which was open for public comment through January 2016.[14] During that time, the Executive hosted six PRD community meetings: one each in Fairwood, Skyway, Fall City, Issaquah, and two in Vashon. A summary of the Executive's outreach efforts can be found in Appendix R "Public Outreach for Development of KCCP." A detailed listing of all of the public comments received during development of the Plan can be found in the Public Participation Report that is located on the Council's KCCP website.[15]

On March 1, the Executive transmitted the proposed 2016 update to the KCCP. Council review of the transmitted 2016 KCCP thus far has included eight briefings in the TrEE Committee, as well as numerous opportunities to submit written or verbal public comment. Three more TrEE briefings are scheduled over the next month, leading up to possible action in TrEE on September 20 and possible final adoption at the full Council in late 2016. As noted above, today's briefing will be a follow-up on issues identified in previous TrEE briefings across all KCCP chapters, the development code ordinance (Proposed Ordinance 2016-0155), and the Real Property Asset Management Plan ordinance (Proposed Ordinance 2016-0159). Follow-up on land use proposals will be discussed at the August 24 special TrEE meeting.

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[11] Motion 14351, which was required to be transmitted by the Executive by K.C.C. 20.18.060. The Council approved the 2016 KCCP scoping motion after the April 30 deadline for Council action. However, as noted in the adopted Motion, the Executive agreed to treat the scope as timely and would proceed with the work program as established in the Council-approved version of the motion.

[12] This policy is currently RP-203 in the adopted 2012 KCCP, and is proposed to be changed to RP-107 as part of the 2016 KCCP. Does not apply to Four-to-One proposals.

[13] http://www.kingcounty.gov/council/2016compplan/materials.aspx

[14] General public comment was open through January 6, 2016. Additional comments on the late addition of the East Cougar Mountain Potential Annexation Area to the Public Review Draft were allowed from January 27 to February 3.

[15] http://www.kingcounty.gov/council/2016compplan.aspx

ANALYSIS

How the Analysis section is organized. The analysis in this staff report includes updates on previous policy issues identified by Council staff in each of the chapters of the transmitted 2016 KCCP, including:

- Any issues or inconsistencies with adopted policies and plans,
- Inconsistencies with the Scoping Motion, and
- Highlights of any additional issues for Council consideration.[16]

This staff report includes discussion of these issues in:

Chapter 1 Regional Growth Management Planning	Page 21
Chapter 2 Urban Communities	Page 22
Chapter 3 Rural Areas and Natural Resource Lands	Page 24
Chapter 4 Housing and Human Services	Page 25
Chapter 5 Environment	Page 27
Chapter 6 Shorelines	Page 28
Chapter 7 Parks, Open Space and Cultural Resources	Page 28
Chapter 8 Transportation	Page 29
Chapter 9 Services, Facilities and Utilities	Page 29
Chapter 10 Economic Development	Page 31
Chapter 11 Community Service Area Planning	Page 32
Chapter 12 Implementation, Amendments and Evaluation	Page 32
Proposed Ordinance 2016-0155 Development Code	Page 34
Proposed Ordinance 2016-0159 Real Property Asset Management Plan	Page 37

[16] For information on the Executive's proposed changes and associated rationale, please refer to the Policy Amendment Analysis Matrix that was included in the 2016 KCCP transmittal package as required by policy I-207, which can be found here: http://www.kingcounty.gov/council/2016compplan/transmittal.aspx

Chapter 1 Regional Growth Management Planning

The policies in Chapter 1 address the King County planning framework,[17] regional partnerships, and planning objectives.

Update on key issues in Chapter 1 of the transmitted 2016 KCCP:

King County Strategic Plan. In 2010, the King County Council adopted the "King County Strategic Plan, 2010-2014: Working Together for One King County" through Ordinance 16897. In 2015, the King County Council passed Motion 14317, which adopted new goals and initiated an update of the Strategic Plan. The Council is evaluating the proposed updates to Chapter 1, and the rest of the KCCP, to ensure consistency with the most recent adopted goals of the Strategic Plan.

Guiding Principles structure. The transmitted 2016 KCCP proposes to relocate the 2012 Guiding Principles polices from the Introduction into the second half of Chapter 1 and to change the name of these policies from "Guiding Principles" to "Planning Objectives." The Council has been evaluating the reference to these policies as "Planning Objectives" within the context of the KCCP and whether they should be returned to their former definition as "Guiding Principles."

Amendments to Guiding Principles. The Council is evaluating the impacts of the changes to the former Guiding Principles policies in the transmitted 2016 KCCP, including:

- **Benefits of county activities.** RP-201 of the transmittal amends a 2012 Guiding Principle to state that the County shall seek to ensure that all County activities provide social, environmental and economic benefits. This proposed language is broad and it is unclear how this would be defined, measured, or enforced. The Council is evaluating language to clarify how the benefits and impacts of County activities could be addressed.

- **Existing UGA.** RP-203 of the transmittal amends a 2012 Guiding Principle, which now calls for focusing growth within the "existing" UGA consistent with adopted growth targets. It appears that this policy change is intended to be consistent with general growth management principles in the GMA, Multicounty Planning Policies (MPPs), Countywide Planning Policies (CPPs), and 2012 KCCP to focus growth within the UGA. However, changing the policy to the focus on the "existing UGA" could limit consideration of UGA expansions that are currently allowed under the current CPPs and KCCP. The Council is evaluating language that would be more consistent with the current policies.

[17] Including relationships to Growth Management Act (GMA); the Puget Sound Regional Council's (PSRC) VISION 2040, Regional Growth Strategy, and Multicounty Planning Policies (MPPs); and the Growth Management Planning Council's (GMPC) Countywide Planning Policies (CPPs); the KCCP; and County functional plans.

- **Equity and Social Justice (ESJ) integration.** The transmitted 2016 KCCP includes text in the Planning Objectives section stating that countywide services, such as recreation, transit service, and public health, will be focused on cities in the contiguous UGA. Additionally, a new map has been proposed for this section that shows a composite of concentrations of three types of historically disadvantaged communities, which could imply that ESJ considerations may be less of a factor in planning in rural and natural resource areas. While the map and its accompanying text is not located in policy, it does imply intent for County operations and could indicate that some services, including recreation and public health, could be less available to:
    - Residents of cities in eastern King County, such as Carnation, Duvall, Enumclaw, North Bend, Skykomish, and Snoqualmie.
    - Urban unincorporated residents, such as those in Fairwood, Highline, Skyway-West Hill, and White Center.
    - Residents in the rural area.

  The Council is evaluating the inclusion of this map and associated text and whether it should it be replaced with text that focuses on indicators of disparities as defined by the Determinants of Equity, rather than focusing on certain populations.

Chapter 2 Urban Communities

The policies in Chapter 2 address development in urban unincorporated areas; creating healthy and sustainable communities; coordination with cities regarding urban unincorporated areas; and strategies with respect to annexations.

<u>Update on key issues in Chapter 2 of the transmitted 2016 KCCP:</u>

Green Building. The transmittal proposes a new reference to Green Building techniques in policy U-133. The County has not yet adopted Green Building code requirements and/or encouraged standards for private development. Instead, the transmitted 2016 KCCP proposes to reference the County's "Green Building Handbook"[18] in lead-in text, which the Executive has not transmitted for Council review or legislative action. In the meantime, due to staffing constraints in the Department of Permitting and Environmental Review, the timeline for adopting such Green Building requirements or standards in the code is currently unclear.[19]

This issue also applies to:

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[19] Ordinance 14449, which adopted the 2015 Strategic Climate Action Plan (SCAP), included a "Priority Action" for the Executive to prepare proposed green building code updates for private development in unincorporated areas by the end of 2017. Proposed Ordinance 2015-0417 would authorize a $68,000 transfer from the General Fund to DPER to provide 50 percent of the funding for a time-limited temporary staff person that would be focused on Green Building code development. The position was called for by the SCAP, which the Council adopted by motion on November 2, 2015. The Council's Budget and Fiscal Management Committee has not taken action on Proposed Ordinance 2015-0417. Given this, it is currently unclear if the 2017 timeline for transmittal of green building regulations is still achievable.

- Policy R-336a in Chapter 3, which encourages the County to adopt and implement Green Building codes that are appropriate, ambitious and achievable, and that respect and support rural character;

- Policy F-215a in Chapter 9, which encourages the County to plan to achieve net-zero greenhouse gas emissions associated with new residential and commercial buildings built in King County by 2030; and

- Policy ED-501a in Chapter 10, which calls for to promoting green and smart building practices throughout private, public and residential uses.

The Council is evaluating approaches on how to address Green Building issues in the KCCP, including potentially requiring transmittal of the Green Building Handbook for Council review and approval.

Urban facilities/School siting. In the transmittal, policy U-109 is amended to state that facilities serving urban development, such as new medical, governmental, educational, and institutional development, shall be located in the UGA. This proposed change would go further than the current school siting policies by requiring that <u>any</u> facilities serving <u>any</u> urban areas be sited in the UGA. This is more far-reaching because it would:

- Apply to facilities serving any portion of the urban areas, rather than those that "primarily" serve urban areas.

- Apply to any facilities serving urban areas, not just schools and institutions.

- Specifically require any medical and governmental development that serves any portion of the urban areas to be located in the UGA, which could imply future changes to the current code provisions that allow these uses to be sited in the rural area under certain conditions.

The Council is evaluating these proposed changes to ensure consistency with existing policies and regulations.

Approach to Rural Cities Potential Annexation Areas (PAAs). The transmitted 2016 KCCP includes revisions to several maps that propose to make a distinction between potential annexation areas: some would still be designated "PAAs" and some would now be designated "City in the Rural Area UGAs." No policy changes have been proposed in the transmitted 2016 KCCP to address this differentiation between the two designations in the maps. Absent further direction in the Plan, the changes in the maps could imply that the PAA policies in the KCCP do not apply to the City in the Rural Area UGAs. Additionally, there are split designations for Maple Valley's unincorporated urban areas, which may cause confusion. The Council is evaluating these proposed changes to ensure consistency with existing policies and designations.

Chapter 3 Rural Areas and Natural Resource Lands

The policies in Chapter 3 address rural residential, rural commercial, forestry, agricultural, and mineral resource areas. Policies regarding the County's approach to Cities in the Rural Area are also included in this chapter.

Update on key issues in Chapter 3 of the transmitted 2016 KCCP:

"Rural Areas" definition and usage. The definition in the glossary for "Rural Area" is proposed to be updated to clarify that it is a collective geography that includes Rural Towns, Rural Neighborhood Commercial Centers, and rural residential zoned properties. This change makes it clearer that Natural Resource lands are distinct from Rural Area lands. The terminology for "Rural Cities" is also proposed to be updated to "Cities in the Rural Area" to reflect that they are urban geographies that are located in the rural area and outside of the contiguous UGA. Where appropriate, the use of these terms is clarified throughout the transmitted 2016 KCCP; the majority of these changes can be found in Chapter 3**.** Staff is continuing to analyze these proposed changes to ensure consistency with existing policy intent.

Local Food Initiative. Several proposed policy changes relate to implementation of the Executive's Local Food Initiative. This initiative has not been reviewed or adopted by the Council. The Council may desire to evaluate the underlying goals of this program before adopting the proposed 2016 KCCP policy changes associated with the Local Food Initiative. Staff analysis of these proposed changes is ongoing.

ESJ integration. New language on equity and social justice is less extensive in chapters on Rural Areas and Natural Resource Lands (Chapter 3) Environment (Chapter 5), Parks, Open Space and Cultural Resources (Chapter 7), Economic Development (Chapter 10), Implementation, Amendments and Evaluation (Chapter 12) than in other chapters of in the transmitted 2016 KCCP. The Council is evaluating further integration of ESJ principles into these chapters of the Plan, including to specifically address ESJ considerations in services for rural residents in Chapter 3.

Nonresidential/urban uses in the Rural Area. Proposed changes to two policies, R-324 and R-201, would limit nonresidential uses in the rural area. The proposed changes are more limiting than existing restrictions regarding schools, institutions, and community facilities listed in R-326, which could affect the types of uses that are allowed in the Rural Area and may lead to unanticipated changes in the uses permitted outside the UGA. The Council is evaluating these proposed changes to ensure consistency with existing policies and regulations.

Farm, Fish, Flood. The transmitted 2016 KCCP does not include specific references to the Farm, Fish, Flood watershed planning process for the Snoqualmie Valley Agricultural Production District (APD), as this process was not complete as of March 1, when the proposed KCCP was transmitted. Since transmittal, the initial Farm, Fish, Flood Advisory

Committee has completed its work and the Council is now evaluating possible changes to lead-in text and to policies R-649 and R-650 that reflect the recommendations of the Advisory Committee.

Mining. The transmitted 2016 KCCP modifies policy R-689, relating to the conditions and mitigations for mining operations. Climate change is added to the list of issues which should require mitigation. Other descriptive text also includes discussion of climate change and mining resources. Executive staff have noted that the intent of these changes is to address the impact of the transport and burning of coal. However, the transmitted policy language in R-689 is not specific to coal and would apply to all mining activities, including mineral resource lands designated as having long-term commercial significance under the GMA.[20] Executive staff also note that the required mitigation in the policy could apply to either associated individual or cumulative impacts to global warming. It is unclear how the cumulative impacts would either be assessed or then be addressed on an individual basis. To implement this proposed policy direction, Executive staff note that the County's SEPA authority could be used to mitigate the effects of climate change by either conditioning or denying mining proposals; though, the standards for how such determinations would be made is not yet established. The Council is evaluating this proposed change as it relates to impacts to all mining activities.

Chapter 4 Housing and Human Services

Chapter 4 is a new chapter that addresses King County's regional role in promoting housing choice and opportunity, as well as regional health and human services.

Section I of this chapter covers King County's regional role in strengthening housing linkages with transportation; enforcing housing and land use regulations; coordinating regional affordable housing funding, resources, and programs; and supporting housing stability.

Section II focuses on King County's regional role in providing health and human services, with a specific focus on the County's efforts to define, build, sustain and coordinate regional service-delivery systems; to emphasize services and opportunities that are prevention-focused, strengthen resilience and may reduce needs for costlier, acute care or crisis interventions; to lead and support place-based initiatives; to address the social determinants of health and the built environment; to develop and implement mandated county-wide specialty systems; and to increase the participation in program development and delivery of residents living in communities with disproportionate outcomes.

[20] A required designation by RCW 36.70A.170 as a means to protect lands for extraction of minerals. Minerals, as defined by the GMA includes "gravel, sand, and valuable metallic substances" (RCW 36.70a.030). Lands designated as having "long-term commercial significance" must include the "growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land" (ibid).

Update on key issues in Chapter 4 of the transmitted 2016 KCCP:

Timing of housing policies. The transmitted 2016 KCCP includes policy language that is inconsistent with or in advance of currently adopted County housing policies. Staff anticipates that legislation may be transmitted during 2016 to address these inconsistencies related to:

- Supporting increased density, either as part of mandatory or incentive policies, particularly near high-capacity transit, or for higher-density housing styles, such as micro-housing.
- Increasing tenant protections beyond current adopted policy.
- Encouraging integration of healthy housing elements.

The Council is evaluating the timing and implementation implications of these proposed changes.

Surplus property. There are several proposed changes to how the County could handle surplus property sales within policy H-157 that may conflict with adopted policy, including:

- Expanding use of surplus property "at a discount" for affordable housing could conflict with policies dictating that funds generated from the sale of some properties must be wholly returned to the department or fund that purchased them. The Council is evaluating whether to add language such as "consistent with funding source limitations" to address this issue.

- The ability to sell property "at a discount" is also not currently clearly reflected in the King County Code. The Council is evaluating whether to clarify the relevant sections of the Code or make changes to the policy in the transmitted 2016 KCCP.

- Allowing for the discounted sale of property for "other community benefits," which are currently undefined and would be determined through a community process. The Council is evaluating whether to clarify or define these benefits either in the 2016 KCCP or in the Code.

The Council is evaluating these proposed changes for consistency with existing surplus property funding and process requirements.

Housing policies' relevance to non-urban King County. The housing policies of the KCCP were purposefully moved out of Chapter 2 Urban Communities and into a standalone chapter for application to both urban and rural areas. However, several policies as proposed only apply to the UGA. For example, Policy H-102 would require the County to encourage and reduce barriers to a wide range of housing, but retains 2012 language limiting this requirement to UGAs. In addition, policy H-103 proposes to remove a current reference to "Rural Towns," leaving it to apply to UGAs only. The Council is evaluating how to approach these policies and whether to encourage a wide range of housing throughout the County in support of ESJ and other goals.

Timing of health and human services policies. In the case of health and human services initiatives for which planning is underway, staff expects legislation to be transmitted during 2016 to align with the transmitted 2016 KCCP. Specifically:

- Best Starts for Kids Implementation.
- Mental Illness and Drug Dependency (MIDD) levy renewal.
- Behavioral health integration in accordance with Second Substitute Senate Bill (2SSB) 6312.[21]

The Council is evaluating the timing and implementation implications of these proposed changes.

Board of Health healthy communities planning. Changes to two policies, H-153 and H-204, are consistent with recommendations the Board of Health has adopted to integrate health and equity into County planning and housing development. However, the Council has not yet adopted policy in these areas. Public Health and Board of Health staff note that the Board of Health materials need to be updated, but there is no plan as of yet about the mechanism for updating these materials nor for the substantive updates themselves. The Council is evaluating the timing and implementation implications of these proposed changes.

Chapter 5 Environment

The policies in Chapter 5 address the natural environment, including critical areas, endangered species, water quality, air quality, shorelines, fish and wildlife resources and habitat, non-native plant and animal species, climate change, surface water management, and monitoring and adaptive management.

Update on key issues in Chapter 5 of the transmitted 2016 KCCP:

ESJ integration. New language on equity and social justice is less extensive in chapters on Rural Areas and Natural Resource Lands (Chapter 3) Environment (Chapter 5), Parks, Open Space and Cultural Resources (Chapter 7), Economic Development (Chapter 10), Implementation, Amendments and Evaluation (Chapter 12) than in other chapters of in the transmitted 2016 KCCP. The Council is evaluating further integration of ESJ principles into these chapters of the Plan, including to specifically address environmental and climate justice in Chapter 5.

SCAP and K4C lead-in text. The transmitted 2015 KCCP has been updated to include the targets and strategies of the 2015 Strategic Climate Action Plan (SCAP). For example, the proposed changes include text that restates the commitments identified in the SCAP that are necessary to achieve King County's operational Greenhouse Gas (GHG) reduction targets. These include listing the specific targets for growing transit service,

[21] For more information on behavioral health integration and 2015 action towards integrating mental health and substance abuse disorder purchasing, see staff report on Proposed Ordinance 2015-0405 through 2015-0408 dated November 12, 2015.

alternative fuels in County fleets, and energy use. The most significant modification to the 2012 climate related goals is the inclusion in the text of the countywide climate commitments included in the SCAP that were developed by King County and the King County Cities Climate Collaboration (K4C). These include listing the specific targets for reducing vehicle miles traveled, energy reduction, green building, and recycling countywide. Achieving these targets will require significant efforts beyond the County's control. The Council is evaluating how and whether to restate these specific goals and targets of implementation plans in the KCCP.

Wetland and groundwater protections. Policies E-425, F-475, E-481, E-483, E-497, and E-499c related to wetland and groundwater regulations, include substantive policy modifications. The Council is evaluating these changes for consistency with current federal, state, and King County Code requirements.

Failing septic systems. Policy E-499i related to strategies to address failing septic systems is proposed to be strengthened. The Council is evaluating this policy for consistency with similar policies in the Plan, such as in Chapter 9 Services, Facilities and Utilities.

Chapter 6 Shorelines

The policies in Chapter 6 comprise King County's Shoreline Master Program (SMP), which addresses the management and conservation of the shoreline jurisdiction in the county as required by RCW 90.58.

Update on key issues in Chapter 6 of the transmitted 2016 KCCP:

No issues identified.

Chapter 7 Parks, Open Space and Cultural Resources

The policies in Chapter 7 address King County's parks, recreation and open space system, as well as the County's cultural resources.

Update on key issues in Chapter 7 of the transmitted 2016 KCCP:

Open Space Plan. The Council adopted the 2016 Open Space Plan on June 27, 2016 via Ordinance 18309. Staff analysis of that plan has indicated that the 2016 Open Space Plan is consistent with both the existing (2012) Comprehensive Plan, as well as with the proposed (2016) Comprehensive Plan.

ESJ integration. New language on equity and social justice is less extensive in chapters on Rural Areas and Natural Resource Lands (Chapter 3) Environment (Chapter 5), Parks, Open Space and Cultural Resources (Chapter 7), Economic Development (Chapter 10),

Implementation, Amendments and Evaluation (Chapter 12) than in other chapters of in the transmitted 2016 KCCP. The Council is evaluating further integration of ESJ principles into these chapters of the Plan, including to specifically address the proposed removal of P-121, which required the consideration of equity in the open space system to help in the reduction of health disparities.

Chapter 8 Transportation

The policies in Chapter 8 address transportation, including unincorporated area roads, Metro Transit services, operation of Sound Transit light rail and some express buses, operation of Seattle streetcars, passenger ferries, and the King County International Airport (KCIA). For the unincorporated area, policies set Level of Service (LOS) standards and define components of the Transportation Concurrency Program and Mitigation Payment System, which are further defined in the King County Code.

Update on key issues in Chapter 8 of the transmitted 2016 KCCP:

Regional Growth Strategy. Proposed new language in policy T-231 refers to the "regional growth strategy," but does not clearly define the meaning of this term. Lead-in text in the transmittal states that with respect to transportation, the Puget Sound Regional Council's (PSRC) Vision 2040, Transportation 2040, and transportation-related Countywide Planning Policies "outline and support a regional growth strategy." The Council is evaluating additional lead-in text in the Plan, such as in Chapter 1 Regional Growth Management Planning, to further clarify this term.

Air transportation. The Scoping Motion called for updating policies to support the KCIA master plan. The transmitted 2016 KCCP does not propose updates to Air Transportation policies (T-317, T-318, T-319, and T-504). The Council is evaluating possible policy language to address this issue.

Chapter 9 Services, Facilities and Utilities

The policies in Chapter 9 address the County's role as a regional service provider, the facilities and services necessary to carry out that regional service provider role, and also information about energy and telecommunications.

Update on key issues in Chapter 9 of the transmitted 2016 KCCP:

Compliance with the Growth Management Act (GMA). Chapter 9, as transmitted, contains a number of new references to either the GMA in general or to specific elements of the GMA, some of which may not be consistent with current regulations. Specifically, a transmitted change in F-102 indicates that the GMA contemplates cities as the coordinators for the provision of local government services. This policy is located in the regional services section of Chapter 9 and, therefore, doesn't mention the role of the

County as a local government service provider. Additionally, this language may not fully capture the potential role of special purpose districts as service providers. The Council is evaluating these GMA-related changes throughout Chapter 9.

ESJ integration. The transmittal includes significant integration of ESJ principles throughout Chapter 9. The Council is evaluating these proposed changes for possible strengthening, consistent with ESJ principles.

Utilization of existing facilities. In F-206, the transmitted 2016 KCCP would make a change that would encourage public and private service providers to make their facilities available for meeting spaces that can be accessed by the community. The Council is evaluating this policy to ensure it adequately addresses risk levels given the County's numerous specialized facilities.

Net positive environmental benefits. The transmitted 2016 KCCP includes a new policy F-215b for King County to guide practices that build and operate buildings and infrastructure that result in regenerative and net positive benefits related to energy, water, other resources and GHG emissions. It is not clear from the language whether this policy applies to County owned properties, privately owned properties, or both. A similar policy can be found in F-217c. The Council is evaluating clarifying language for these policies.

Failure to consider cost. Chapter 9, as transmitted, includes a number of policies related to environmental conservation and energy efficiency. However, policies F-217d and F-314 do not include a specific cost consideration. The Council is evaluating these policies for consideration of cost impacts.

Green building requirements for County owned projects. Consistent with the SCAP, the transmitted 2016 KCCP updates policy F-217 related to LEED certification and sustainable building requirements. The requirement for LEED Gold certification has been replaced with a requirement for LEED Platinum. Policy F-217 does not distinguish between new construction and major remodels and renovations. Currently, King County Code 18.17.020 requires new construction to plan to achieve LEED Platinum if certain cost limitations are met, whereas major remodels and renovations are to plan to achieve Gold. The Council is evaluating this proposed change for consistency with the Code.

Wastewater systems. The transmitted 2016 KCCP includes several proposed changes to wastewater policies that are unclear as currently drafted:

- In policy F-235, the transmittal requires homeowners and/or associations to ensure connection to the public water systems in a timely manner. It does not identify what duration of time is meant by "a timely manner," nor does it identify who should determine or how that duration of time is to be determined.

- In F-261, the transmittal proposes that the policy on conversion from septic to sewer be used only as a last resort. However, the language does not indicate who would determine this or how that determination of last resort is made.

- In F-262, the proposed policy amendment would require lot consolidation as a precondition to getting approval to establish a collective on-site system. It does not define, nor does it identify an agency or standard to be used, in determining how it will be known whether the required consolidation has been completed.

- In F-264, the proposed policy amendment would limit rural area connection to the sewer system to areas where septic or other on-site methods has been determined not to be feasible. The policy does not indicate a process or agency in charge of making that determination.

The Council is evaluating these policies for potential clarification.

Chapter 10 Economic Development

The policies in Chapter 10 address economic development, including general policies, business development, workforce development, infrastructure, sustainable development in the private sector, and the rural economy.

Update on key issues in Chapter 10 of the transmitted 2016 KCCP:

ESJ integration. New language on equity and social justice is less extensive in chapters on Rural Areas and Natural Resource Lands (Chapter 3) Environment (Chapter 5), Parks, Open Space and Cultural Resources (Chapter 7), Economic Development (Chapter 10), Implementation, Amendments and Evaluation (Chapter 12) than in other chapters of in the transmitted 2016 KCCP. The Council is evaluating further integration of ESJ principles into these chapters of the Plan, including to specifically address equity in economic development programs and policies in Chapter 10.

Local Food Initiative. Several policy changes relate to implementation of the Executive's Local Food Initiative. This initiative has not been reviewed or adopted by the Council. The Council is evaluating ways to review the underlying goals of this program before adopting the proposed 2016 KCCP policy changes. Staff analysis of these proposed changes is ongoing.

Nonresidential/urban uses in the Rural Area. Proposed changes to infrastructure development policies, ED-401 and ED-404, more clearly state the County's support for infrastructure and facilities related to economic development that are consistent[22] with the locations in which they are sited. These changes appear to relate to other proposed changes elsewhere in the Plan,[23] which further limit siting urban or largely urban serving uses or facilities in the rural area. The Council is evaluating these proposed changes to ensure consistency with existing policies and regulations.

[22] Consistency is related to size, scale, adjacent land uses, and applicable policy restrictions regarding where the uses are allowed to be sited.
[23] Such as noted in the Chapter 3 staff report related to policies R-324 and R-201.

Rural Economic Strategies (RES). The existing and amended policies in the transmitted 2016 KCCP are not inconsistent with the 2013 RES Plan[24] policies. However, the Scoping Motion called for advancing the RES strategies and policy direction in the 2016 KCCP. The transmitted 2016 KCCP includes new language in ED-603 about the importance of food and forest processing in the regional economy and a new policy ED-606 calling for economic analysis and development of the local food system. However, the other policy issues in the 2013 RES Plan are not addressed.[25] The Council is evaluating Chapter 10, including policy ED-602, for potential refinement consistent with the 2013 RES Plan.

Place-based workforce training. The Scoping Motion called for considering inclusion of "policies for place-based workforce training strategies in communities with education and opportunity challenges." None of the policies directly call for place-based workforce training. The Council is evaluating potential inclusion of policy language to address this in Chapter 10.

Chapter 11 Community Service Area Planning

The policies in Chapter 11 of the transmitted 2016 KCCP address unincorporated area community plans that have been incorporated into the KCCP.

Update on key issues in Chapter 11 of the transmitted 2016 KCCP:

Community plans cleanup. The transmittal proposes to update the existing community plans in the KCCP by amending or removing polices the Executive had originally identified as outdated. The Council is evaluating whether any substantive amendments to the Community Plans should wait for the subarea planning process for each of the geographies to be complete.

Chapter 12 Implementation, Amendments and Evaluation

The policies in Chapter 12 outline how the policies of the KCCP should be implemented and monitored; how and when to amend the KCCP; and the role of land use zoning in the planning process.

Update on key issues in Chapter 12 of the transmitted 2016 KCCP:

ESJ integration. New language on equity and social justice is less extensive in chapters on Rural Areas and Natural Resource Lands (Chapter 3) Environment (Chapter 5), Parks,

[24] Ordinance 17956, adopted by the Council in 2014.

[25] Such as additional revenues and/or resources to support infrastructure (ranging from roads to data transmission technology), economic development in rural and resource areas, and emphasis on potential home based business development.

Open Space and Cultural Resources (Chapter 7), Economic Development (Chapter 10), Implementation, Amendments and Evaluation (Chapter 12) than in other chapters of in the transmitted 2016 KCCP. The Council is evaluating further integration of ESJ principles into these chapters of the Plan, including to specifically address incentives for areas of the county with the most disparate outcomes in health and housing in Chapter 12.

Mining site conversion demonstration project. Policy I-203 is proposed to be amended to remove the option to consider policy or land use changes related to a mining site conversion demonstration project as part of the annual KCCP amendment cycle. This allowance was originally added to the KCCP by the Council in 2012. Since 2012, no ordinance for such a demonstration project has been transmitted by the Executive or introduced by the Council. However, since transmittal of the 2016 KCCP, a mining site property owner that is impacted by this proposed policy change has since come forward indicating that work on a demonstration project proposal is ongoing and requested that the annual cycle allowance in I-203 be maintained.[26] Conversely, the Council has also received public comments from residents and community groups that have indicated support for the Executive's proposed removal of the allowance. The Council is evaluating how to move forward with this policy in this context.

Benchmark Program/Performance Measures Program. The transmitted 2016 KCCP removes references to the County's Benchmark Program, which implements the monitoring and evaluation of achieving the Regional Growth Strategy as required by KCCP policy I-203 and Countywide Planning Policy (CPP) G-2. This is proposed to be addressed in the Workplan through creation of a new Performance Measures Program in 2017 that will then be implemented in 2018. The Council is evaluating whether to clarify the benchmarking standards in the meantime.

Workplan clarity. The transmitted 2016 KCCP proposes a new format for the Workplan by including it in the Plan itself instead of in the underlying adopting ordinance. In previous KCCP updates, the Workplan items that were included in the adopting ordinance included very specific deadlines and reporting requirements for each item; for example:[27]

> "The report required by this subsection shall be transmitted to the council by June 1, 2013. The report must be filed in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers and to the lead staff for the transportation, economy and environment committee, or its successor."

The transmitted 2016 Work Program, as proposed, includes less specific language; for example:[28]

- *Timeline:* 2018; one-year process

[26] Representatives of the Reserve Silica mining site provided public testimony at the March 15, 2016 TrEE meeting and at the April 6 Committee of the Whole meeting.
[27] From the 2012 KCCP (Ordinance 17485, Section 50, A)
[28] From 2016 Workplan item for the Four-to-One Program

- *Outcomes:* County-led and consultant supported task force, feasibility report and final report.
- *Leads:* Office of Performance Strategy and Budget, Department of Natural Resources and Parks.

As currently written, it is unclear when, how, or if the Council would receive copies of the report in this example. This format is consistent across the majority of the Workplan items proposed in the transmitted 2016 KCCP. The Council is evaluating whether to add more direction on the timelines, outcomes, and reporting requirements for the 2016 Workplan items.

Proposed Ordinance 2016-0155 and Development Code Proposals

Proposed Ordinance 2016-0155 adopts the 2016 KCCP, as well as associated code amendments. This portion of the staff report reviews the code changes in the Proposed Ordinance, as well as the development code proposals called for in the Scoping Motion.

Update on key issues in Proposed Ordinance 2016-0155:

Agricultural Uses. The changes in the Proposed Ordinance include several policy considerations the Council has been reviewing, including:

- whether the inclusion of new, broad uses within the existing permitted use table structure is appropriate;
- whether these new uses should be allowed in the zoning districts shown, or whether they should be allowed in other zones (such as the Urban Reserve zone, as currently allowed in the Code);
- whether the proposed development conditions for the new uses are adequate;
- whether the requirement that 60 percent of products be grown or processed in Puget Sound counties, proposed to be retained and expanded in the Proposed Ordinance, is appropriate;
- whether the language for the new administrative review process proposed to allow increases to the square footage allowed for some "Agricultural Activities" and to approve "Agricultural Support Services" is clear enough; and
- whether the proposed changes have unintended impacts on other requirements of the County's development regulations, such as the landscaping and parking standards.

The Council is evaluating these issues for possible refinement as part of the 2016 KCCP.

Winery Study. The Executive is currently conducting a study regarding the wineries in the Sammamish Valley APD area, and intends to make recommendations on policy and code changes later this summer for possible inclusion in the 2016 KCCP. When the study is complete, the Council will evaluate how to incorporate the recommended policy and code changes into the 2016 KCCP update.

Development Code Proposals. The Scoping Motion included direction for six development code proposals. In response to this direction, the Executive completed development code studies for these six items , which are summarized in Table 1. The Proposed Ordinance includes code changes for items 1 and 5, both related to the agricultural land policy and agricultural use permitted uses. Item 3, regarding micro-housing and similar uses, was recommended for approval by its development code study, but no code changes were included in the Proposed Ordinance, nor as part of a separate ordinance. The Council is evaluating whether to include any code changes related to the non-included and/or non-recommended code proposals from the Scoping Motion in this Ordinance.

Table 1 – Summary of Development Code Study Items Identified by Scoping Motion

Item #	Proposal in Scoping Motion	Executive Recommendation	Location in PO 2016-0155
1	Code amendments for agricultural supportive and dependent uses to support viable and sustainable agricultural products.	Significant changes in Title 21A addressed above. Conduct a winery study in the Sammamish APD and surrounding area, to be completed in summer 2016. Incorporate recommendations in the 2016 KCCP at that time.	Throughout
2	Code flexibility for alternative temporary lodging, such as treehouses and structures associated with re-creations of historic communities.	Code amendments not recommended. Instead, use existing procedures in the Building Code for "alternative methods and materials."	N/A

Item #	Proposal in Scoping Motion	Executive Recommendation	Location in PO 2016-0155
3	Consider code flexibility for alternative housing models, such as micro-housing.	Add a definition, zoning allowance, and building code templates for micro-housing, as well as tiny houses, recreational vehicles, and apodments. These recommendations were not included in PO 2016-0155. Executive staff report that the recommendations in the development code study were not final, and that departments continue to review what appropriate regulations should be proposed to Council.	N/A
4	Code changes regarding ingress/egress for new plat proposals, including space needed for traffic queuing.	Do not change Title 21A or the King County Road Standards.	N/A
5	Consolidate code sections related to agricultural lands policy.	Repeal most of K.C.C. 20.54, repeal K.C.C. 26.08, amendment Title 21A to make agricultural use tables more consistent with agricultural lands policies.	Section 7 – 19, Section 37
6	Code changes to allow extensions for preliminary plat approvals.	Do not change the code to allow for any extensions to preliminary plats. If the Council determines an amendment is necessary, limit to one-time for one year.	N/A

Proposed Ordinance 2016-0159
Real Property Asset Management Plan

Consistency with the Scoping Motion

Real Property Asset Management Plan (RAMP). The RAMP is a policy guidance document for the management of King County real property assets for which the Facilities Management Division (FMD) is responsible. It addresses space standards, current and future space needs, a policy framework regarding County facility development, and the County facility planning work program.

The King County Code[29] currently requires the RAMP to be included as a part of Technical Appendix A and as a component to the Comprehensive Plan. On March 1, the Executive transmitted the 2016 RAMP as a proposed ordinance (Proposed Ordinance 2016-0159) that is separate from the 2016 KCCP (Proposed Ordinance 2016-0155). The GMA and the County Code require Comprehensive Plan amendments to be considered and adopted through a consolidated process. With regard to the RAMP, the Council has been considering the separate RAMP ordinance as part of the same process as the 2016 KCCP ordinance.

Update on key issues in Proposed Ordinance 2016-0159:

Connection to KCCP. While the County Code currently requires that the 2016 RAMP must be adopted concurrently with the Comprehensive Plan, the RAMP is more of an internal, strategic and operational plan than a growth management related document. As such, there is an option to decouple future RAMPs from the Comprehensive Plan. Because the RAMP is itself an integrated document, the split should be made wholesale rather than piecemeal (i.e., it is not practical to pick-and-choose specific sections of the RAMP to be retained within the Comprehensive Plan), though some high-level policy language may need to be integrated into Chapter 9 Services, Facilities and Utilities to provide general policy direction to the RAMP. The Council is evaluating how this could most efficiently be accomplished should the Council pursue this option.

Level of detail. The 2016 RAMP (and previous RAMPs) includes point-in-time information on the County's real property assets. The Council may wish to consider the long-term nature of the RAMP and how that may impact what Councilmembers wish to see in the RAMP, i.e., whether the inclusion of near-term projects is valuable in a document updated on a four-year cycle. In the 2016 RAMP, for example, detailed discussions of planned near-term moves in the Chinook Building and King Street Center are included; these projects are likely to be completed prior to 2020, when the next RAMP would be adopted. In order to better calibrate the timing of transmitted information to opportunities for feedback and re-direction, the Council may wish to require more frequent updates on near- and long-term space planning efforts (for example, in an annual report to Council, distinct from the RAMP).

[29] K.C.C. 20.12.100

The Council is evaluating how this could most efficiently be accomplished should the Council pursue this option.

Strategic facility planning. The 2016 RAMP proposes seven "Policy Implementation Strategies" or initiatives to address issues and meet policy objectives presented in the RAMP's Facility Management Policies. Per Executive staff, this list of strategic initiatives reflects the fact that strategic planning is now carried out on an *ad hoc* basis with the existing staff supporting FMD operations and related operational strategies. These efforts are different in nature and required skill sets and experience from long-term strategic facility planning such as the Civic Campus master plan concept, which are not addressed in any detail in the 2016 RAMP. The Council is evaluating whether to address long-term strategic facility planning in the RAMP ongoing, or to continue to direct such planning on a project-specific basis.

ATTACHMENTS

1. 2016 KCCP Schedule, updated as of August 10, 2016
2. Frequently Used Acronyms
3. Public comments, updated as of August 10, 2016

LINKS

Proposed Ordinance 2016-0155, the underlying ordinance for the proposed 2016 KCCP, can be found at:

http://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=2594294&GUID=050D99B0-CE2F-4349-BD0D-46D46F673458&Options=ID%7cText%7c&Search=2016-0155

The Council's Scoping Motion, Motion 14351, can be found at:

http://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=2233471&GUID=8A16CDC8-8A9A-455D-A9E6-00CF10E055A9&Options=ID|Text|&Search=2015-0104

All components of the proposed 2016 KCCP can be found at:

http://www.kingcounty.gov/council/2016compplan/transmittal.aspx

These components include:

- Proposed Ordinance 2016-0155
- 2016 KCCP
- Land Use and Zoning Changes
- Appendix A: Capital Facilities
- Appendix B: Housing
- Appendix C: Transportation
- Appendix C1: Transportation Needs Report
- Appendix C2: Regional Trails Needs Report
- Appendix D: Growth Targets and the Urban Growth Area
- Appendix R: Public Outreach for Development of KCCP
- Attachment: Skyway-West Hill Action Plan
- Attachment: Area Zoning Studies
- Attachment: Development Code Studies
- Attachment: Policy Amendment Analysis Matrix
- Attachment: Public Participation Report

INVITED

- Ivan Miller, KCCP Manager, Performance, Strategy and Budget

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King County Council
Schedule for 2016 King County Comprehensive Plan
(As of 8/10/16, Subject to change)

March 1	Transmittal of King County Executive's proposed 2016 King County Comprehensive Plan.
March 15 9:30 a.m.	**Briefing in Transportation, Economy and Environment Committee.** Anticipated topics (subject to change): • *Committee review process overview* • *Land use proposals/Area Zoning Studies* • *Chapter 11 Community Service Area Planning* • *Chapter 12 Implementation, Appendix D Growth Targets* **Opportunity for public comment**
April 6 **6:30 p.m.**	**Committee of the Whole Town Hall - Special Evening Meeting** ***Location: Gracie Hansen Community Center at Ravensdale Park (Rock Creek Sports) - 27132 SE Ravensdale Way, Ravensdale WA*** **Opportunity for public comment on proposed 2016 Comprehensive Plan**
May 3 9:30 a.m.	**Briefing in Transportation, Economy and Environment Committee.** Anticipated topics (subject to change): • *Chapter 1 Regional Planning* • *Chapter 3 Rural Area and Natural Resource Lands* • *Chapter 8 Transportation, Appendix C Transportation, C1 Transportation Needs Report* • *Chapter 10 Economic Development* • *Development code updates (Proposed Ordinance 2016-0155)* **Opportunity for public comment**
May 17 9:30 a.m.	**Briefing in Transportation, Economy and Environment Committee.** Anticipated topics (subject to change): • *Chapter 2 Urban Communities* **Opportunity for public comment**
May 31 9:30 a.m.	**Briefing in Transportation, Economy and Environment Committee.** Anticipated topics (subject to change): • *Chapter 4 Housing and Human Services, Appendix B Housing* **Opportunity for public comment**
June 7 9:30 a.m.	**Briefing in Transportation, Economy and Environment Committee.** Anticipated topics (subject to change): • *Chapter 7 Parks, Open Space and Cultural Resources, Appendix C2 – Regional Trail Needs Report* **Opportunity for public comment**
June 21 9:30 a.m.	**Briefing in Transportation, Economy and Environment Committee.** Anticipated topics (subject to change): • *Chapter 5 Environment* • *Chapter 6 Shorelines* **Opportunity for public comment**

June 28 9:30 a.m.	**Briefing in Transportation, Economy and Environment Committee.** Anticipated topics (subject to change): • *Climate Change (all chapters)* • *Equity and Social Justice (all chapters)* **Opportunity for public comment**
July 5 10:30 a.m.	**Briefing in Transportation, Economy and Environment Committee.** Anticipated topics (subject to change): • *Chapter 9 Services, Facilities and Utilities, Appendix A – Capital Facilities* • *Real Property Asset Management Plan (Proposed Ordinance 2016-0159)* **Opportunity for public comment**

August 16
9:30 a.m.
	Briefing in Transportation, Economy and Environment Committee. Anticipated topics (subject to change):
	• *Follow up on identified issues in:*
	  o *All Chapters in the 2016 Comprehensive Plan*
	  o *Development code updates (Proposed Ordinance 2016-0155)*
	  o *Real Property Asset Management Plan (Proposed Ordinance 2016-0159)*
	Opportunity for public comment

August 24 1:30 p.m.	**Briefing in Special Transportation, Economy and Environment Committee.** Anticipated topics (subject to change): • *Follow up on land use proposals* **Opportunity for public comment**
September 6 9:30 a.m.	**Briefing in Transportation, Economy and Environment Committee.** Anticipated topics (subject to change): • *Chair's Striking Amendment* **Opportunity for public comment**
September 20 9:30 a.m.	**Possible vote in Transportation, Economy and Environment Committee** • *Includes consideration of possible amendments* **Opportunity for public comment**
November 28 Time TBD	**Anticipated public hearing at full Council** **Opportunity for public comment**
December 5 Time TBD	**Possible vote at full Council** • *Includes consideration of possible amendments*

Unless otherwise noted, all meetings will take place in the Council Chambers on the 10th Floor of the King County Courthouse, at 516 3rd Ave, Seattle WA.

2016 King County Comprehensive Plan
Frequently Used Acronyms

APD	Agricultural Production District
CIP	Capital Improvement Program
CPP	Countywide Planning Policy
ESA	Endangered Species Act
FCC	Fully Contained Community
FPD	Forest Production District
GMA	Growth Management Act
GMPC	Growth Management Planning Council
HOT	High Occupancy Toll
HOV	High Occupancy Vehicle
ITS	Intelligent Transportation Systems
KCCP	King County Comprehensive Plan
KCSP	King County Strategic Plan
LID	Low Impact Development
LOS	Level of Service
LSRA	Locally Significant Resource Area
MPP	Multi-county Planning Policies
MPS	Mitigation Payment System
PAA	Potential Annexation Area
PBRS	Public Benefit Rating System
PSRC	Puget Sound Regional Council
RSRA	Regionally Significant Resource Area
RWSP	Regional Wastewater Services Plan
SCAP	Strategic Climate Action Plan
SPPT	Strategic Plan for Public Transportation
SPRS	Strategic Plan for Road Services
SEPA	State Environmental Policy Act
TAM	Transportation Adequacy Measure
TDR	Transfer of Development Rights
TDM	Transportation Demand Management
TNR	Transportation Needs Report
TOD	Transit Oriented Development
UGA	Urban Growth Area
UGB	Urban Growth Boundary
UPD	Urban Planned Development
UTRC	Utilities Technical Review Committee

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Denis Law Mayor

July 12, 2016

The Honorable Joe McDermott, Council Chair
Metropolitan King County Council
King County Courthouse
516 Third Avenue, Room 1200
Seattle, WA 98104

Dear Council Chair McDermott:

This letter provides comments from the City of Renton regarding the 2016 Executive Recommended Update to the King County Comprehensive Plan. There are some revisions in the current draft that we are concerned about. Specifically, the two policies below shown as drafted with proposed deletions ~~stricken~~ and new text underscored.

U-126 King County, when evaluating rezone requests for increases in density, shall ~~work with~~ notify the city whose PAA includes the property under review; if a pre-annexation agreement exists, King County shall work with the city to ensure compatibility with the city's pre-annexation zoning for the area. King County shall also notify special purpose districts and local providers of urban utility services and should work with these service providers on issues raised by the proposal.

U-208 King County ~~shall consider initiating new subarea~~ will engage in joint planning processes for the urban unincorporated areas ~~to assess the feasibility of~~ in tandem with the annexing city upon a commitment from the city to annex through an interlocal agreement. Such planning may consider land use tools such as:

a. Traditional subarea plans or areawide rezoning;
b. Allowing additional commercial, industrial and high density residential development through the application of new zoning;
c. Transfers of Development Rights that add units to new development projects; and
d. Application of collaborative and innovative approaches
King County will work through the Growth Management Planning Council to develop a plan to move the remaining unincorporated potential annexation areas toward annexation.

Finally, the Update includes a proposed schedule for engaging in planning with the seven Community Service Areas over the course of the next eight years. The "*sequencing was determined by subarea plans already underway, the ability to partner with other jurisdictions, anticipated land use changes within a Community Service Area, and striving for a countywide geographic balance in alternating years.*" The Four

Creeks/Tiger Mountain area, which includes the East Renton Plateau area (where most annexations to Renton have been occurring for the last several years), is not scheduled until 2020.

Collectively and separately, these proposed amendments run counter to King County Countywide Planning (CPP) Policy DP-26 which states that the County will "*Develop agreements between King County and cities with Potential Annexation Areas to apply city-compatible development standards that will guide land development prior to annexation*." The proposed amendments put conditions on the requirement embodied in this CPP. Policy U-126, as proposed, states that the County will only work with cities in regards to rezone requests if a pre-annexation agreement exists; zoning directly relates to development standards. Further, proposed Policy U-208 states that the County will engage in joint planning only if the city makes a commitment through an interlocal agreement to annex the area. With the adoption of Renton's PAAs the City has made a strong commitment to annex the areas.

In 2012, Renton City Council adopted a resolution asking the County to engage the City in discussions regarding a potential interlocal. To date, the County has not taken steps to engage Renton in such an agreement. The City has sought to develop a strong working relationship with the County on matters of annexation areas transitioning to City jurisdiction. The current Update to the King County Comprehensive Plan works to diminish the City's request and adds unnecessary and arbitrary requirements that are in conflict with previously adopted CPPs and run counter to our shared interest in engagement in a collaborative effort.

Sincerely,

Denis Law
Mayor

Randy Corman
Renton Council President

DL:aa

cc: Dow Constantine, King County Executive
Renton City Council
Jay Covington, City of Renton Chief Administrative Officer
C. E. "Chip" Vincent, City of Renton Community & Economic Development Administrator

16-103

From:	Jensen, Christine
To:	CouncilCompPlan
Subject:	FW: WRITTEN COMMENTS (ENVIR & ECON-RELATED, & FULL SET)--2016 KCCP UPDATE
Date:	Tuesday, July 12, 2016 11:56:57 AM
Attachments:	Cvr_Ltr--GMVUAC_Comments--KCCP_Upd.doc GMVUAC_Comments--Envir.doc GMVUAC_Comments--Econ.doc GMVUAC_Comments--KCCP_Update.doc

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Christine Jensen

Principal Legislative Analyst | King County Council

516 Third Ave, Room 1200 | Seattle, WA 98104

206.477.5702 | christine.jensen@kingcounty.gov

Learn more about the 2016 King County Comprehensive Plan Update

This email and any response to it constitute a public record and may be subject to public disclosure.

From: Peter Rimbos [mailto:primbos@comcast.net]
Sent: Tuesday, July 12, 2016 10:06 AM
To: Dembowski, Rod <Rod.Dembowski@kingcounty.gov>; Balducci, Claudia <Claudia.Balducci@kingcounty.gov>; Lambert, Kathy <Kathy.Lambert@kingcounty.gov>; Kohl-Welles, Jeanne <Jeanne.Kohl-Welles@kingcounty.gov>; McDermott, Joe <Joe.McDermott@kingcounty.gov>; Upthegrove, Dave <Dave.Upthegrove@kingcounty.gov>; von Reichbauer, Pete <Pete.vonReichbauer@kingcounty.gov>
Cc: Dunn, Reagan <Reagan.Dunn@kingcounty.gov>; Gossett, Larry <Larry.Gossett@kingcounty.gov>; Jensen, Christine <Christine.Jensen@kingcounty.gov>; Miller, Ivan <Ivan.Miller@kingcounty.gov>; Wolf, Karen <Karen.Wolf@kingcounty.gov>; Painter, Alan <Alan.Painter@kingcounty.gov>
Subject: WRITTEN COMMENTS (ENVIR & ECON-RELATED, & FULL SET)--2016 KCCP UPDATE

KC Council TrEE Committee Chair Dembowski and Members,

Please see the attached Cover Letter which explains our review of the Executive's proposed 2016 King County Comprehensive Plan Update and describes the three attached sets of Written Comments.

Thank you.

Peter Rimbos
Corresponding Secretary
Greater Maple Valley Unincorporated Area Council (GMVUAC)
primbos@comcast.net

"To know and not to do is not to know."-- Chinese proverb

Please consider our shared environment before printing.

Greater Maple Valley Unincorporated Area Council
P.O. Box 101
Maple Valley, WA 98038

July 12, 2016

To: King County Council TrEE Committee

Re: 2016 KCCP Update

Chairman Dembowski,

Since early 2015 the Greater Maple Valley Unincorporated Area Council (GMVUAC) has provided detailed inputs to the Executive's Office as it developed its 2016 KCCP Update Public Review Draft (PRD). We subsequently provided detailed comments on the PRD.

We have now completed our review of the Executive's proposed 2016 KCCP Update submitted to the KC Council on March 1 of this year. Herein please find our third and final submittal to the TrEE committee: (1) Environment-related comments (attached) and (2) Economic Development-related comments (attached).

Previously, we submitted our Transportation-related comments (May 3) and Growth Management-related comments (June 7).

In addition, for your convenience we have combined all our submittals into one Complete Set of Comments (attached).

Our Comments include detailed reviews of all the Update's Chapters, Appendices, and Attachments (except where noted) and are color-coded as follows: **COMMENTS**, **CONCERNS**, **RECOMMENDATIONS**, and **RATIONALE**.

We plan to remain involved in the Update process through final Council approval in December. Should TrEE Committee members or Staff have any questions regarding our Comments, please contact our Coordinator for the KCCP Update, Peter Rimbos, at 425-432-1332 or primbos@comcast.net.

Thank you in advance for your careful consideration of our Written Comments.

Sincerely,

Steve Hiester
Chairman, Greater Maple Valley Unincorporated Area Council

Complete Set of Comments on Proposed 2016 KCCP Update

Greater Maple Valley Unincorporated Area Council

Chapters

CHAPTER 1—REGIONAL PLANNING

1. ((~~GP-103~~)) RP-203 *"King County shall continue to support the reduction of sprawl by focusing growth and future development in the existing urban growth area, consistent with adopted growth targets."*

RECOMMENDATION: We support this policy change. It is consistent with State GMA growth-management principles, as well as Countywide Planning Policies. It focusses growth within the UGA, which is the clear intent of the State GMA.

CHAPTER 2—URBAN COMMUNITIES

1. **U-109** -- *"King County should concentrate facilities and services within the Urban Growth Area to make it a desirable place to live and work, to increase the opportunities for walking and biking within the community, to more efficiently use existing infrastructure capacity and to reduce the long-term costs of infrastructure maintenance. Facilities serving urban areas such as new medical, governmental, educational or institutional development, shall be located in within the Urban Growth Area, except as provided in policies R-326 and R-327."*

RECOMMENDATION: We support the addition made to this policy, as it aligns with our overall mission ("Keep the Rural Area rural") by restricting the siting of urban- or largely urban-serving facilities to the Urban Growth Area.

2. **U-185** -- *"Through the Four-to-One Program, King County shall actively pursue dedication of open space along the original Urban Growth Area line adopted in the 1994 King County Comprehensive Plan. Through this program, one acre of Rural Area zoned land may be added to the Urban Growth Area in exchange for a dedication to King County of four acres of permanent open space. Land added to the Urban Growth Area for ((~~naturally appearing~~)) drainage facilities that are designed as mitigation to have a natural looking visual appearance in support of its development, does not require dedication of permanent open space."*

CONCERNS: While we have no problems with the original intent of the Four-to-One Program, we do not support annexing of Rural Area acreage into the UGA when it is not part of a recognized Potential Annexation Area (PAA).

RECOMMENDATION: Revisit this augmentation of the Four-to-One Program.

3. **U-207**

COMMENT: Bonded Debt: State law (RCWs 35.13.110; 35.13.270, and 35A.14.801) is rigid here.

RECOMMENDATION: Revisit State law (RCWs 35.13.110; 35.13.270, and 35A.14.801) so that Counties and Cities have the opportunity to "negotiate" any transfer of bonded debt incurred within the annexed area. Approval of County bonded debt could be similar to how cities do so upon annexation by offering a vote to the annexing residents and allow the county to require a disapproval of the annexation should residents vote against the bonded debt continuance.

QUESTION: Does the new R-320a policy in CHAPTER 3 take care of this?

KC EXEC OFFICE RESPONSE: *"Comments noted; see the Workplan section of Chapter 12. It includes a workplan to revisit the Annexation Areas Map and Countywide Planning Policies. This type of analysis may be an important part of this future work."*

CHAPTER 3—RURAL AREA AND NATURAL RESOURCE LANDS

1. **R-201 --** *"Therefore, King County's land use regulations and development standards shall protect and enhance the following ((~~components of~~)) attributes associated with a rural lifestyle ((~~the~~)) and the Rural Area: Rural uses that do not include urban or largely urban-serving facilities."*

RECOMMENDATION: We strongly support this addition. The Rural Area is no place for "urban or urban-serving facilities." (see RECOMMENDATIONS under R-326 below)

2. **II. Rural Designation / B. Forestry and Agriculture in Rural King County / 1. Forestry / Item f.** -- *"Conduct projects on King County park lands to demonstrate sustainable forestry practices, and."*

CONCERN: King County has several types of "lands"--"Recreation Parks, Multi-Use Parks, Working Forest Lands, Natural Areas, Regional Trail Properties, Flood Hazard Properties, and Other Public Lands"--all identified on "King County's Open Space System 2016" map accompanying Chapter VII--Parks, Open Space, and Natural Resources. Our Rural Area parks (many of which include ballfields for both children and adults) should not see chain saws just to "demonstrate" something.

RECOMMENDATION: Eliminate Item "f.". Otherwise, make the language more specific, so as not to encompass all the lands identified in our CONCERN above, since we don't think that was the intent.

3. **III. Rural Densities and Development / D. Nonresidential Uses**

CONCERN: This section does not address resource-based businesses in unincorporated areas, such as Marijuana production, processing and retail uses. Policies should preclude siting of Marijuana production, processing, and retail uses in residential areas in the Rural Area. SEPA reviews should ensure the particular issues associated with such businesses, such as Public Safety, are included and fully addressed. An excellent example in the Rural Area is the proposed Marijuana Processing Facility at the end of 200th Ave SE, a narrow (18 ft at its worst), unshouldered one-lane country road that is bordered by residences on both sides. The Commercial Site Development Permit Application already was found complete by KC DPER and the KC PAO has provided an opinion that all future permit applications are fully vested. The GMVUAC discussed this issue with Deputy KC Executive Fred Jarrett at its May 19, 2015, Community Service Area Meeting and he requested full documentation, which the GMVUAC provided to Mr. Jarrett, DPER Director John Starbard, and the KC Ombudsman Office. This went nowhere.

RECOMMENDATION: Marijuana growing operations, processing/manufacturing facilities, or distribution businesses should not be sited in Rural Area residential neighborhoods. Such businesses could be quite

lucrative both with valuable product on the premises and amount of cash on hand. However, the County Sheriff's Office budget has been continually pared down and can no longer provide adequate Police protection to the Rural Area. This is a dangerous mix. Such operations must to be recognized as incompatible with the Rural Character the County and the people strive to maintain. In addition, KC Code definitions 21A.06.605 Home industry and 21A.06.610 Home occupation should be revised back to their pre-2008 Comprehensive Plan definitions to address the existing loophole whereby a residence can be converted to a business establishment without maintaining "the primary use of the site as a residence."

4. **R-309** -- *"The RA-2.5 zone has generally been applied to ((~~rural areas~~)) Rural Areas with an existing pattern of lots below five acres in size that were created prior to the adoption of the 1994 Comprehensive Plan. These smaller lots may still be developed individually or combined, provided that applicable standards for sewage disposal, environmental protection, water supply, roads and rural fire protection can be met. A subdivision at a density of one home per 2.5 acres shall only be permitted through the transfer of development rights from property in the designated Rural Forest Focus Areas. The site receiving the density must be approved as a Transfer of Development Rights receiving site in accordance with the King County Code. Properties on Vashon-Maury Islands shall not be eligible as receiving sites."*

CONCERNS: We have two major concerns:

1. Allowing such 2.5 zoning perpetuates existing traffic flow issues, consequently, identifying a viable plan to address the traffic issue should be part of any subdivision adjustment, not just TDR agreements. To address Transportation Concurrency we recommend the language be changed to require all the TDRs to not only be purchased from the Rural Area, but also from the same Travel Shed. To do this, we recommend the following be added to the end of the third sentence: "...within the same Travel Shed."

2. That said, Rural Area properties should not serve as receiving sites for any TDRs.

RECOMMENDATION: The third sentence in R-309 should be modified as follows:

"In the RA-2.5 zone a~~A~~ subdivision at a density of one home per 2.5 acres shall only be permitted through the transfer of development rights from property in the designated Rural Forest Focus Areas within the same Travel Shed."

RECOMMENDATION: Add a new fourth sentence to be consistent with the intent of C. Transfer of Development Rights Program (immediately below R-311): "Rural Area properties should not serve as receiving sites for any TDRs." [this could necessitate changes to **CHAPTER 8--TRANSPORTATION**]

5. ***COMMENT: Following R-309 regarding the RA-2.5 zone, there needs to be more specifics related to the RA-5 zone, especially as related to private wells. CONCERN: The King County Board of Health Code's Title 13's references to the "1972" cutoff and "5-acre" minimums (13.04.070 Domestic water supply***

source., B. Private individual well source: "A private well on a lot five acres or greater in size or a lot created prior to May 18, 1972,...") are not consistent with the "1994 Comprehensive Plan" cited in R-309.

RECOMMENDATION: Add a new Policy as follows:

> ***"R-309a The RA-5 zone is typical of the Rural Area. However, there exist numerous legal parcels of less than five acres in size. These smaller lots may still be developed individually or combined (at the owner's discretion) and private wells allowed, provided applicable King County Board of Health separation requirements can be met for sewage disposal and water supply. Water treatment is an acceptable means of providing, and proving the existence of, an adequate water supply."***

RATIONALE: In 1992 State Attorney General issued the following opinion in AGO 1992 No. 17, Re: Requirement of Adequate Water Supply Before a Building permit is Issued: (our emphasis shown)

> ***"If a local building department chooses not to apply public water system standards to other water sources, then it may apply any other criteria that it determines are appropriate to ensure that the water supply for a building is of sufficient quality and quantity for the intended use of the building. These criteria must be based on considerations of water quality and quantity, and not on other considerations, such as limiting density or the construction of unpopular facilities. Furthermore, the local building department may not act in an arbitrary and capricious manner in setting the criteria. E.g.,Rosen v. Tacoma, 24 Wn. App. 735, 740, 603 P.2d 846 (1979). This means that its actions must not be willful and unreasoning, taken "without consideration and in disregard of facts and circumstances." e.g.,Pierce Cy. Sheriff v. Civil Serv. Comm'n, 98 Wn.2d 690, 695, 658 P.2d 648 (1983)." [Ref: http://www.atg.wa.gov/ago-opinions/requirement-adequate-water-supply-building-permit-issued]***

Consequently, such criteria must be based on "water quality and quantity," not to limit density, which is under the purview of and, thus, a decision made by the legislative body (i.e., King County Council), not the Board of Health or other agency.

6. **R-324** *"Nonresidential uses in the Rural Area shall be limited to those that:*
   a. *Provide convenient local products and services for nearby Rural Area residents;*
   b. *Require location in a Rural Area;*
   c. *Support natural resource-based industries;*
   d. *Provide adaptive reuse of significant historic resources; or*
   e. *Provide recreational opportunities that are compatible with the surrounding Rural Area.*

RECOMMENDATION: We strongly support the addition to item a.

RECOMMENDATION: Add a new item f., such that:

> ***"e. Provide recreational opportunities that are compatible with the surrounding Rural Area~~.~~; or***
> ***f. Include home occupations and home industries."***

7. **R-326** *"Except as provided in R-327:*

a. New schools and institutions primarily serving rural residents shall be located in neighboring cities and rural towns;

b. New schools, institutions, and other community facilities primarily serving urban residents shall be located within the ((~~UGA~~)) Urban Growth Area; and

c. New community facilities and services that primarily serve rural residents shall be located in neighboring cities and rural towns, with limited exceptions when their use is dependent on a rural location and their size and scale supports rural character."

CONCERN: Siting of Urban facilities in the Rural Area: Policies must be strengthened to forbid siting and approval of urban- or largely urban-serving facilities in Unincorporated or Rural Areas. As an example, the following King County Code should be amended:

KCC 21A.08.060 A. Government/business services land uses. under "Specific Land Use" – "Utility Facility" by adding Note #38 as a Development Condition to all Zoning Designations.

Note #38: Utility Facilities consisting of regional surface water flow control and water quality facilities that are proposed to be wholly located within a Resource or Rural-designated area and associated in whole or in part with an existing or new proposed private residential development that is located wholly within an Urban-designated area are prohibited. Where such conditions are proposed for a new facility or where substantial facility or service area modifications to an existing regional surface water flow control and water quality facility are proposed, the requirements under Note #8 shall apply to Utility Facilities.

RECOMMENDATION: Add a new item "d." to R-326 as follows:

"d. New stormwater facilities primarily serving urban needs shall be located within the UGA."

COMMENT: There was an attempt to address this in CHAPTER 9, F-230, by adding a new subsection: "i. To the extent allowable under the Growth Management Act, the locational criteria in policy R-326." However, the problem actually stems from King County Code. We are on record recommending a change to: KCC 21A.08.060 A. Government/business services land uses. under "Specific Land Use" – "Utility Facility" by adding a Note #38 as a Development Condition to all Zoning Designations:

Note #38: Utility Facilities consisting of regional surface water flow control and water quality facilities that are proposed to be wholly located within a Resource or Rural-designated area and associated in whole or in part with an existing or new proposed private residential development that is located wholly within an Urban-designated area are prohibited. Where such conditions are proposed for a new facility or where substantial facility or service area modifications to an existing regional surface water flow control and water quality facility are proposed, the requirements under Note #8 shall apply to Utility Facilities.

8. **R-512** *"The creation of new Industrial-zoned lands in the Rural Area shall be limited to those that have long been used for industrial purposes, do not have potential for conversion to residential use due to a historic designation and that may be accessed directly from SR-169."*

QUESTION: How is this consistent with the proposed "Demonstration Project" at Pacific Raceways? If the land is in the Rural Area and not zoned "Industrial," then this policy should preclude consideration of such a "Demonstration Project."

9. **VI. Resource Lands / E. Mineral Resources**

CONCERN: "Demonstration Projects" must not be used to convert resource-based lands into housing subdivisions, as has been proposed in the past and continues to be proposed (e.g., Reserve Silica site in Ravensdale). King County Code Title 21A.55 -- DEMONSTRATION PROJECTS (.010 thru .030) should be strictly adhered to. The Code states the following:

1. ***The purpose of "Demonstration Projects" as to: "...evaluate alternative development standards and processes prior to amending King County policies and regulations" and "test the efficacy of alternative regulations that are proposed to facilitate increased quality of development and/or increased efficiency in the development review processes;..." and that "All demonstration projects shall have broad public benefit through the testing of new development regulations and shall not be used solely to benefit individual property owners seeking relief from King County development standards." (ref.: KCC Title 21A.55.010)***
2. ***The following should be specified: "5. The process through which requests for modifications or waivers are reviewed and any limitations on the type of permit or action; 6. The criteria for modification or waiver approval; 7. The effective period for the demonstration project and any limitations on extensions of the effective period;..." (ref.: KCC Title 21A.55.020)***
3. ***"Demonstration projects must be consistent with the King County Comprehensive Plan. Designation of a demonstration project and its provisions to waive or modify development standards must not require nor result in amendment of the comprehensive plan nor the comprehensive land use map." (ref.: KCC Title 21A.55.030)***

CHAPTER 4—HOUSING AND HUMAN SERVICES (No review)

CHAPTER 5—ENVIRONMENT

1. **I. Natural Environment and Regulatory Context / B. Policy and Regulatory Context / 2. Clean Water Act**

((~~E-106~~)) E-112b *"The protection of lands where development would pose hazards to health, property, important ecological functions or environmental quality shall be achieved through acquisition, enhancement, incentive programs and appropriate*

regulations. The following critical areas are particularly susceptible and shall be protected in King County:

a. Floodways of 100-year floodplains;

b. Slopes with a grade of 40 percent or more or landslide hazards that cannot be mitigated;

c. Wetlands and their protective buffers;"

CONCERN: As Wetland buffers must be protected, we remain concerned with the use of "in-lieu fees" in wetland buffer mitigation policies, because major developers, who typically can have a large impact on the nearby environment, shouldn't be able to "buy their way" out of important and necessary environmental requirements.

RECOMMENDATION: Do not use "In-lieu fees" as a mitigation method.

2. **IV. Land and Water Resources / A. Conserving King County's Biodiversity / 4. Fish and Wildlife Habitat Conservation Areas / b. Species and Habitats of Local Importance**

E-442 *"King County should conserve and restore salmonid habitats by ensuring that land use and facility plans (transportation, water, sewer, electricity, gas) include riparian and stream habitat conservation measures developed by the county, cities, tribes, service providers, and state and federal agencies. Project review of development proposals within basins that contain hatcheries and other artificial propagation facilities that are managed to protect the abundance, productivity, genetic diversity, and spatial distribution of native salmon and provide harvest opportunities should consider significant adverse impacts to those facilities."*

CONCERN: It was not apparent this was done in late 2013 / early 2014 when King County and Yarrow Bay negotiated and signed a Development Agreement for the 77-unit Reserves at Woodland upland from the Muckleshoot hatchery west of the City of Black Diamond.

3. **IV. Land and Water Resources / D. Aquatic Resources / 2. Wetlands**

E-488 *"King County should be a regional service provider of compensatory mitigation through the Mitigation Reserves Program by working with local cities, other counties, and state agencies to establish partnerships for implementation of inter-jurisdictional in-lieu fee mitigation."*

CONCERN: (See E-112b CONCERN under Item 1. above).

4. **IV. Land and Water Resources / F. Flood Hazard Management**

COMMENT: We support the Executive's proposed additions of Policies E-499q1 and 499q2 to "implement a comprehensive floodplain management program" and "continue to exceed the federal minimum standards stipulated by the National Flood Insurance Program for unincorporated areas," respectively.

5. **V. Geologically Hazardous Areas /F. Coal Mine Hazard Areas**

E-513 *"King County shall allow development within coal mine hazard areas if the proposal includes appropriate mitigation for identified, mine-related hazards using best available engineering practices and if the development is in compliance with all other local, state and federal requirements."*

CONCERN: This Policy incurs a risk to the Public which may not be justified. If anything, extraordinary study should be required before any such development is contemplated within these hazard areas, many of which are inadequately mapped.

6. **C. Achieving the Open Space System / Priorities**
CONCERN: Policies should not allow siting and approval of urban or largely urban-serving facilities in Unincorporated or Rural Areas as a tradeoff to secure additional Open Space and/or Trail Connections, as was partly done through the Development Agreement between the County and Yarrow Bay concerning the Reserves at Woodlands just west of the City of Black Diamond in early 2014. In this case the "urban-serving facility" was a massive Stormwater Retention "Lake" (~20-ac in size with a 40-ac footprint) to serve (and help enable) the adjacent Yarrow Bay Master-Planned Developments wholly contained with the City of Black Diamond.

CHAPTER 6—SHORELINE MASTER PROGRAM (No review)

CHAPTER 7—PARKS, OPEN SPACE, & CULTURAL RESOURCES

1. **I. Parks, Recreation and Open Space / B. Components of the Regional Open Space System / 6. Backcountry Trails**
P-118a (Backcountry trails; was **P-108**): Our ***CONCERNS/QUESTIONS*** regarding access to Taylor Mountain Park were not addressed:
QUESTION: Will King County Parks work with the City of Seattle Public Utility Department to ensure the SE 208th St access to Taylor Mountain Park via the Seattle Watershed will remain open to the Public for hiking and horseback riding? There also is a large off-road parking area at stake here, again, all on the Seattle Watershed property.

2. **I. Parks, Recreation & Open Space / C. Achieving the Open Space System / 2. Criteria**
P-124 (Trades for Open Space lands): Our ***CONCERN*** regarding allowing the siting and approval of urban or largely urban-serving facilities in Unincorporated or Rural Areas as a tradeoff to secure additional Open Space and/or Trail Connections was not addressed:
RECOMMENDATION: Add a third sentence to P-124 as follows: "Open Space and/or Trail Connections land trade agreements should not allow siting and approval of urban or largely urban-serving facilities in Unincorporated or Rural Areas." [Example: In early 2014, a Development Agreement between King County and YarrowBay concerning the Reserves at Woodlands just west of the City of Black Diamond permitted, in exchange for Open Space and some trail connections, an "urban-serving facility"--a massive Stormwater Retention "Lake" (~20-ac in size with a 40-ac footprint)--to serve (and help enable) the adjacent YarrowBay Master-Planned Developments wholly contained within the City of Black Diamond.]

CHAPTER 8—TRANSPORTATION

1. **T-102** *"As a transportation provider and participant in regional transportation planning, King County should support, plan, design, and implement an integrated, coordinated and balanced multimodal transportation system that serves the growing travel needs of the county safely, effectively and efficiently and promotes a decrease in the share of trips made by single occupant vehicles."*

CONCERN: Regional policies should explore the establishment of County road "networks," which know no jurisdictional boundaries (similar to State roads), funded by all County taxpayers. We reviewed the January 2016 recommendations of the County Bridges and Roads Task Force, but they inexplicably did not include establishing County road "networks." We urge the Council to to explore this concept and, therefore, we make the following RECOMMENDATION.

RECOMMENDATION: A second sentence should be added to T-102: "King County should explore establishing county-wide "road networks," which know no jurisdictional boundaries, or a Transportation Benefit District, both funded by all County taxpayers."

2. **T-208** *" King County shall not add any new arterial capacity in the Rural Area or ((~~natural resource lands~~)) Natural Resource Lands, except for segments of rural regional corridors that pass through ((~~rural or resource lands~~)) Rural Areas and Natural Resource Lands to accommodate levels of traffic between urban areas. Rural regional corridors shall be identified in the Transportation Needs Report (Appendix C) and shall meet all of the following criteria:*

a. *Connects one urban area to another, or to a highway of statewide significance that provides such connection, by traversing the Rural Area and Natural Resource Lands;*
b. *Classified as a principal arterial;*
c. *Carries high traffic volumes (at least 15,000 ADT); and*
d. *At least half of P.M. peak trips on the corridor are traveling to cities or other counties."*

CONCERN: Such "rural regional corridors," so designated "to accommodate levels of traffic between urban areas," cannot be sustainably funded simply by Rural Area property taxes. T-208 simply provides a means of identifying such "corridors," but provides no solutions. The same could be said for Policies T-403 and T-407 later in this chapter. They state solutions should be found, yet identify none.

RECOMMENDATIONS: Besides RECOMMENDATIONS given under T-102 above, to begin to address the Rural road usage/funding imbalance problem State laws (RCWs 36.78, 46.68,120-124, & 84.52) could be reviewed for opportunities to enable a more transportation-sustainable allocation of gas tax monies and provide more flexibility in revenues used. Working with the State, some mechanism should be developed, along with incentives, for cities to share revenues with Counties, possibly tied to growth that occurs in the absence of job opportunities. While we understand State law changes are outside the scope of the Comprehensive Plan update, policies herein should explore the Puget Sound Regional Council's (PSRC's) Transportation 2040

user-pays model by providing authority for usage charges, such as tolling key roads and methods to implement such strategies.

3. **T-212** *"King County shall work with cities for the annexation of county-((~~owned~~)) roadways and/or street segments located in the urban area and within or between cities, in order to provide for a consistent level of urban services on the affected roads and reduce the burden on unincorporated taxpayers that are supporting this urban infrastructure."*

RECOMMENDATION: We strongly support the Executive's recognition of the unsustainable funding problem for unincorporated transportation infrastructure.

4. **II. Providing Services and Infrastructure that Support the County Land Use Vision / ((~~H~~)) G. Concurrency**

CONCERN: Concurrency must have an enforcement mechanism, be linked to a public dialog, and include "regional" perspective among multiple jurisdictions. Infrastructure needs should be identified as early and accurately as possible, with implementation of identified improvements truly concurrent, otherwise the development approval must be delayed or denied.

5. **T-224** *"In the Rural Area, the concurrency test may include a provision that allows the purchase of Transferable Development Rights in order to satisfy transportation concurrency requirements."*

We wholly concur with Docket Item #15 to eliminate T-224 as TDRs should not be used to satisfy Concurrency testing anywhere within the Rural Area. Concurrency is a tool used to ensure infrastructure keeps up with development. The use of TDRs to satisfy Concurrency testing does nothing to help reach that goal and, in fact, can hinder reaching that goal. Consequently, we provide the following:

CONCERN: Within a failing Travel Shed purchasing TDRs should not allow granting of a Concurrency certificate, since traffic is still being added to a failing area. We asked KCDOT if examples exist where T-224 was applied? KCDOT's Ruth Harvey responded the Policy has never been applied. We have communicated with KC DNRP's Darren Greve regarding the TDR program. Consequently, we suggest the following RECOMMENDATIONS:

RECOMMENDATION: Eliminate Policy T-224, as TDRs should not be used to satisfy Concurrency testing anywhere within the Rural Area. Concurrency is a tool used to ensure infrastructure keeps up with development. The use of TDRs to satisfy Concurrency testing does nothing to help reach that goal and, in fact, can hinder reaching that goal.

RECOMMENDATION: Add a new Policy under Concurrency to address the item the KC Council added to "Scope of Work" as follows:

> ***T-xxx When conducting concurrency testing, King County shall collaborate with other jurisdictions to ensure infrastructure improvement strategies help prevent travel shed failure caused by unfunded city and state projects and traffic generated outside the unincorporated area.***

6. P. 8-38: **IV. Financing Services and Facilities that Meet Local and Regional Goals/ B. Road-Related Funding Capabilities.** Rural Area taxpayers should not be providing diminishing tax monies any more than they already are to enhance or expand

urban-to-urban travel corridors. King County should adopt a long-term vision that recognizes the reality of long-term road revenue shortfalls and should act proactively to avoid decreases in future funding levels. Policies herein should be based on such realities in order to be successful. Consequently, we recommend the following :

RECOMMENDATION: On p. 8-38, add the following to the end of the second paragraph:

"Without a critical revision to our statewide tax code or the State gas tax jurisdictional distribution formula being modified to reflect the reality that many County roads are used by Urban commuters, it is highly predictable that the tax base for Roads funding will never return to pre-recession values in real terms."

CHAPTER 9—SERVICES, FACILITIES, & UTILITIES

1. **F-230** Please see ***RECOMMENDATION*** under **R-326c** above.

2. **F-236** *"In the Rural Area, King County land use and water service decisions support the long-term integrity of Rural Area ecosystems. Within the Rural Area, individual private wells, rainwater catchment, Group B water systems, and Group A water systems are all allowed. If an existing Group A water provider cannot provide direct or indirect service to new development per the exceptions in Policy F-233, a new public water system or private well may be established if it is owned or operated by the following, in order of preference:*

   a. *By a satellite management agency approved by the state Department of Health under contract with the Group A system in whose service area the system is located, provided that the existing Group A water system remains responsible for meeting the duty to serve the new system under RCW 43.20.260; and*
   b. *By a satellite management agency or an existing Group B system approved by both the State Department of Health and King County. If service cannot be obtained by means of the above stated options, then water service may be obtained by creation of a new system, use of private wells or rainwater catchment. All new public water systems formed in the Rural Area shall connect to the Group A water system in whose service area the new system is located when direct service becomes available."*

CONCERN: Small Group B water systems should not be required to connect to Group A water systems when they become available.

RECOMMENDATION: In the last sentence of subitem "b." change "shall" to "may."

3. **F-240** *"King County shall require any new or expanding Group B water system to have a totalizing source meter and make information from the meter available upon request of King County."*

CONCERN: Our biannual Citizen Surveys, which have been conducted and published over the past decade, continually have indicated Rural Area residents do not want their wells metered.

RECOMMENDATION: Strike F-240 in its entirety.

CHAPTER 10--ECONOMIC DEVELOPMENT

1. **Overarching comments:**

CONCERN: The County does not have in place an Economic Development Organization to coordinate, execute, and implement policies and deploy resources.

RECOMMENDATION: The Executive should establish a position for Economic Development Director within his Office, who is assigned an ongoing mission to foster economic development vision throughout the County and interacts with the Economic Development Council of Seattle and King County.

CONCERN: The chapter should include both aquaculture and fisheries.

2. **ED-103** *King County policies, programs, and strategies shall recognize the importance of, and place special emphasis on, start-up companies as well as retaining and expanding homegrown firms in basic industries that bring income into the county and increase the standard of living of ((~~our~~)) the County's residents.*

RECOMMENDATION: Add the following immediately after "...in basic industries":

"...that demonstrate their innovativeness, intellectual property development, production, and/or services and..."

RECOMMENDATION: Also add the word "may" between "that" and "bring."

3. **ED-213** *"King County shall coordinate with a broad range of partners, organizations, businesses and public sector agencies to support the development of business innovation districts and related initiatives in lower income communities, with an emphasis on food innovation districts, in particular. Food innovation districts may encompass anchor food businesses, small food business incubation, food industry education and training, markets and food hubs, food programs and partnerships with urban and rural food growers and cooperatives, and food aggregation and processing."*

RECOMMENDATION: Add the following sentence to the end of ED-213:

"Food may include sourcing from land and marine sources, such as aquaculture, aquaponics, and water bodies served by fishing means."

4. **ED-302** *"King County supports the King County Workforce Development Council, established by the federal ((~~Workforce Investment Act of 1998~~)) Workforce Innovation and Opportunity Act of 2014, composed of high-level representatives from business, local government, labor, education and training institutions, advocacy organizations, and human service providers. The purpose of the council is to coordinate and improve employment, training, literacy, and vocational rehabilitation programs to meet the needs of workers and employers. King County will work with the Workforce Development Council to emphasis the need in and highlight opportunities for communities that have the highest unemployment rates in the region."*

RECOMMENDATION: Add the following sentence at the end of ED-302:

"This includes programs for self-employment and self-directed employment opportunities seeking business marketing skills."

5. **ED-404** *"Through local subarea planning and partnerships with other agencies and organizations, King County should use zoning, incentives, or other measures to ((~~ensure that an appropriate proportion of the land adjacent or near to major public~~*

~~infrastructure facilities is used to capitalize on the economic benefit of that infrastructure. The surrounding land uses should be compatible with the economic development uses or a buffer provided as necessary~~)) capitalize on the economic benefit of infrastructure projects, in a manner consistent with existing and forecasted land uses, and other locational criteria."

CONCERN: ED-404 should not be used as a pretext to conceiving and approving "Demonstration Projects" in the Rural Area even if those sites are near major arterials, since most already are congested during ever-longer AM and PM traffic commutes. For example, the Cedar Hills Subarea is near SR-169, but the wait at the intersection traffic light is long and once successfully navigated, one sits in an 8-mile-long backup just to reach the I-405 gridlock in both north and south directions, and then the journey begins to major business centers of Seattle, Tacoma, Bellevue, and Everett.

CHAPTER 11—COMMUNITY SERVICE AREA PLANNING (No comments)

CHAPTER 12— IMPLEMENTATION

1. **I-203** Item b.

COMMENT: This appears to ameliorate our past and ongoing concerns related to the proposed Reserve Silica Demonstration Project. We strongly support such a change. The Executive has not supported this project, nor have we. Members of the Public in our area also strongly oppose this project. It never has been consistent with other policies in the Comprehensive Plan. The County should follow its standard methods for transitioning mining sites when resource extraction is complete, which we and the Public do support, with the land reverting to the underlying zoning as code and practice has long required. This best protects the County's forest and rural resources. [Please also see our related detailed comments above under Chapter 3, VI. Resource Lands / E. Mineral Resources (listed as Item 9.)]

Technical Appendices

Land-Use and Zoning Amendments (No comments.)

Technical Appendix A—CAPITAL FACILITIES (No review.)

Technical Appendix B—HOUSING (No review.)

Technical Appendix C—TRANSPORTATION (No comments.)

Technical Appendix C1—TRANSPORTATION NEEDS REPORT (TNR)

1. ***CONCERN:***

A great dichotomy exists between growth targets, which are not forecasts, and identifying and addressing transportation needs. Such a gap complicates planning efforts and, as more development occurs, could result in inadequate infrastructure to meet GMA Concurrency requirements. Clearly realistic forecasts, not allocated growth targets, should be the primary information used in Comprehensive Planning and identification of infrastructure needs.

The PSRC states: "No direction is given in the GMA as to the methodology for setting growth targets. Cities and counties have a duty to accommodate the targets, but are provided broad discretion on how they do so." ("Growth Management by the Numbers," July 2005, p. 11.) This can result in an opaque process through which cities utilize selective criteria to furnish information they deem relevant or advantageous.

Further, jurisdictions can grossly exceed their growth targets. This was the case in 2012, as a small city in Southeast King County, in one of the fastest growing and heavily congested areas in the State, with a growth target of 1,900 new residences, signed Development Agreements that would eventually bring an additional 6,050 residences, or approximately 20,000 people, into the city. This scenario could easily repeat itself throughout the county and state as long as it remains to each county and its cities to determine what is relevant in developing such projections.

RECOMMENDATION:

Although outside this Comprehensive Plan update, potential solution paths for discussion could include changes in State law to establish criteria that will ensure realistic forecasting, not minimum growth targets, inform Comprehensive Planning and Transportation Needs Reports. The following RCWs could provide such opportunities:

RCW 43.62 -- DETERMINATION OF POPULATIONS -- STUDENT ENROLLMENTS

43.62.035 -- Determining population -- Projections

RCW 36.70A -- GROWTH MANAGEMENT -- PLANNING BY SELECTED COUNTIES & CITIES.

36.70A.040 -- Who must plan -- Summary of requirements–Development regulations must implement comprehensive plans [Requires cities and unincorporated areas to plan for future growth through formation of Comprehensive Plans. In King County, Comprehensive Plans are reviewed/revised every four years with the current target year of 2025. Many King County cities currently are updating their Comprehensive Plans to be completed by June 2015.]

Technical Appendix C2—REGIONAL TRAILS NEEDS REPORT (No comments)

Technical Appendix D—Growth Targets and Urban Growth Area (No comments)

Technical Appendix R—PUBLIC OUTREACH FOR DEVELOPMENT OF COMPREHENSIVE PLAN (No comments)

Attachments

Attachment—SKYWAY-WEST HILL ACTION PLAN (No review)

Attachment—AREA ZONING STUDIES

1. **Cedar Hills/Maple Valley--Future Subarea Plan**:
   CONCERN: The greater community (unincorporated area councils, community organizations, rural residents, and rural business owners, including forest and farm owners, and rural communities, towns, and cities) must be involved with such Subarea planning, not just the owners of the twelve specific properties identified. Future changes in this subarea could have major impacts on the quality of life of surrounding residences and greatly increase traffic on Cedar Grove Rd, Lake Francis Rd, and SR-169.
   RECOMMENDATION: Provide the Public with the formal process the County uses to define Subarea Plans.

Attachment--DEVELOPMENT CODE STUDIES

1. ***CONCERN: There is a need for a* Development Code Study #X --**
   Scope of Work: Consider code changes regarding the definitions of "Home Industry" and "Home Occupation."
   Background: This requested development code review is in response to expressed concerns about businesses being set up in the Rural Area that are wholly incompatible with the surrounding dwellings and neighborhoods. Examples include Marijuana growing, processing, and distribution facilities and operations. The following is County Code as it currently exists:

   "21A.06 TECHNICAL TERMS AND LAND USE DEFINITIONS
   21A.06.605 Home industry. *Home industry: a limited-scale sales, service or fabrication activity undertaken for financial gain, which occurs in a dwelling unit or residential accessory building, or in a barn or other resource accessory building and is subordinate to the primary use of the site as a residence. (Ord. 13022 § 7, 1998: Ord. 10870 § 161, 1993).*
   21A.06.610 Home occupation. *Home occupation: a limited-scale service or fabrication activity undertaken for financial gain, which occurs in a dwelling unit or accessory building and is subordinate to the primary use of the site as a residence. (Ord. 13022 § 8, 1998: Ord. 10870 § 162, 1993)."*

   Discussion: The 2008 Comprehensive Plan Update changed the definitions of both "Home Industry" and "Home Occupation." The pre-2008 condition that such activities are permitted only as *"… subordinate to the use of the site as the primary residence of the business owner."*

The purpose of this change is to narrow a loophole where a residence is converted to a business establishment without maintaining *"the primary use of the site as a residence."*

It should be noted that should this change be adopted it would be somewhat more lenient than the associated language pre-2008, which mandated that a "Home Industry" and "Home Occupation" was permitted in an RA, F, or A zone only as accessory to the primary use of the site as a residence of the *"property owner."* Also, should this change be adopted, a renter or a property owner could operate a "Home Industry" and "Home Occupation" as long as the site is her/his actual *"primary residence."*

RECOMMENDATION: Amend K.C.C. Titles 21A.06.605 and 21A.06.610 as follows:

*"**21A.06.605 Home industry.** Home industry: a limited-scale sales, service or fabrication activity undertaken for financial gain, which occurs in a dwelling unit or residential accessory building, or in a barn or other resource accessory building and is subordinate to the ~~primary~~ use of the site as ~~a~~ the primary residence of the business owner. (Ord. 13022 § 7, 1998: Ord. 10870 § 161, 1993)."*

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Attachment—POLICY AMENDMENT ANALYSIS MATRIX (No comments)

Attachment—PUBLIC PARTICIPATION REPORT (No comments)

Environment-related Comments on Proposed 2016 KCCP Update

Chapters

CHAPTER 5—ENVIRONMENT

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b. Slopes with a grade of 40 percent or more or landslide hazards that cannot be mitigated;

c. Wetlands and their protective buffers;"

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CONCERN: (See E-112b CONCERN under Item 1. above).

4. **IV. Land and Water Resources / F. Flood Hazard Management**

COMMENT: We support the Executive's proposed additions of Policies E-499q1 and 499q2 to "implement a comprehensive floodplain management program" and "continue to exceed the federal minimum standards stipulated

by the National Flood Insurance Program for unincorporated areas," respectively.

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2. **I. Parks, Recreation & Open Space / C. Achieving the Open Space System / 2. Criteria**

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RECOMMENDATION: Add a third sentence to P-124 as follows: "Open Space and/or Trail Connections land trade agreements should not allow siting and approval of urban or largely urban-serving facilities in Unincorporated or Rural Areas." [Example: In early 2014, a Development Agreement between King County and YarrowBay concerning the Reserves at Woodlands just west of the City of Black Diamond permitted, in exchange for Open Space and some trail connections, an

"urban-serving facility"--a massive Stormwater Retention "Lake" (~20-ac in size with a 40-ac footprint)--to serve (and help enable) the adjacent YarrowBay Master-Planned Developments wholly contained within the City of Black Diamond.]

Economic-related Comments on Proposed 2016 KCCP Update

Chapters

CHAPTER 3—RURAL AREA AND NATURAL RESOURCE LANDS

1. **R-324** *"Nonresidential uses in the Rural Area shall be limited to those that:*
    a. *Provide convenient local products and services for nearby Rural Area residents;*
    b. *Require location in a Rural Area;*
    c. *Support natural resource-based industries;*
    d. *Provide adaptive reuse of significant historic resources; or*
    e. *Provide recreational opportunities that are compatible with the surrounding Rural Area.*

    RECOMMENDATION: As an addition to our previously submitted comments on R-324 add a new item f. to the above list, such that:

    "e. Provide recreational opportunities that are compatible with the surrounding Rural Area~~.~~; or

    f. Include home occupations and home industries."

CHAPTER 10--ECONOMIC DEVELOPMENT

1. **Overarching comments:**

    CONCERN: The County does not have in place an Economic Development Organization to coordinate, execute, and implement policies and deploy resources.

    RECOMMENDATION: The Executive should establish a position for Economic Development Director within his Office, who is assigned an ongoing mission to foster economic development vision throughout the County and interacts with the Economic Development Council of Seattle and King County.

    CONCERN: The chapter should include both aquaculture and fisheries.

2. **ED-103** *King County policies, programs, and strategies shall recognize the importance of, and place special emphasis on, start-up companies as well as retaining and expanding homegrown firms in basic industries that bring income into the county and increase the standard of living of ((~~our~~)) the County's residents.*

    RECOMMENDATION: Add the following immediately after "...in basic industries":

    "...that demonstrate their innovativeness, intellectual property development, production, and/or services and..."

    RECOMMENDATION: Also add the word "may" between "that" and "bring."

3. **ED-213** *"King County shall coordinate with a broad range of partners, organizations, businesses and public sector agencies to support the development of business innovation districts and related initiatives in lower income communities, with an emphasis on food innovation districts, in particular. Food innovation districts may encompass anchor food businesses, small food business incubation, food industry education and training, markets and food hubs, food programs and partnerships with urban and rural food growers and cooperatives, and food aggregation and processing."*

    RECOMMENDATION: Add the following sentence to the end of ED-213:

    "Food may include sourcing from land and marine sources, such as aquaculture, aquaponics, and water bodies served by fishing means."

4. **ED-302** *"King County supports the King County Workforce Development Council, established by the federal ((~~Workforce Investment Act of 1998~~)) Workforce Innovation and Opportunity Act of 2014, composed of high-level representatives from business, local government, labor, education and training institutions, advocacy organizations, and human service providers. The purpose of the council is to coordinate and improve employment, training, literacy, and vocational rehabilitation programs to meet the needs of workers and employers. King County will work with the Workforce Development Council to emphasis the need in and highlight opportunities for communities that have the highest unemployment rates in the region."*

RECOMMENDATION: Add the following sentence at the end of ED-302: "This includes programs for self-employment and self-directed employment opportunities seeking business marketing skills."

5. **ED-404** *"Through local subarea planning and partnerships with other agencies and organizations, King County should use zoning, incentives, or other measures to ((~~ensure that an appropriate proportion of the land adjacent or near to major public infrastructure facilities is used to capitalize on the economic benefit of that infrastructure. The surrounding land uses should be compatible with the economic development uses or a buffer provided as necessary~~)) capitalize on the economic benefit of infrastructure projects, in a manner consistent with existing and forecasted land uses, and other locational criteria."*

CONCERN: ED-404 should not be used as a pretext to conceiving and approving "Demonstration Projects" in the Rural Area even if those sites are near major arterials, since most already are congested during ever-longer AM and PM traffic commutes. For example, the Cedar Hills Subarea is near SR-169, but the wait at the intersection traffic light is long and once successfully navigated, one sits in an 8-mile-long backup just to reach the I-405 gridlock in both north and south directions, and then the journey begins to major business centers of Seattle, Tacoma, Bellevue, and Everett.

GREEN VALLEY/LAKE HOLM ASSOCIATION

August 6, 2016

To: King County Council

CC:
Ivan Miller - Comprehensive Planning Manager
John Taylor - Assistant Director of DNRP Land and Water Resources Division
Alan Painter - Manager of the Community Service Area

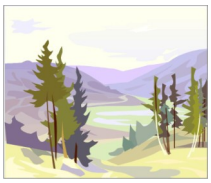
Subject: 2016 update to King County Comprehensive Plan, Chapter 5, E497

In September 2014 the newly formed Green Valley/Lake Holm Association, an association within the SE King County CSA, prepared a position paper (see attached) regarding protection of rural wells and springs. In this paper we recommended specific actions to ensure our essential rural wells and springs are protected from decreased quality or quantity by any land use change or water resource activity.

In 2015 the Green Valley/Lake Holm Association, through volunteer committee work, research, and meetings with John Taylor and Alan Painter prepared recommendations for the 2016 King County Comprehensive Plan update for further protection of rural water systems throughout the county. We were pleased when our recommendations were included in the Executive's proposed KCCP update, Chapter 5, E-497.

We ask the Council to support these recommendations as stated in the proposed E-497 changes. Without adequate quality and quantity of potable water, I'm sure you would agree that properties in the unincorporated areas of the county are of little value to their owners and King County alike. People everywhere depend on clean, safe water.

Thank you for your consideration,
Green Valley/Lake Holm Association
Gwyn Vukich - President



GREEN VALLEY/LAKE HOLM ASSOCIATION

Mike Morris, President
Andy Benedetti, Vice President
Elizabeth Chadwick, Treasurer

Fran Seagren, Secretary
Judith Carrier, Officer At-Large
E-Mail: GVLHAssn@gmail.com

September 24, 2014

POSITION PAPER REGARDING PROTECTION OF RURAL WELLS AND SPRINGS
(PRIVATE AND CLASS B WATER SYSTEMS)

SITUATION: Our concern is the protection of rural wells and springs. After several years of pleading with Washington State and King County agencies, we feel our water systems are still vulnerable.

Since 2011, a number of rural residents downstream of Black Diamond have been involved in the public review of the massive development projects wherein upwards of twenty-thousand new residents will be added to the small rural town of Black Diamond. In addition, the adjacent Reserve at Woodlands King County development project will add seventy-seven homes with individual septic systems and a lake-sized storm water detention pond servicing both developments.

Soliciting State and County agencies to protect our rural water systems from these development impacts resulted in little or no help. Their answers included: we don't have budget, or it's not our responsibility. A small Class B system, whose neighbor plumbed into their main water line, received similar answers when requesting assistance. To compound the problem, in the spring of 2014, without thorough studies and without informing rural residents of potential impacts to their drinking water systems, King County pumped flood waters from Horseshoe Lake into a gravel pit instead of an engineered storm water detention pond.

Such large scale urbanization with major clear cutting, septic tanks, and urban chemical leaching into soils clearly could have significant impact on ground water flows and put at risk our rural wells and springs. Adding the periodic threats of smaller actions further increases these risks.

Despite being comprehensive and well-intended, current state and county laws are inadequate to protect private and Class B water systems. For example, in state law chapter 246-291 WAC, there is no water system plan to protect our rural water systems beyond a small protective radius around the water source. King County Title 13 and other regulations and programs do not provide for specific protections for rural water systems receiving ground water from surrounding lands that may be affected by development. (*see attachment #1*).

Without assurances of protection and full mitigation we feel vulnerable and fear violation.

PROPOSALS: To receive assurance our essential rural wells and springs are protected from decreased quality or quantity by any land use change or water resource activity, we propose the following:

Risk assessment using best science: In any land use change or water resource activity approval process, there should be a condition included to identify and provide periodic impartial risk assessments, using best science techniques, for the rural water systems which could be affected by the proposed action. Depending on the level of risks, appropriate quality and quantity monitoring should be conducted plus potential impact mitigation identified, e.g., water purification systems or alternative water sources.

***Communication and coordination with rural property owners*:** Early in the approval process, all rural property owners whose wells or springs could be affected by the proposed action should be notified and involved when addressing potential risks and when considering associated monitoring and mitigations. Ongoing property owner support should be provided by coordinated and funded government agencies with well-defined and communicated responsibilities, so rural property owners know where to go for assistance with water issues.

REQUEST: We request that the Growth Management Act, the County and City Comprehensive Plans, and associated regulating documents be updated per our proposals and adhered to meticulously--the goal being to maintain the distinct character of our rural areas and to protect our chosen rural life style.

See attached for details and printable position paper – click here

RESOLUTION NO. 483

A RESOLUTION OF THE WOODINVILLE CITY COUNCIL SUPPORTING ENFORCEMENT OF KING COUNTY ZONING CODES; SUPPORTING INCREASED PROTECTIONS OF AGRICULTURAL AND RURAL LANDS IN AND SURROUNDING THE SAMMAMISH RIVER VALLEY; AND SUPPORTING TRANSIT IMPROVEMENTS IN THE SAMMAMISH VALLEY AND THE CITY OF WOODINVILLE.

WHEREAS, King County's 2016 Comprehensive Plan Amendment process is underway and includes a study of wine, agriculture, and tourism in the Sammamish River Valley; and

WHEREAS, Sammamish River Valley wine tourism relies in part on unobstructed views of working agricultural land to draw wine tourists; and

WHEREAS, agricultural land is a nonrenewable resource; and

WHEREAS, the citizens of King County voted in 1979 to fund a Farmland Preservation Program that includes the Sammamish River Agricultural Production District for the purpose of preserving farmland, agriculture, and open space (see

http://www.kingcounty.gov/depts/dnrp/wlr/sections-programs/rural-regional-services-section/agriculture-program/farmland-preservation-program.aspx); and

WHEREAS, the average price of high-quality farmland in Washington has increased 25 percent in the last year, and nearly 50 percent in the last four years (*Seattle Times*, "Latest Washington real-estate gold rush: farms," July 20, 2016, http://www.seattletimes.com/business/real-estate/latest-washington-real-estate-gold-rush-farms/); and

WHEREAS, Washington has lost more than a million acres of farmland between 1997 and 2012 (https://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_State_Level/Washington/st53_1_001_001.pdf); and

WHEREAS, King County Council studies to consider loosening restrictions on Rural and Agricultural land in the Sammamish Valley help fuel land speculation, resulting in further price increases that make agricultural land too expensive for farmers (*Attachment 1); and*

WHEREAS, development has already made some Sammamish Valley agricultural acreage too wet to farm *(Attachment 2)*; and

WHEREAS, King County has modest protections such as SO-120 (the Agricultural Production Buffer Special District Overlay, KCC 21A.38.130) to prevent upslope development from harming agricultural land but these protections have proven inadequate (*Attachment 3*); and

WHEREAS, Washington's Growth Management Act Goal 8, RCW 36.70A.020(8), encourages conservation of agricultural lands and discourages incompatible uses *(Attachment 4)*; and

WHEREAS, King County's Countywide Planning Policy DP-57 discourages incompatible land uses adjacent to designated Resource Lands including agricultural land *(Attachment 5)*; and

WHEREAS, The Washington Supreme Court has held that agricultural land must be protected under the Growth Management Act, *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543 (2000), recognizing that "allowing incompatible uses nearby impairs the viability of the resource industry" (referring to agriculture), *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38 (1998); and

WHEREAS, King County's Countywide Planning Policy DP-50 requires that new nonresidential uses in the Rural Area be limited to uses that are demonstrated to serve the Rural Area (*Attachment 6*); and

WHEREAS, a small number of wine tasting rooms and retail sales businesses—correctly characterized as urban uses—operate in unincorporated King County in violation of King County code, are built without environmental or building permits, disrupt traffic, fail to provide adequate parking, increase storm water runoff, and thus compete unfairly with law-abiding businesses (King County Code Enforcement complaints ENFR15-0287, ENFR15-0486, ENFR13-0143, ENFR15-0538, ENFR15-0525, and ENFR12-0239); and

WHEREAS, the sprawling style of these illegal uses, environmental harm to nearby agricultural land, and availability of suitable land inside the Woodinville city limits for such uses mean that expansion of the Urban Growth Boundary in order to accommodate such uses is unnecessary and contrary to the criteria identified in Countywide Planning Policies DP-16 and DP-17 *(Attachment 7)*; and

WHEREAS, Woodinville has ample vacant and redevelopable land in its retail and industrial zones *(Attachment 8)*; and

WHEREAS, the Vision Statement in Woodinville's Comprehensive Plan recognizes the economic and cultural importance of healthy farmland and a healthy agricultural industry in the Sammamish Valley *(Attachment 9)*; and

WHEREAS, the presence of approximately 100 wineries and tasting rooms, plus numerous breweries, distilleries, and cideries inside the Woodinville city limits demonstrates that wineries and tasting rooms can thrive while complying with GMA-mandated zoning and permitting requirements; and

WHEREAS, parking is insufficient during peak tourism hours in the City's wine districts;

NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The Woodinville City Council respectfully requests that the King County Council take actions that will ensure enforcement of current code in and around the Sammamish Valley.

As an underlying guide to implementation, the Woodinville City Council respectfully requests that the law-abiding citizens, communities, and environment of King County, not the parties violating code, be regarded as the "customers" of code enforcement (*Attachment 10*).

As another guide to implementation, the Woodinville City Council respectfully requests that code enforcement shift its standards closer to both the letter and spirit of the codes. This would end such practices as regarding a cot as proof of residency.

The Woodinville City Council regards code enforcement as a necessity for the continued existence of agriculture in the Sammamish River Valley. We regard any discussion of relaxing code as compounding what is already a very real threat to the continued viability of Sammamish River Valley agriculture.

Section 2. The Woodinville City Council respectfully requests that King County Council not only preserve all Agricultural zoning, but also increase the protections on upslope Rural land, because the current protections have proved inadequate.

Agriculture has value in its own right, as affirmed by King County voters when they approved the Farmland Preservation Program in 1979. It is also the basis for Woodinville wine country tourism: without the country aesthetic that the farmland provides, there is no Woodinville wine country.

Preserving Agricultural zoning is necessary, but not sufficient. Upslope development has already made some Agricultural acreage too wet to farm *(Attachment 2)*. This indicates that the existing protections that apply to nearby Rural land, such as SO-120, are insufficient and should be strengthened, broadened in the scope of development and permitted uses covered, and extended to cover more geographic area. Preserving farmland, agriculture, and farmers means that current proposals for Rural land, including retail overlays, relaxed permitted uses, Urban Growth Boundary amendments, rezones, relaxed definitions, relaxed standards, and any other changes that allow urban activities upslope of Agricultural zoning should be rejected by the King County Council on the grounds that they have already harmed, and are likely to further harm, agriculture and farmers in the Sammamish Valley.

Section 3. The Woodinville City Council respectfully requests that the King County Council preserve views of working agricultural land from the roadways in the Sammamish River Valley.

Unobstructed views of productive farmland are essential to the ability of the Sammamish Valley to draw tourists; places like Seattle already have numerous production wineries much closer to the homes or lodgings of wine tourists. Therefore, developing the parcels along the roadside between Woodinville and Redmond not only damages the feasibility of using the land for agricultural uses by increasing runoff, but also erases tourism value of the Sammamish River Valley by obscuring the views that attract tourists.

Section 4. The Woodinville City Council respectfully requests that the King County Council set a higher bar for initiating consideration of relaxation of existing protections for the Sammamish River Valley every four years, as even such studies destabilize agricultural land prices, thereby jeopardizing agriculture in the Valley (*Attachment 1*).

Support for relaxing codes is restricted to a small number of developers, real estate brokers, land speculators, and businessmen who are unwilling to pay urban prices and undertake urban permitting processes in their quest to open urban businesses. Accommodating the wishes of this small number of individuals jeopardizes the livelihood of farmers and the environment that are the basis of the tourism and wine economy in the Sammamish Valley.

Section 5. The Woodinville City Council commits to continuing to make Woodinville a hospitable host for manufacturing and sale of alcoholic beverages.

The City of Woodinville hosts approximately 100 wineries, breweries, distilleries, and tasting rooms inside its city limits – a strong indication that its land use codes are a good fit for the industry. The City is currently reviewing its zoning code, permitted uses, and permitting processes to identify opportunities for making the area inside the city limits (inside the Urban Growth Boundary) even more inviting to the wine and beverage industries.

The overwhelming majority of the wineries and tasting rooms in Woodinville wine country operate successfully within the Woodinville city limits. With nearly 190 acres of vacant and redevelopable commercial land inside the city limits, there is ample space for every winery in the state of Washington to have a tasting room inside the Woodinville city limits (*Attachment 8*).

The commercial or industrial-scale manufacture and sale of wine, as with any other product being manufactured and sold at such a scale and at a location other than where the raw materials are grown, are fundamentally urban activities. The fact that so many wineries are conducting these urban activities successfully in Woodinville is proof that the industry can not only survive, but thrive in an urban setting. The same is true of tasting rooms; they are fundamentally retail points of sale, and therefore an urban activity.

Section 6. The Woodinville City Council respectfully requests that the King County Council explore ways to provide public transit and alleviate parking shortages in Woodinville's wine districts.

No public transit serves Woodinville's wine districts. This forces tourists to visit by private vehicles, causing even more demand for parking than most commercial districts experience. Woodinville receives many requests by tourist-oriented business owners for transit service. We are grateful for Metro's current Alternative Services study. We ask that the King County Council also consider adding fixed-route service serving Woodinville's Park & Ride and covering Woodinville's downtown, Hollywood, West Valley, and North Industrial wine districts. This fixed route service would complement King County's ongoing efforts to better utilize existing park & ride facilities by transporting tourists, local employees, citizens, and transit-dependent individuals from available remote parking to their destinations throughout the City.

RESOLVED this 2nd day of August 2016.

Bernard W. Talmas

Bernard W. Talmas, Mayor

ATTEST/AUTHENTICATED:

Jennifer Kuhn

Jennifer Kuhn, City Clerk, CMC

Summary of Available/Recently Sold Property In Woodinville Wine Country

Current Owner	Property Address	Parcel Number	Acres	Assessor's Appraised Value	Asking Price	Asking Price Differential	Listing Price Source	Sale Price
Walker	13229 Woodinville Redmond Rd NE	2326059024	4.00	$557,000	$10,000,000	1695.33%	Annie McKenzie-Mutch (Agent)	
Carlson	15132 148th Ave NE	3407700011	4.15	$371,000	$2,600,000	600.81%	Windemere Real Estate	
Brown	16725 140th Ave NE	1026059031	7.98	$715,000	$3,000,000	319.58%	North Pacific Properties	$1,850,000
Zante	13425 NE 171st St	1026059030	14.90	$1,022,000	$7,000,000	684.93%	Zante family comments to Woodinville Planning Commission	
Leone	14701 148th Ave NE	1526059051	1.48	$445,000				$995,000

Comment originally submitted to the King County Council for the 2012 Comprehensive Plan update:

THE ROOT CONNECTION CSA
13607 Woodinville-Redmond Rd NE
PO Box 267
Woodinville Wa 98072
www.rootconnection.com

December 18, 2011

Re: Proposal to move the Urban Growth Boundary in the Sammamish Valley

I have been a farmer and farm manager in the Sammamish Valley for over 26 years. There are specific reasons why I am opposed to moving of the UGB, which I will address here.

Any change in density of lands surrounding farmlands to farms has an immediate and detrimental effect on farming production:

A number of years ago, new houses were built on the hill directly across from the Root Connection property, along with a new road leading up to those houses. The buildings, roads and driveways have been the direct cause of an extreme increase in runoff from the hill, which flows via piping underneath the Wood-Red Rd. and empties directly onto our farmland. This has resulted in appx. one-fourth of our acreage now being too wet to farm. ***Since our average annual production of vegetables on this farm is 11,250 lbs per acre, this means that 45,000 lbs (22.5 tons) of much needed food production has been lost – forever.***

Since the land this farm is on is in the Farmland Preservation Program, this loss is not only the farmer's loss, but a loss to all the citizens of King County who voted to tax themselves so that food could be produced here.

Similar problems have occurred at another property I manage, a 47 acre piece on the corner of the Wood-Red Rd. and NE 124th St. (commonly referred to as the "South 47"). Citizens formed an LLC to purchase this property, which was then put into the Farmland Preservation Program. The motivation was to make sure this property would always be farmed. Unfortunately, due to increased building and commercial activities surrounding this farm, 9 acres are now too wet to farm, and drainage of the whole parcel has been affected.

When will we stop using the lands that are needed to feed our population as a dumping ground for water run-off and the resulting contamination that results? Moving the UGB will destroy the surrounding farmlands, and it will not take long. We cannot keep nipping at the ends of the valley and expect the middle to survive. A healthy ecosystem has to maintain a certain size in order to function. Some of these properties considered in this ill-advised plan have wetlands or are adjacent to wetlands. I'm sure that proposals for dealing with that would be to push that water and runoff from increased building and pavement onto the neighboring farms, which would then cause flooding and pollution. Anyone who says this won't happen is not a farmer and really doesn't know what they are talking about. This would also leave the door open for these properties to be annexed to Woodinville, and we can see how well that worked out for the farmlands that used to exist in the valley.

Yes, yes, most folks who are wary of encroachment on farmland areas would bemoan the loss of "open space", "quality of life", "rural atmosphere", etc. And while these reasons are important for citizens who live in the area, as well as businesses such as some wineries and restaurants that depend on a somewhat picturesque landscape, the most important reason of all is to protect our food security in local food production.(As in "Agricultural Production District".)

If we can stop infringing on the APD, we will be able to protect the lands that remain. ***There is enough farmland available in the Sammamish Valley to produce over 12 million pounds of vegetables annually, enough to provide more than 80,000 people with 150 lbs each year.*** We just need some patience. We almost lost all our farmers 30 years ago, and it's taken that long for new farmers to make some of these lands productive again. It may take another 30 years before the majority of the parcels are actively farmed. Do we have to go the way of all those other valleys where the farmlands have been destroyed? That's how it happens – little by little – can we have the wisdom to learn from the past and be different?

Respectfully,

Claire Thomas
President, Roots of Our Times Cooperative

King County agricultural buffer

SO-120: Agricultural Production Buffer SDO

Summary

An agricultural production buffer special district overlay provides a buffer between agricultural and upslope residential land uses.

Story

Amended by Ord. 15028, 10/11/2004 (Map)
Amended by Ord. 15032, 10/11/2004 (Language)
Amended by Ord. 15326, 11/25/2005 (Map)

Description

Agricultural Production Buffer SDO

Development Condition Text

21A.38.130 Special district overlay - agricultural production buffer.

A. The purpose of the agricultural production buffer special district overlay is to provide a buffer between agricultural and upslope residential land uses. An agricultural production buffer special district overlay shall only be established in areas adjacent to an agricultural production district and zoned RA.

B. The following development standard shall apply to residential subdivisions locating in an agricultural production buffer special district overlay: Lots shall be clustered in accordance with K.C.C. 21A.14.040 and at least seventy-five percent of a site shall remain as open space, unless greater lot area is required by the Seattle-King County department of public health. (Ord. 15032 § 50, 2004: Ord. 12823 § 8, 1997).

http://www.kingcounty.gov/depts/permitting-environmental-review/gis/DevConditionsSearch/SDO/SO-120.aspx

Washington Growth Management Act

RCW 36.70A.020

Planning goals.

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

. . .

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

King County Countywide Planning Policies

DP-57 Discourage incompatible land uses adjacent to designated Resource Lands to prevent interference with their continued use for the production of agricultural, mining, or forest products.

King County Countywide Planning Policies

DP-50 Except as provided in Appendix 5 (March 31, 2012 School Siting Task Force Report), limit new nonresidential uses located in the Rural Area to those that are demonstrated to serve the Rural Area, unless the use is dependent upon a rural location. Such uses shall be of a size, scale, and nature that is consistent with rural character.

King County Countywide Planning Policies

DP-16 Allow expansion of the Urban Growth Area only if at least one of the following criteria is met:

a) A countywide analysis determines that the current Urban Growth Area is insufficient in size and additional land is needed to accommodate the housing and employment growth targets, including institutional and other non-residential uses, and there are no other reasonable measures, such as increasing density or rezoning existing urban land, that would avoid the need to expand the Urban Growth Area; or

b) A proposed expansion of the Urban Growth Area is accompanied by dedication of permanent open space to the King County Open Space System, where the acreage of the proposed open space

1) is at least four times the acreage of the land added to the Urban Growth Area;
2) is contiguous with the Urban Growth Area with at least a portion of the dedicated open space surrounding the proposed Urban Growth Area expansion; and
3) Preserves high quality habitat, critical areas, or unique features that contribute to the band of permanent open space along the edge of the Urban Growth Area; or

c) The area is currently a King County park being transferred to a city to be maintained as a park in perpetuity or is park land that has been owned by a city since 1994 and is less than thirty acres in size.

DP-17 If expansion of the Urban Growth Area is warranted based on the criteria in DP-16(a) or DP-16(b), add land to the Urban Growth Area only if it meets all of the following criteria:

a) Is adjacent to the existing Urban Growth Area;

b) For expansions based on DP-16(a) only, is no larger than necessary to promote compact development that accommodates anticipated growth needs;

c) Can be efficiently provided with urban services and does not require supportive facilities located in the Rural Area;

d) Follows topographical features that form natural boundaries, such as rivers and ridge lines and does not extend beyond natural boundaries, such as watersheds, that impede the provision of urban services;

e) Is not currently designated as Resource Land;

f) Is sufficiently free of environmental constraints to be able to support urban development without significant adverse environmental impacts, unless the area is designated as an Urban Separator by interlocal agreement between King County and the annexing city; and

g) Is subject to an agreement between King County and the city or town adjacent to the area that the area will be added to the city's Potential Annexation Area. Upon ratification of the amendment, the Countywide Planning Policies will reflect both the Urban Growth Area change and Potential Annexation Area Change.

Woodinville Buildable Lands Inventory

WOODINVILLE COMPREHENSIVE PLAN UPDATE | EXISTING CONDITIONS INVENTORY

Exhibit 2.4-17
Commercial Buildable Land by Zone, 2014 Analysis

	Gross Acres		Net Acres	
Zone	Vacant	Redevelopable	Vacant	Redevelopable
CBD	6.9	120.2	2.8	68.8
GB	16.3	38.9	7.9	23.9
NB	0.2	1.0	0.1	0.8
O	0.5	0.0	0.5	0.0
R-48/O	0.0	0.0	0.0	0.0
TBD	2.0	1.6	0.4	0.6
I	39.0	51.7	25.2	37.7
Total	**64.9**	**213.4**	**36.8**	**131.8**

Source: City of Woodinville, 2013; BERK, 2014

Net buildable acres represent the amount of land available for actually development after critical areas, market factors, right-of-way needs, and other factors are considered. Applying these factors nets the City 36.8 acres of vacant buildable land and 131.8 acres of buildable land in its commercial and industrial zones.Net buildable acres are used to determine the amount of additional building square feet and employment capacity a parcel can support given the current zoning.

Note #1: On December 31, 2015, a Development Agreement in Woodinville's Tourist Business District lapsed. This adds roughly 20 acres to the vacant land area in the Tourist Business District, for a total of 22 vacant acres in the heart of the Sammamish River Valley.

Note #2: Removing the acres unavailable for wineries or tasting rooms (NB, O, & R-48/O districts) and adding the 22 vacant acres described in Note #1, the total vacant and developable land for these type of uses within Woodinville City Limits is approximately 187.3 acres.

Woodinville Comprehensive Plan, Vision Statement

In the year 2035, Woodinville is a safe, welcoming, family-friendly, and diverse community that supports a successful balance of neighborhoods, parks and recreation, businesses, and tourism. We have preserved our Northwest woodland character, our open space, and our clean environment. Woodinville is a vibrant community in which to live, work, play, and visit. We have cultivated a compact, inviting downtown in which locally owned businesses can successfully establish and thrive. We have enhanced our ability to move about the community by all modes of travel. We have strengthened the agricultural and wine industries in Woodinville, the Sammamish Valley, and throughout the state by transforming locally sourced food, libations, and hospitality into an internationally renowned tourism experience.

Mike Tanksley to John Starbard, 18 Feb 2016

> Subject: Re: code enforcement reform status
> From: wmtanksley@comcast.net
> Date: Thu, 18 Feb 2016 15:14:27 -0800
> To: John.Starbard@kingcounty.gov
>
> John,
>
> Yes, thanks for your response, below, and mostly agreed. But leaving the condescension towards "less familiar" and "less affluent" Rural residents aside, we need to be clear about what's going on here:
>
> The problems we are facing around our community come from well-heeled property owners who are very aware of their violations. They have a long-held agenda to urbanize our Rural community for their own profit and are actively thumbing their noses at our municipality, King County, as well as at our law-abiding citizens and businesses, in pursuit of that goal.
>
> To our discussion of "customers" vs. "violators", you cannot provide "services" to interests that don't want those services, and these scofflaws do NOT want your "services". When law-breakers have been given a chance to correct their infractions, but instead make clear their intention to continue breaking the law, we need to leave the "customer" mentality behind and deal with them on a law enforcement perspective.
>
> Meanwhile, our law-abiding citizens and businesses DO want your "services" in the form of effective law enforcement to defend the greater property and business rights of our community!
>
> Perhaps you are familiar with the crisis we are having across the west with characters such as the Bundys, self-styled militias and rogue sheriffs. The Malheur stand-off was in large part the result of a federal government that has been too timid to stand up to such outlaws, such as the 2014 Bundy stand-off in Nevada. Such accommodation has encouraged numerous less-publicized outrages across the west. (I can send you some quality reading on the subject if you'd like)
>
> What we have here is very similar, only the guns are being kept (just barely) behind the counters. The longer we abide lawlessness such as we have with the illegal tasting rooms around the outskirts of Woodinville, the more trouble we invite.
>

> And now, in an effort to garner support, our local troublemakers are dragging businesses that we have no quarrel with into the spotlight, such as the businesses which are actively making wine or other spirits on their properties.
>
> In other words, they are doing a good PR job of using fear to spiral the issue well beyond their focused interests.
>
> So, I hope the consulting company can be approved and get into the job ASAP. The longer this goes unresolved, the worse it gets, which is exactly what our local outlaws (and their abettors) want.
>
> Thanks,
> MT
>
>
> On Feb 18, 2016, at 12:56 PM, Starbard, John <John.Starbard@kingcounty.gov> wrote:
>
> Michael:
>
> Last year, when we did our study, we spent a fair amount of time early on defining who was our "customer." Our unsatisfying answer--as you correctly identify below--is that in King County the code enforcement violator is the customer. Why? We concluded that the vast majority of the processes we have address the violation and steps to seek compliance. Impacts to the neighbors are only a bit player in the codes as they exist today. Again, that was our UN-satisfying conclusion.
>
> My speculation and personal observation is that in the past some may have viewed Rural residents as less familiar with land use codes and also less affluent to correct violations. Therefore, give our Rural violators (although our codes apply to all unincorporated areas, some of which are Urban) more time and don't over penalize them financially. In fact, a similar argument MAY have been made even for our Urban unincorporated areas, which include areas like White Center and Skyway, which, in fact, are not affluent.
>
> But these sensitivities don't take into full account people who prefer to have twenty acres of neatly maintained land and buildings who don't appreciate when less care is applied to neighboring properties, affluent people who are aware of the weaknesses of our current code and can calculate that a few hours of a lawyer is less than more hours of an engineer and the cost of following all the rules, or that because our penalties are not that expensive they can be factored in merely as a cost of doing business.
>
> For me, in this case, correctly identifying the "customer" may be less valuable than correctly framing or stating what the "service" is. Perhaps the service is about safety, protecting the environment, protecting property rights and values, upholding the laws--for all, regardless of where the violation exists. Because often an area is impacted, not only a site, even for cases of hoarders (e.g. rodents).
>

> John Starbard, Director
> King County
> Department of Permitting and Environmental Review
> 35030 S.E. Douglas Street, Suite 210
> Snoqualmie, WA 98065
> Phone: (206) 477-0382
>
>
> -----Original Message-----
> From: Michael Tanksley [mailto:wmtanksley@comcast.net]
> Sent: Tuesday, February 16, 2016 4:32 PM
> To: Starbard, John
> Subject: Re: code enforcement reform status
>
> John,
>
> That's good news. We would be interested in providing some input to the firm once they are ready to start work.
>
> One point in particular that may merit discussion within DPER as well as with the consulting firm:
>
> There must be a recognized differentiation between "customers" and "violators".
>
> In an effort to be kinder and gentler, KC code enforcement (CE) harbors a culture that defines all violators as "customers". Unfortunately, this sometimes leads to a relationship where CE ends up abetting an activity that is in violation of the code.
>
> While there are certainly cases where it is appropriate for DPER to work with willing property or business owners to bring their activities into compliance with our laws (and who might appropriately be referred to as "customers"), there is another side where underlying zoning and codes simply do not allow certain activities or where violators refuse to adjust their activities to comply with the law.
>
> Interests that willfully violate our laws need to know they will face an effective and swift law enforcement mechanism if they continue their violations. These violators should not be referred to, nor perceived as, "customers".
>
> Put another way, the majority of our communities are composed of law-abiding citizens. We need for our rights to be upheld against those who are willing to trample on them in pursuit of their own narrow interests.
>
> This will require a culture change along with policy changes within the department.
>

> Thanks for getting back to me on this.
>
> Best,
> Michael Tanksley
> President
> Hollywood Hill Association
>
> On Feb 16, 2016, at 3:02 PM, Starbard, John <John.Starbard@kingcounty.gov> wrote:
>
> Michael:
>
> When we completed the code enforcement analysis last year, we felt we needed to do something about it.
>
> We have retained a consulting firm to: 1) conduct and present a survey of code enforcement best practices from across the nation, and 2) prepare a detailed, annotated outline of a proposed replacement of the County's current title 23 in the King County Code. We asked for that because we were searching for a firm that had understanding and expertise in the service rather than the specific skill of code writing. Our own staff and our attorneys can use the outline to come up with draft code.
>
> We took this approach because, frankly, our current Title 23 is so convoluted that trying to amend it seemed less fruitful than starting with a clean sheet of paper and designing a new program.
>
> The consulting firm is working out the final details of its contract with the County (with central contracting), then we'll dig into the scope. We are looking to have a draft annotated outline in May of this year.
>
> JFS
>
> -----Original Message-----
> From: Michael Tanksley [mailto:wmtanksley@comcast.net]
> Sent: Tuesday, February 16, 2016 10:31 AM
> To: Starbard, John
> Subject: code enforcement reform status
>
> John,
>
> We are interested in knowing the status of the measures we discussed last fall in reference to reform of code enforcement for unincorporated King County.
>
> Everyone we speak to says that you are the one to talk to.
>

> Any information that you might provide would be helpful.
>
> Thank you.
>
> Michael Tanksley

King County

Metropolitan King County Council
Transportation, Economy and Environment Committee

STAFF REPORT

Agenda Item:	8	**Name:**	Mike Reed
Proposed No.:	2016-0339	**Date:**	August 15, 2016

SUBJECT

Agreement for the sale of biofuels, and associated environmental attributes, generated at the South Wastewater Treatment Plant in Renton.

SUMMARY

The Federal Clean Air Act encourages the incorporation of renewable "biofuels" into the nation's transportation fuel supply, by the establishment of requirements for processors of petroleum and other transportation fuels to incorporate defined volumes of certain renewable fuels into the transportation fuels that they produce and market. The Act also establishes a market for environmental credits for the generation and utilization of such biofuels, as a means of encouraging and accounting for the required biofuels.

The County's Wastewater Treatment Division (WTD) has been generating biofuels through its wastewater treatment process. Proposed Ordinance 2016-0339 would authorize the execution of contract with a natural gas processor to sell biofuels generated at the South Treatment Plant in Renton, together with associated environmental attributes, for use as a renewable transportation fuel.

BACKGROUND

Federal Energy Independence and Security Act

The Federal Clean Air Act was amended in 2005 and 2007[1] to, among other things, support the use of renewable fuels in fuels intended for transportation use. In particular, the 2007 amendments, known as the "Energy Independence and Security Act", required the EPA Administrator, through regulatory activity, to

> "ensure that transportation fuel…contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel";

[1] 42 USC Chapter 85 II A Sect. 7545 (o) Renewable Fuel Program https://www.gpo.gov/fdsys/pkg/USCODE-2013-title42/html/USCODE-2013-title42-chap85-subchapII-partA-sec7545.htm

> such fuel blend is to " achieve at least a 20 percent reduction in lifecycle greenhouse gas emissions".

In sum, the legislation created an obligation on the part of gas importers, producers and others to incorporate renewable fuels ("biofuels") into their marketed stream of fuels, such as petroleum, natural gas and other fuels used in transportation. The use of these biofuels is intended to reduce the volume of greenhouse gas emissions from the transportation sector. Cellulosic biofuels, derived from cellulose, hemicellulous or lignin, were required to have at least 60 percent less lifecycle greenhouse gas emissions than an established baseline. Specific identified volumes to be incorporated into the nation's transportation fuel supply each year were specified in the law. For cellulosic biofuel, the target for 2010 was established at 100 million gallons, growing to 16 billion gallons by 2022.

As a means of accounting for, as well as incentivizing the generation and use of renewable fuels, the measure included provision for a system of tradeable environmental credits—units of value that would be associated with gallons of renewable fuel produced, in order to provide incentive to renewable fuel generators to produce and market the fuel.

> "The Administrator may issue regulations providing: (i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports additional renewable fuels specified by the Administrator; and (ii) for the use of such credits by the generator, or the transfer of all or a portion of the credits to another person."[2]

Based on this act, the Environmental Protection Agency (EPA) developed a Renewable Fuels Standard ("RFS") program that, among other things, features "fuel pathways" associated with each of the four categories of biofuels addressed in the Energy Independence and Security Act: biomass-based diesel, advanced biofuel, cellulosic biofuel and renewable (or conventional) fuel. For each fuel source and fuel use seeking to qualify under the Act, EPA must approve a pathway that addresses feedstock, production process and fuel type. EPA has established approximately 20 pathways. In a table addressing approved fuel pathways for the program,[3] EPA identifies "biogas from municipal wastewater treatment facility digesters" as a feedstock for an approved Renewable Compressed Natural Gas/Liquified Natural Gas/Electricity pathway for cellulosic biofuel.

<u>Cellulosic Biofuels</u>

Of particular interest to managers of wastewater facilities is the evolution of the cellulosic biofuel pathway. Gas derived from wastewater management processes were initially classed by EPA as advanced biofuels for the purposes of the Act. However, in a 2014 rulemaking, the EPA reclassed such gas as being derived from biomass that includes proportions of cellulose, hemicellulous and lignin amounting to more than 75 percent, resulting in a determination that the activated sludge meets the criteria for being classified as cellulosic, and the redesignation of wastewater process gases as

[2] 42 USC Chapter 85 II A Sect. 7545 (o) 5 (A) Credit Program

[3] https://www.epa.gov/renewable-fuel-standard-program/approved-pathways-renewable-fuel

"cellulosic."[4] This change provided an opportunity for wastewater facility operators to pursue registration in the program through a "cellulosic" pathway, for which there is a more limited supply. Also, given the established volume targets that the transportation fuel industry is required to meet, there is a strong demand for cellulosic biofuels—driving a potentially stronger revenue stream.

Biofuels from the WTD South Plant in Renton

King County's Wastewater Treatment Division (WTD) processes an average dry-weather flow of 90 million gallons of wastewater daily, including 201,000 pounds/day of suspended solids,[5] through its South Treatment Plant in Renton. The process includes operation of an anaerobic digester that produces about 60,000 wet tons of biosolids annually that are destined for land application; additionally, the process generates about 1.8 million therms of methane gas annually.[6] This methane is sold directly to Puget Sound Energy (PSE), and injected into PSE pipelines. The sale of South Plant biogas to PSE has not included any valuation for environmental credits, as addressed in the Energy Independence Security Act described above.

In 2014, WTD issued a Request for Proposals ("RFP") to partner in generation of renewable fuel for the transportation industry and the generation and monetizing of environmental credits authorized by the Energy Independence Security Act. These credits, known as "Renewable Information Numbers" ("RINs"), are generated through the production of renewable fuel such as wastewater processing biofuel. Responses to the RFP were received from a number of parties, including IGI Resources, a natural gas subsidiary of BP. IGI was selected as the successful responder, based on the criteria of the RFP.

The County and IGI have worked to develop and refine an agreement for the sale of biofuel, and the management of associated RINs, from the South Plant. Operationally, such an agreement would take advantage of the existing delivery of South Plant biofuel to PSE. The biofuel would continue to be delivered to PSE pipelines in the same way it is currently; an equivalent amount of natural gas would be received by IGI at an identified point in the PSE pipeline. This is facilitated through the Transportation Tariff approved through the state's Utilities and Transportation Commission, providing for pipeline access by third parties.[7] As a result, the proposed transaction does not contemplate any capital or operational changes to accomplish the biofuel/RINs delivery. WTD will need to develop an agreement with PSE to define the terms by which the biofuel is to access the PSE distribution network.

Proposed Contract

On July 11, 2016, the Executive transmitted a proposed agreement, as an attachment to Proposed Ordinance 2016-0339. The agreement consists of three contract documents: Attachment A-- Base Contract for the Sale and Purchase of Natural Gas

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[4] Federal Register Vol. 79 No. 138 July 18 2014 p42137

[5] http://www.kingcounty.gov/environment/wtd/About/System/Facts.aspx

[6] http://www.kingcounty.gov/~/media/environment/wtd/About/System/SP/docs/1402_SouthPlantTreatmentProcess.ashx?la=en

[7] https://pse.com/aboutpse/Rates/Documents/gas_sch_031t.pdf This rule addresses "Distribution System Transportation Service Availability" as follows: "This distribution system transportation service is available throughout the territory served by the Company to non-residential customers who have executed the service agreement for transportation service under this schedule."

Key, and Exhibit A--Transaction Confirmation form; Exhibit B--Special Provisions Attached To the Base Contract, including a Biogas Special Provisions Addendum; and Exhibit C--Transaction Confirmation.

Key elements of the agreement include the following:

- If the parties come to an agreement regarding a gas purchase and sale transaction, that agreement will be recorded on a Transaction Confirmation. King County will sell, and IGI will purchase, the contract quantity of gas for the transaction meeting the pressure, quality and heat contents of PSE, to be transported to an identified delivery point. IGI will remit the amount due by the Payment Date, or within 10 days after receipt of the invoice.
- The contract may be terminated on 30 day's written notice, but will remain in effect until the expiration of the latest delivery period of any transaction.

Special Provisions

- IGI will maintain a guaranty in the amount of $1,000,000 from a guarantor reasonably acceptable to WTD.

Biogas Special Provisions:

- WTD warrants that it has the rights to all Green Attributes for such biogas, and will convey them to the Buyer. The biogas is from a project that produces pipeline quality biogas.
- If IGI cannot use the biogas for the production of vehicle fuel, IGI will be entitled to a refund of any Green Premium payment made for the volume of biogas not processed into a vehicle fuel, for which no Green Premium may be claimed under relevant regulation.
- Before delivery of the biogas, WTD or its designee is to submit documentation to certify that the biogas is an Advanced or Cellulosic Biofuel that can generate RINs.

Transaction Confirmation

- The price for RIN qualified Biogas will be the posted price (the Gas Daily Midpoint Index for NW Pipeline Canadian Border published by Platts) plus the RIN Premium Allocation, which is 70 percent of the RIN Price Basis.
- RIN valuations are based on Cellulosic Biofuel RIN prices determined by 1) the Argus D3 index; 2) revenue realized by the buyer's RIN marketing affiliate, or 3) the greater of 90 percent of the Argus D3 index or the average of daily posted prices for the Argus D-5 Index.
- Instead of receiving the RIN Premium Allocation, WTD may choose to receive its allocation as RINs in-kind.
- IGI is to pursue biogas contracts with vehicle fuel producers located in King County, and will sell all biogas purchased under this contract to such King County Vehicle Fuel Producers. If conditions necessary to fulfill this provision are not in place, IGI will pursue biogas contracts with vehicle fuel producers located in Washington State, if necessary conditions are in place.

- Provision is made for the process required for the generation and allocation of RINs, pursuant to EPA requirements.

This summary of contract documents is intended to address highlights only. a provision-by-provision description of the contract documents is provided in Attachment 2 to the staff report.

The transmitted legislation is accompanied by a Fiscal Note (Attachment x), which anticipates revenue of $4,053,663 per biennium, above the amount currently received through current sales to PSE, for the sale of biofuel and RINs as authorized by this measure.

ANALYSIS

WTD has, over a 50-year period, constructed a system for the collection and processing of wastewater, and the production biosolids and biofuels, including biofuels generated at the system's South Plant in Renton. Congressional action to encourage the use of biofuels in the nation's transportation fuel supply, and subsequent action by EPA to designate wastewater biofuel as "cellulosic" biofuel, appears to have created an opportunity to monetize the biofuel element of the South Plant's wastewater digestion process. A number of major benefits appear to accrue from this opportunity. These include:

- Additional revenue generation in the amount of approx. $4 million/biennium;
- Access to the RINs market of environmental credits, contributing to the national effort to incorporate renewable fuels into the nation's fuel supply, and thus supporting efforts to control greenhouse gas emissions nationally, and climate change targets of the Wastewater Treatment Division and King County; and
- Creating or expanding opportunities for natural gas-powered vehicles to utilize locally-produced biofuels.

There are a number of potential developments in the RFS marketplace that suggest continuing attention to the regulatory and market environment associated with this undertaking. First, EPA has, in the recent past, indicated a preference that the owner of the RINs should be the entity that processes biofuel into transportation fuel. If vehicle fuel is consumed as Liquid Natural Gas or Compressed Natural Gas, this suggests that, while WTD may produce pipeline-quality gas for delivery to IGI, there may be further processing steps to prepare it for use as vehicle fuel. To the extent that this is the case, were EPA to hold to its earlier position that the producer of transportation fuel is to be the generator of RINs, the WTD's ownership status, and right to sell, the RINs associated with biofuel production, would be open to question. However, following a public input process, EPA has apparently taken a step back from its original position, and indicated that it would address the ownership of RINs on a case-by-case basis.

While the "case by case" approach of EPA to RINs ownership does not provide a definitive federal answer to this question, it does suggest that County assertion of ownership in the form of a registration application to EPA supported by necessary contract documents, and the EPA's acceptance/approval of the parties participation in the RINs process, should represent a case-specific determination of County ownership,

and right to sell, the RINs generated through the treatment processes of the South Plant.

Staff has sought the input of counsel on this question; counsel has indicated that the contract is written with sufficient breadth that this question should not be a concern.

Additionally, the parties have chosen to pursue registration through the "cellulosic" pathway. This feedstock category, of the four categories managed by EPA, is the one that has proven least successful in meeting fuel generation targets. For a number of years consecutively, EPA has needed to revise downwards the annual volume target for transportation fuel through the cellulosic pathway, in the absence of a robust market response to the cellulosic fuel requirements of obligated parties. This has made for some lack of predictability/instability in this sector of the RINs market.

While these conditions encourage continuing monitoring of market and regulatory developments associated with this project, the potential climate change benefits, together with revenue benefits, indicate that approval of this measure appears to be a reasonable business decision.

AMENDMENT

Following review by Council's Legal Counsel and consultation with outside legal counsel retained by WTD, a number of potential changes have been made as part of Amendment S1. These changes insert code references, clarify County negotiation authority, specify a Council finding of unique circumstances supporting a negotiated direct sale, and identify pertinent elements of the Strategic Climate Action Plan that address carbon emissions offsets.

Amendment S1 would also replace the Attachment A Base Contract, Special Provisions, Biogas Special Provisions and Transaction Confirmation to update language related to Regulatory Events and Definitions, to clarify Biogas Deliveries provisions and to make various technical revisions.

Staff and legal counsel continue to work on several issues related to Amendment S1. As a result, the amendment has not been included in the packet but is anticipated to be ready to be distributed at the committee meeting on August 16.

ATTACHMENTS

1. Proposed Ordinance 2016-0339
2. Summary
3. Transmittal Letter
4. Fiscal Note
5. Executive Presentation Materials

INVITED

- Megan Smith, Director of Climate and Energy Initiatives, Office of the Executive

KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

August 12, 2016

Ordinance

Proposed No. 2016-0339.1 **Sponsors** Dembowski

AN ORDINANCE relating to the sale of biomethane and related environmental attributes held by the county; authorizing the wastewater treatment division to enter into an agreement for the sale of biomethane and environmental attributes associated with purified biomethane produced at the South wastewater treatment plant to IGI Resources, Inc.

STATEMENT OF FACTS:

1. The wastewater treatment division of the department of natural resources and parks operates three regional wastewater treatment facilities, including the South wastewater treatment plant in Renton, Washington, which treats approximately thirty billion gallons of wastewater each year.

2. Anaerobic digesters at the treatment plant generate methane digester biogas as part of the water and associated solid material treatment and purification processes.

3. Since 1988, the wastewater treatment division has been scrubbing impurities from the digester biogas to create biomethane, using some of the resulting pipeline quality gas for internal heating purposes, and

injecting the surplus pipeline quality gas into the regional natural gas pipeline.

4. Since 1988, the pipeline quality gas commodity not consumed at the treatment plant has been sold to Puget Sound Energy, per a pipeline quality gas purchase and sales agreement between King County and Puget Sound Energy, most recently amended in 2005.

5. In addition to the energy content of the pipeline quality gas, the origin of the pipeline quality gas as a byproduct of the wastewater treatment process provides significant greenhouse-gas reduction benefits when compared to the consumption of fossil fuel-derived natural gas.

6. These environmental benefits, as an extension of the energy content, are recognized as environmental attributes. Environmental attributes refer to renewable energy or other characteristics of a resource that are distinguished from a commodity, and can have financial value related to both voluntary and mandatory environmental requirements.

7. Renewable Identification Numbers are environmental attributes that can be produced when a renewable energy source is consumed for an on-road transportation purpose, and have an economic value beyond the commodity value of the renewable fuel. Renewable Identification Numbers are defined under the Federal Renewable Fuel Standard, authorized by Congress under the Energy Policy Act of 2005 and expanded under the Energy Independence and Security Act of 2007, which was created in an effort to reduce greenhouse gas emissions and

expand the nation's renewable fuels sector while reducing reliance on imported oil.

8. Under the Federal Renewable Fuel Standard legislation, obligated parties such as oil producers and importers must meet specific annual renewable fuel obligations for on-road transportation fuels, through Renewable Identification Number credits. The legislation has created demand for transportation fuels sourced from renewable sources, including biomethane sourced from wastewater treatment plants.

9. In 2014, in an attempt to determine if the Federal Renewable Fuel Standard would result in greater economic value for wastewater biomethane, the wastewater treatment division issued a request for proposals for the future sale of the combined pipeline quality gas commodity and any related environmental attributes of the biomethane.

10. Through a selection process, the wastewater treatment division selected IGI Resources, Inc., for the sale of the biomethane, specifying that the environmental attributes be monetized as Renewable Identification Numbers.

11. After certification under the Federal Renewable Fuel Standard, Renewable Identification Numbers will be generated when the biomethane generated at the South wastewater treatment plant is sold to IGI Resources, Inc., and consumed by local natural gas powered vehicles, resulting in renewable fuels being utilized for transportation purposes.

12. Under K.C.C. 4.56.250, sales of rights, title or interests in emissions credits, offsets or allowances or renewable energy certificates, credits, benefits, environmental air quality credits and any similar rights, title or interests held by the county are exempt from the real and personal property requirements of K.C.C chapter 4.56 when unique circumstances are present. Such sales may be made in the best interests of the public to a person or entity through a direct agreement negotiated by the King County executive and approved by the King County council.

13. The council finds that unique circumstances are present for this agreement because the market for the sale of biomethane and the environmental attributes from biomethane is highly specialized and is subject to market variability that requires prompt action. The nature of these rights is unique in that they do not lend themselves to a sale to the highest responsible bidder at public auction or by sealed bid. Although K.C.C. 4.56.250 authorizes the county to negotiate directly with a person or entity in such circumstances, nevertheless, the county conducted a competitive process to locate a qualified buyer to ensure that this agreement is in the best interests of the public.

14. The sale of the biomethane and related environmental attributes provide public benefit by increasing the revenue generated through the sale of the biomethane resource. The revenue from the sale of the biomethane and related environmental attributes will be used to reduce or offset greenhouse gas emissions greater than the reduction benefit that

would come through direct wastewater treatment division ownership of the environmental attributes, but only if the use of wastewater revenues is consistent with: chapter 35.58 RCW; Section 230.10.10 of the King County Charter; agreements for sewage disposal entered into between King County and component agencies; and other applicable county ordinance and state law restrictions. Revenue from the sale will also be used to expand energy efficiency and renewable energy generation efforts within the wastewater treatment division.

15. The investment of revenue from the sale of the biomethane and related environmental attributes to expand energy efficiency and renewable energy production and use within the wastewater treatment division and the resulting financial savings from these efficiencies has the effect of stabilizing rates.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. **Findings:** The King County council hereby finds that a direct agreement for the sale of biomethane and the related environmental attributes at the South Wastewater Treatment Plant is in the best interests of the public.

SECTION 2. The King County executive is hereby authorized to execute a base contract for sale and purchase of natural gas and all related documents with IGI Resources, Inc., substantially in the form of Attachment A to this ordinance.

SECTION 3. Moneys from the sale of biomethane and environmental attributes under section 2 of this ordinance shall be allocated to the originating division. The revenue from the biomethane and environmental attributes shall be used to further the

goals outlined in the 2015 Strategic Climate Action Plan. Each year, the division shall use the revenue to offset carbon emissions in excess of the reduction benefit that would come through direct wastewater treatment division ownership of the environmental attributes. Revenue beyond that needed for the annual carbon emissions offsets may be spent on rate stabilization.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

Attachments: A. Base Contract for Sale and Purchase of Natural Gas

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date Month ___, 2016. The parties to this Base Contract are the following:

PARTY A IGI Resources, Inc.	*PARTY NAME*	PARTY B King County, through its Department of Natural Resources and Parks -- Wastewater Treatment Division
PO Box 6488 Boise, ID 83707-6488	*ADDRESS*	Wastewater Treatment Division 201 S. Jackson St., Suite 500 Seattle, WA 98104
www.igires.com	*BUSINESS WEBSITE*	www.kingcounty.gov/environment/wtd.aspx
	CONTRACT NUMBER	
19-429-0953	*D-U-N-S® NUMBER*	135108934
☒ US FEDERAL: **82-0401137** ☐ OTHER:	*TAX ID NUMBERS*	☒ US FEDERAL: **91-6001327** ☐ OTHER:
Idaho	*JURISDICTION OF ORGANIZATION*	Washington
☒ Corporation ☐ LLC ☐ Limited Partnership ☐ Partnership ☐ LLP ☐ Other: _____	*COMPANY TYPE*	☐ Corporation ☐ LLC ☐ Limited Partnership ☐ Partnership ☐ LLP ☒ Other: a home rule charter county and political subdivision of the State of Washington
BP Corporation North America, Inc.	*GUARANTOR* (IF APPLICABLE)	

CONTACT INFORMATION

ATTN: _____ *TEL#:* _____ *FAX#:* _____ *EMAIL:* _____	▪ *COMMERCIAL*	*ATTN:* *David Broustis* *TEL#:* 206-477-4544 *FAX#:* ___ *EMAIL:* *david.broustis@kingcounty.com*
ATTN: *Customer Service Department* *TEL#:* 208-395-0520 *FAX#:* 208-395-0531 *EMAIL:* *igioperations@bp.com*	▪ *SCHEDULING*	*ATTN:* Please Provide_____ *TEL#:* _____ *FAX#:* _____ *EMAIL:* _____
ATTN: *Natural Gas Marketing - Contract Services* *TEL#:* 713-323-2000 *FAX#:* 713-323-0203 *EMAIL:* _____	▪ *CONTRACT AND LEGAL NOTICES*	*ATTN:* *David Broustis* *TEL#:* 206-477-4544 *FAX#:* ___ *EMAIL:* *david.broustis@kingcounty.com*
ATTN: *Natural Gas Marketing - Credit* *TEL#:* 208-395-0500 *FAX#:* 208-395-0530 *EMAIL:* *karl.wagner@bp.com*	▪ *CREDIT*	*ATTN:* *Max Foster* *TEL#:* 206-477-5362 *FAX#:* 206-681-1741 *EMAIL:* *max.foster@kingcounty.gov*
ATTN: *Natural Gas Marketing - Confirmations* *TEL#:* 208-395-0500 *FAX#:* 281-227-8470 *EMAIL:* _____	▪ *TRANSACTION CONFIRMATIONS*	*ATTN:* *David Broustis* *TEL#:* 206-477-4544 *FAX#:* _____ *EMAIL:* *david.broustis@kingcounty.gov*

ACCOUNTING INFORMATION

ATTN: *Natural Gas Marketing - Accounting* *TEL#:* 208-395-0500 *FAX#:* 208-395-0536 *EMAIL:* _____	▪ *INVOICES* ▪ *PAYMENTS* ▪ *SETTLEMENTS*	*ATTN:* *Francesca Ho- Revenue & Accounts Receivable Section* *TEL#:* 206-477-5521 *FAX#:* 206-684-1741 *EMAIL:* *francesca.ho@kingcounty.gov*
BANK: *JP Morgan Chase Bank, New York, NY* *ABA:* 021000021 *ACCT:* 323363075 *OTHER DETAILS:* *For the Account of IGI Resources, Inc.*	*WIRE TRANSFER NUMBERS* *(IF APPLICABLE)*	*BANK:* *U.S. Bank 1420 Fifth Avenue, 10th FL Seattle, WA 98101* *ABA:* *123000848 ACCT: 153910685327* *OTHER DETAILS:* Include details regarding purpose of wire or ACH
BANK: *JP Morgan Chase Bank, New York, NY* *ABA:* 021000021 *ACCT:* 323363075 *OTHER DETAILS:* *For the Account of IGI Resources, Inc.*	*ACH NUMBERS* *(IF APPLICABLE)*	*BANK:* *U.S. Bank 1420 Fifth Avenue, 10th FL Seattle, WA 98101* *ABA:* *123000848 ACCT: 153910685327* *OTHER DETAILS :* Include details regarding purpose of wire or ACH
ATTN: *Bank of America-c/o Remittance Services Lockbox 12124* *ADDRESS:* *12124 Collections Center Drive Chicago, IL 60693*	*CHECKS* *(IF APPLICABLE)*	*ATTN:* **King County Treasury Operations/CCP** *ADDRESS:* Finance and Business Operations Division King County Administration Building 500 4th AVE #600 Seattle, WA 98104-2387

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Base Contract for Sale and Purchase of Natural Gas

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply.

Section 1.2 Transaction Procedure
☐ Oral (default)
OR
☒ Written

Section 2.7 Confirm Deadline
☒ 2 Business Days after receipt (default)
OR
☐ 5 Business Days after receipt

Section 2.8 Confirming Party
☐ Seller (default)
OR
☐ Buyer
☒ IGI Resources, Inc.

Section 3.2 Performance Obligation
☒ Cover Standard (default)
OR
☐ Spot Price Standard

Note: The following Spot Price Publication applies to both of the immediately preceding.

Section 2.31 Spot Price Publication
☒ Gas Daily Midpoint (default)
OR
☐ _____

Section 6 Taxes
☒ Buyer Pays At and After Delivery Point (default)
OR
☐ Seller Pays Before and At Delivery Point

Section 7.2 Payment Date
☐ 25th Day of Month following Month of delivery (default)
OR
☒ 20th Day of Month following Month of delivery

Section 7.2 Method of Payment
☐ Wire transfer (default)
☒ Automated Clearinghouse Credit (ACH)
☐ Check

Section 7.7 Netting
☒ Netting applies (default)
OR
☐ Netting does not apply

Section 10.2 Additional Events of Default
☒ No Additional Events of Default (default)
☐ Indebtedness Cross Default
☐ Party A: _____
☐ Party B: _____
☐ Transactional Cross Default
Specified Transactions:

Section 10.3.1 Early Termination Damages
☐ Early Termination Damages Apply (default)
OR
☒ Early Termination Damages Do Not Apply

Section 10.3.2 Other Agreement Setoffs
☒ Other Agreement Setoffs Apply (default)
☒ Bilateral (default)
☐ Triangular
OR
☐ Other Agreement Setoffs Do Not Apply

Section 15.5 Choice Of Law
New York; provided that matters relating to the legal power and authority of Party B under this Contract will be governed by the laws of Washington

Section 15.10 Confidentiality
☒ Confidentiality applies (default)
OR
☐ Confidentiality does not apply

☒ **Special Provisions** Number of sheets attached: 11

Addendum(s): Biogas Supply Addendum – Vehicle Fuel Segment – Supply side

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

IGI RESOURCES, INC.	***PARTY NAME***	**KING COUNTY, THROUGH ITS DEPARTMENT OF NATURAL RESOURCES AND PARKS -- WASTEWATER TREATMENT DIVISION**
By:_____	***SIGNATURE***	By:_____
Randy Schultz	***PRINTED NAME***	**Gunars Sreibers**
President	***TITLE***	**Interim Division Director**

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General Terms and Conditions
Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

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2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.

2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.

2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.

2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.

2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.

2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.

2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.

2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.

2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.

2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.

2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.

2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.

2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.

2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.

2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.

2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance

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Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.

2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.

2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.

2.31. "Spot Price " as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.

2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.
Cover Standard:
3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.
Spot Price Standard:
3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the

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difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

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7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

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9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

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10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

Bilateral Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

Triangular Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

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SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract , (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure,

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and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

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TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

Letterhead/Logo	Date: _____, _____ Transaction Confirmation #: _____

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

SELLER:	**BUYER:**
_____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	_____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____

Contract Price: $_____/MMBtu or _____

Delivery Period: Begin: _____, ____ End: _____, ____

Performance Obligation and Contract Quantity: (Select One)

Firm (Fixed Quantity):	**Firm (Variable Quantity):**	**Interruptible:**
_____ MMBtus/day ☐ EFP	_____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of ☐ Buyer or ☐ Seller	Up to _____ MMBtus/day

Delivery Point(s): _____
(If a pooling point is used, list a specific geographic and pipeline location):

Special Conditions:

Seller: _____	Buyer: _____
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

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Summary of Biogas Sale and Purchase Transaction

King County Wastewater Treatment Division – IGI Resources, Inc.

Contract Objectives

- Monetize biomethane and environmental attributes at market prices
    - Take advantage of the Federal Renewable Fuel Standard (RFS) environmental attribute monetary premium value
- Prioritize sale of biomethane to local natural gas vehicle market, to encourage the use of locally-produced renewable transportation fuels
- Preserve flexibility for variable biomethane output, to reflect historical plant output

Overview of Contract Structure. Use of the North American Energy Standards Board ("NAESB") master agreement

- Commonly used/typical master agreement in the wholesale natural gas market
    - Standard contract for natural gas transactions throughout North America
- Provides ability to customize for specialized transactions, such as this contract

Analysis of Contract Documents

BC = Base Contract (NAESB), plus Special Provisions Attachment to the Base Contract
BSP = Biogas Special Provisions Addendum
BTC = Biogas Transaction Confirmation

Con-tract	Item	Page	Details	Special Provisions Details
BC	Section 1: Purpose and Procedures	3 of 14	Describes the process for the parties to enter into transactions under the NAESB master agreement. Agreements between the parties for the purchase and sale of gas must be in writing; no oral agreements are enforceable. Note that the Biogas Transaction Confirmation will be executed simultaneously with the Base Contract and special provisions. The parties are authorized to record telephone lines of commercial personnel.	Each party indemnifies the other party for claims relating to the recording of its employees' telephone lines with the other party's commercial personnel.
BC	Section 2: Definitions	3 of 14	Defines terms used in this document	Defines terms used in the Special Provisions addendum
BC	Section 3: Performance Obligation	5 of 14	If a party breaches an obligation to sell or purchase gas under the contract, the other party may purchase (or sell, as applicable) such gas in the market and recover damages (if replacement gas is purchased from another supplier at a higher price than the price under this contract or, as applicable, if unpurchased gas is sold to another buyer at a lower price than the price under this contract) from the other party. Note that King County's only liability under this section would be if it sold gas from the biogas project to a	The parties may not agree to a purchase and sale of gas that is done on a fixed price basis (i.e., a payment that is not completely calculated at market prices) without agreeing on a payment mechanism that compensates IGI Resources for losses incurred in force majeure events. Note that this concept does not impact the transaction agreed by the parties under the Biogas Transaction Confirmation. If a Regulatory Event (a change in law that impacts the ability to perform or

Con-tract	Item	Page	Details	Special Provisions Details
			buyer other than IGI Resources.	imposes significant new costs on a party's performance) occurs, the parties will attempt to reach agreement to remedy the impacts of such event. Absent an agreement by the parties, the impacted party may terminate the contract on 10 business days' notice.
BC	Section 4: Transportation, nominations and imbalances	6 of 14	King County is responsible for transportation of gas to the Delivery Point. IGI Resources is responsible for transportation of gas from the Delivery Point. The parties agree to (i) coordinate gas nominations with Puget Sound Energy, (ii) promptly inform each other of any deviations from scheduled gas volumes, and (iii) cooperate to avoid any imbalance charges with Puget Sound Energy. If an imbalance charge occurs, the party whose acts or omissions caused the imbalance charge is responsible for paying it.	
BC	Section 5: Quality and Measurement	6 of 14	King County is responsible for compliance of the gas with the quality requirements of Puget Sound Energy. Note that if gas is rejected by PSE due to noncompliance with quality specifications, King County does not incur any liability to IGI Resources	

Con-tract	Item	Page	Details	Special Provisions Details
			under the contract for such gas. Gas delivered under the contract is to be measured in accordance with the procedures of PSE.	
BC	Section 6: Taxes	6 of 14	King County is responsible for all taxes on the gas prior to delivery at the Delivery Point. IGI Resources is responsible for all taxes on the gas at and after delivery at the Delivery Point.	King County is responsible for payments to production interest holders and for severance tax applicable to the gas. King County will invoice IGI Resources for any gross receipts, compensating, or sales or use tax applicable to the gas sold under the contract. The parties will cooperate with each other in the protest of taxes and furnish documentation relating to tax exemptions.
BC	Section 7: Billing, payment, and audit	6 of 14	King County will invoice IGI Resources monthly for gas sold and purchased. Payment is due by Automated Clearinghouse Credit by the later of (i) the 20th day of the month following delivery of gas or (ii) 10 days after delivery of an invoice. Payment for cover damages (damages for non-performance under Section 3 of the Base Contract) is due 5 business days after receipt of an invoice. A party may withhold disputed amounts pending resolution of an	

Con-tract	Item	Page	Details	Special Provisions Details
			invoicing dispute. Interest on late payments accrues at the prime rate plus 2%. Either party can audit the relevant books and records of the other party to verify amounts and calculations. All invoices are presumed to be correct and final after 2 years from the month of gas delivery. The parties will net all undisputed amounts owing under the contract.	The 2 year presumption does not apply to taxes, tariff changes by PSE, and payments for green attributes of biogas. These amounts may be challenged and reviewed until 5 years from the month of gas delivery.
BC	Section 8: Title, Warranty and Indemnity	7 of 14	Title and risk of loss to the gas pass from King County to IGI Resources at the Delivery Point. King County is responsible for delivering gas with clean title (no encumbrances or liens). King County makes no other representations with respect to the gas sold. Each party is responsible for and indemnifies the other party for all claims that arise on the gas when the indemnifying party had title to the gas.	Deletes a representation under the base contract relating to the customs origin of gas sold, as there are no issues of customs or import of gas under this contract.
BC	Section 9: Notices	7 of 14	Specifies the procedures for giving of notices. Notices must be in writing and delivered via mail, courier service, email or fax. Notices are effective upon receipt.	No material edits to the base contract

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Con-tract	Item	Page	Details	Special Provisions Details
BC	Section 10: Financial responsibility	8 of 14	If a party has reasonable grounds for insecurity of the ability of the other party to perform (e.g., due to a credit deterioration), it can require the other party to provide adequate assurance of performance (cash, letter of credit, etc.). Events of default under the contract are: (i) bankruptcy or insolvency, (ii) failure to provide required credit support, (iii) payment failure that is not cured within 2 business days. Upon the occurrence of an event of default, the non-defaulting party can suspend performance under the contract (for up to 20 days) and/or terminate the contract. Upon termination, the parties will make payment for all gas that has been delivered prior to termination. Neither party has liability for any term of the contract after termination. The non-defaulting party can set off amounts owed under any other agreements the parties may have between them.	Adds events of default for (i) a failure to perform any other obligation under the contract that is not cured within 7 business days, (ii) a merger event that results in a deterioration of creditworthiness, and (iii) defaults by IGI Resources's guarantor. The defaulting party is responsible for payment of costs of the non-defaulting party incurred in terminating or enforcing its rights under the contract. Payment of termination damages is due within 5 business days after delivery of calculation thereof. The non-defaulting party may withhold any termination payment that may be owed to the defaulting party until all other claims between the parties (including bankruptcy claims) have

Con-tract	Item	Page	Details	Special Provisions Details
				been satisfied. The parties make standard representations of the status of the contract under the bankruptcy code. IGI Resources must provide and maintain a parent guaranty in the amount of $1 million to secure its performance obligations to King County. If IGI Resources fails to make a payment to King County, then King County may demand payment from IGI Resources parent company under the guaranty.
BC	Section 11: Force Majeure	10 of 14	A party impacted by force majeure is excused from its obligations under the contract during the force majeure event. Force majeure includes events or circumstances beyond the control of the parties, other than general economic or market events. An impacted party must give notice to the other party of the occurrence of a force majeure event.	A change in law may also form the basis for a force majeure claim. If the force majeure lasts for 180 days, either party may terminate the contract.
BC	Section 12: Term	10 of 14	The base contract may be terminated by either party on 30 days' notice. Termination of the base contract does not impact any transaction confirmations that are existing on the date of termination.	No material edits to the base contract

Con-tract	Item	Page	Details	Special Provisions Details
BC	Section 13: Limitations	10 of 14	Where a calculation of damages is specified in the contract for a breach (e.g., failure to perform under Section 3 or events of default under Section 10), the remedies specified in the contract are the exclusive remedies of the non-defaulting party. Neither party is liable for indirect, consequential or punitive damages under the contract.	
BC	Section 14: Market disruption	11 of 14	If an index price that forms the basis for pricing under the contract fails to be published, the parties will agree on a replacement price. Absent an agreement, the parties will seek price quotations from dealers in the market to determine the price.	
BC	Section 15: Miscellaneous	11 of 14	This section contains standard contract boilerplate language. Assignments of the contract other than to affiliates or to lenders require the consent of the other party. The assigning party is not discharged from liability under the contract after the assignment. The contract is governed by New York law (this choice of law is commonly seen under gas purchase and sale contracts), except for the authority and	

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Con-tract	Item	Page	Details	Special Provisions Details
			power of King County under the contract, which is governed by Washington law. The parties must keep information relating to the contract confidential.	King County is allowed to comply with applicable public records laws. The parties waive rights to jury trials. King County waives sovereign immunity defenses it may have. Disputes under the contract will be resolved by negotiation between the parties. Any unresolved disputes may be referred to state or federal courts in King County or Western District of Washington.
BSP	Article I: Definitions and Interpretation	7	Defines terms used in the Biogas Special Provisions	
BSP	Article II: Specific Terms of Purchase & Sale	8	King County represents that it owns all the green attributes of the biogas sold and that the biogas facility is compliant with EPA requirements. King County will give notice of expected gas deliveries by the 20th day of the month prior to delivery. King County will give notice of facility outages. If biogas that was previously sold under the contract is subsequently disqualified as biogas or if IGI Resources is unable to utilize the biogas as a vehicle fuel, King County must refund any payment that was made for the green attributes of such gas. King County is responsible for EPA registration of the biogas project and must deliver to IGI Resources documentation of registration and eligibility of the biogas to qualify under the applicable renewable fuel standards.	

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Con-tract	Item	Page	Details	Special Provisions Details
			Each party indemnifies the other party for claims arising while it has title to the biogas.	
BSP	Article III: Disruption Event	9	If IGI Resources's downstream contracts with vehicle fuel producers terminate, then IGI Resources will act to replace such contracts. During the period when IGI Resources is unable to sell biogas to vehicle fuel producers, the King County NAESB contract will continue in effect, but will only be a sale and purchase of natural gas (with no green attributes).	
BSP	Article IV: Miscellaneous	9	Standard contract boilerplate provisions. If there are any conflicts between the base contract and the Biogas Special Provisions, the provisions of the Biogas Special Provisions will govern. If there are any conflicts between a transaction confirmation and the Biogas Special Provisions, the provisions of the transaction confirmation will govern.	
BTC	Performance Obligation	1 of 9	King County is obligated to deliver the Contract Quantity to the Delivery Point and to certify eligibility of biogas volumes with applicable regulatory programs. During the disruption of a contract between IGI Resources and a vehicle fuel producer, no payment will be made for green attributes of gas (see article 3 of the Biogas Special Provisions above).	
BTC	Contract Price	1 of 9	Contract Price for Gas. The county will receive the full index price of the gas commodity, based on the Sumas, WA index published in Gas Daily; RIN Price. The environmental attribute value is based on published market Renewable Identification Number (RIN) pricing. Revenue from IGI's sales are split between King County (70%) and IGI Resources (30%). The relevant RIN market uses two different market indices published by Argus to determine price (D5 and D3). D5 RIN pricing and market is well established, although volatile. D3 RINs transactions are in a nascent stage but have a market premium over D5 RINs. The contract provides King County with the benefit of the higher D5 RIN index, with certain protections if the D5 RIN market is not well functioning: • If the D3 RIN market is liquidly trading, the D3 RIN index price is the	

Con-tract	Item	Page	Details	Special Provisions Details
			price under the contract. • If the D3 RIN market is not trading liquidly, then IGI Resources will attempt to sell the RINs on the market, with the actual proceeds received being split 70/30 between King County and IGI Resources. • If a sale is not possible, then the RINs are priced at the D5 RIN index price, with a floor of 90% of the D3 RIN index price. This gives King County protection against a large difference in the two index prices. • As an alternative to the pricing mechanism above, King County may elect in advance to receive its share of RINs in kind and market the RINs itself. Since the biogas sold under this contract will be part of IGI Resources's portfolio of vehicle fuel volumes, exact tracking of contracts and value may be difficult. This "self help" provision is a protection to King County in the event that questions arise as to whether IGI Resources is maximizing the value of the RINs in the market.	
BTC	Delivery Period	3 of 9	Delivery term is 36 months, with two one-year extensions, if mutually agreed-upon by both parties.	
BTC	Contract Quantity	3 of 9	King County is obligated to sell to IGI Resources all gas it injects for gas transportation into the PSE pipeline system. King County has operational flexibility to use gas for internal requirements before it is injected into the pipeline, without liability to IGI Resources.	
BTC	Delivery Point	3 of 9	Interconnection with Puget Sound Energy distribution system, at the current delivery location at the Renton South Plant facility	
BTC	Special Conditions: 1. Definitions	3 of 9	Defines terms used in the Biogas Transaction Confirmation	
BTC	Special Conditions: 2. Payment of RIN and LCFS Credit Premium Allocations	4 of 9	The RIN Premium is paid to King County by the 15th day of the month following the month of gas delivery. If biogas is sold into California, the applicable credit premium is paid quarterly between the 15th and 18th day of the month following the end of a calendar quarter.	
BTC	Special Conditions: 3. Buyer's Biogas Sales	4 of 9	IGI Resources will sell biogas to vehicle fuel producers in King County. If IGI	

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Con-tract	Item	Page	Details	Special Provisions Details
	to Vehicle Fuel Producers		Resources replaces its vehicle fuel producer contracts, it will give first priority to producers in King County and second priority to producers in Washington State before selling to an out of state producer.	
BTC	Special Conditions: 4. Monthly Nominations and	4 of 9	On the 20th of each month, King County will communicate to IGI estimated gas delivery volumes for the following month.	
BTC	Special Conditions: 5. Vehicle Fuel Producers	4 of 9	The biomethane will be sold to Clean Energy Fuels at a list of locations to be detailed in the final contract. IGI Resources will amend the Biogas Transaction Confirmation to reflect any new or replacement vehicle fuel producers to which it will sell the biogas sold under the King County NAESB.	
BTC	Special Conditions: 6. Representations	4 of 9	Each party makes standard representations of authority and solvency.	
BTC	Special Conditions: 7. Right to Extend Term	4 of 9	King County and IGI Resources can mutually agree to two additional one year term extensions.	
BTC	Special Conditions: 8. Transfer of CARB LCFS Regulated Party Status (if applicable)	4 of 9	If biogas is sold into California, King County will provide to IGI Resources standard documentation of the transfer of biogas to satisfy regulatory requirements in California.	
BTC	Special Conditions: 9. EPA and CARB Registration Cost	5 of 9	King County will submit to EPA documentation needed to certify biogas. The parties will share equally the cost of registering production and fuel pathways.	
BTC	Special Conditions: 10. Process for Generation and Allocation of LCFS Credits (if applicable)	5 of 9	If biogas is sold into California, King County will give IGI Resources data and cooperation needed to certify compliance with California credit requirements. IGI Resources will prepare reports needed to qualify for California credits and receive quarterly payments. If Washington State enacts a regulatory system for environmental attributes, the parties will negotiate modifications to the Biogas Transaction Confirmation.	
BTC	Special Conditions: 11. Process for Generation and Allocation of RINs	6 of 9	King County will on a weekly basis give IGI Resources access to data regarding the quantity of biogas sold and other information needed to generate RINs.	

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Con-tract	Item	Page	Details	Special Provisions Details
			IGI Resources will engage Weaver to validate the RINs and generate weekly reports of RINs. If EPA changes the procedures for generating RINs, the parties will agree on modifications to the Biogas Transaction Confirmation to comply with such new or modified procedures.	
BTC	Special Conditions: 12. Additional Event in Default	6 of 9	The following are added as events of default with respect to deliveries of biogas: (1) a party commits a fraudulent act, (2) a party makes a material misrepresentation relating to biogas qualification or documentation, (3) with respect to King County as the defaulting party, the biogas facility is not registered with EPA within 6 months after the execution of the Biogas Transaction Confirmation.	
BTC	Special Conditions: 13. Biogas Deliveries	6 of 9	Biogas deliveries will not commence until the month after the biogas project is registered with EPA. The parties may reach an agreement for the purchase and sale of gas prior to such registration. Such gas would be held in storage pending EPA registration, at which time, the biogas would be sold to vehicle fuel producers and RINs generated.	
BTC	Special Conditions: 14. Hierarchy	6 of 9	In the event of an inconsistency between the base contract, biogas special provisions and the Biogas Transaction Confirmation, the provisions of the Biogas Transaction Confirmation will govern.	

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ATTACHMENT 3

June 22, 2016

The Honorable Joe McDermott
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember McDermott:

This letter transmits an ordinance that will further King County's efforts to expand the local clean energy economy through the authorization to execute a Biomethane Purchase and Sale Agreement (contract) between IGI Resources, Inc. (IGI) and the Wastewater Treatment Division (WTD) of the Department of Natural Resources and Parks (DNRP).

Biomethane is purified biogas which meets or exceeds all natural gas quality standards and is interchangeable with fossil fuel derived natural gas. For more than twenty-five years, King County has produced renewable biomethane energy at the South Wastewater Treatment Plant, injected the biomethane into a natural gas pipeline, and sold the gas to Puget Sound Energy (PSE).

The legislation will provide for the biomethane produced at the South Wastewater Treatment Plant to be sold to IGI. Doing so will create a public benefit by supporting the use of biofuels for transportation purposes, while increasing the revenue received by the County.

Specifically, the ordinance will accomplish the following:

- Allow King County to tap into the lucrative economic value of environmental attributes for renewable transportation fuels through the Federal Renewable Fuel Standard (RFS), known as Renewable Identification Numbers (RINs)
- Generate an estimated $736,000 in 2016 above the current revenue for the gas sales to PSE, by selling the biomethane with the associated environmental attributes, with an estimated $3 million of additional revenue in the 2017-2018 biennium.
- Enable WTD to expand short and long-term greenhouse gas reduction efforts. Specifically, the revenue will be used to enhance biomethane production, reduce overall carbon emissions, invest in energy efficiency, and obtain more renewable energy to power its facilities. This collective work will significantly advance efforts by WTD toward carbon-neutrality.
- Encourage the use of local, renewable transportation fuels by directing the biomethane to be used to fuel natural gas vehicles in the Puget Sound region.
- Serve as a catalyst that encourages the development of biomethane projects by other wastewater treatment facilities, by serving as the first RFS-qualified wastewater biomethane to pipeline transportation fuel project in the State of Washington.

The legislation also furthers the goals of key County plans and initiatives as follows:

- The legislation furthers Environmental Sustainability Objective 3 of the King County Strategic Plan by using the biomethane for vehicle fueling to reduce climate pollution and prepare for the effects of climate change.
- The legislation also furthers the Strategic Climate Action Plan Transportation and Land Use strategy of collaborating with private industry to build demand and markets for alternative fuels.

In developing the legislation, and in an effort to ensure WTD would obtain the highest and best value for the biomethane produced at the South Wastewater Treatment Plant, DNRP issued a Request For Proposals (RFP) for the sale of the biomethane and related environmental attributes. IGI was selected as the preferred buyer of the biomethane. The proposed contract between WTD and IGI details compensation to King County for the sale of the biomethane and the corresponding Renewable Identification Number (RIN) environmental attributes.

To allow for the execution of this contract, King County has been concurrently working with PSE on an agreement that will enable the County to transport the biomethane to third parties through PSE's pipeline. The agreement is currently under review by the Washington State Utilities and Transportation Commission.

Thank you for your consideration of this ordinance.

If you have any questions about this ordinance, please feel free to contact Sharman Herrin, Government Relations Administrator of the Wastewater Treatment Division in the Department of Natural Resources and Parks, at 206-477-5376, or sharman.herrin@kingcounty.gov.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Carolyn Busch, Chief of Staff
Anne Noris, Clerk of the Council
Carrie S. Cihak, Chief of Policy Development, King County Executive Office
Dwight Dively, Director, Office of Performance, Strategy and Budget
Christie True, Director, Department of Natural Resources and Parks (DNRP)
Gunars Sreibers, Acting Division Director, Wastewater Treatment Division, DNRP
Sharman Herrin, Government Relations Administrator, WTD, DNRP

2015/2016 FISCAL NOTE

Ordinance/Motion: 2016-XXXX
Title: Biomethane and Environmental Atribute Purchase and Sale Agreement
Affected Agency and/or Agencies: Wastewater Treatment Division, Department of Natural Resources and Parks
Note Prepared By: David Broustis
Date Prepared: 4/14/2016
Note Reviewed By:
Date Reviewed:

Description of request:

Revenue to:

Agency	Fund Code	Revenue Source	2015/2016	2017/2018	2019/2020
DNRP: Wastewater Treatment Division			736,000	4,053,663	4,053,663
TOTAL			**736,000**	**4,053,663**	**4,053,663**

Expenditures from:

Agency	Fund Code	Department	2015/2016	2017/2018	2019/2020
TOTAL			**0**	**0**	**0**

Expenditures by Categories

	2015/2016	2017/2018	2019/2020
TOTAL	**0**	**0**	**0**

Does this legislation require a budget supplemental?

Notes and Assumptions:
- Biogas generation based on four year (2012-2015) average of gas injected into the pipeline: 1,760,673 therms per year
- Sales price of gas @ $0.22/therm
- 1.1727 Renewable Identification Numbers (RINs) generated per therm of gas injected into the pipeline
- RIN sales price @ 75% of combined five year average (2011-2015) of D5 RIN price and 2016 Cellolosic Waiver Credit value
- 70% of total RIN value to King County, 30% to IGI Resources, Inc.
- Baseline comparison revenue @ $0.2897/therm (Puget Sound Energy 2016 gas commodity price)
- 2016 revenue for five months, assuming contracts are complete and gas is moving per the contract by August 1st.
- Revenue beyond 2016 calculated at full year 2016 assumptions. Future market conditions are uncertain

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Proposed Sale of Environmental Attributes

Leveraging King County's Production and Use of Renewable Energy to Meet Climate Goals

Megan Smith
Director of Climate and Energy Initiatives
King County Executive Constantine's Office

King County

Presentation Overview

- **2 pieces of legislation before TrEE**
- **How did we get here?**
  - Council Direction on renewable energy
  - Long track record of producing and using renewable energy
- **What is a RIN?**
- **Wastewater and Transit Legislation Summaries**
- **Next Steps and Timeline**

King County

Wastewater: Proposed Ordinance 2016-0339

- Authorizes agreement for the sale of biomethane gas produced at South Plant **and** related *environmental attributes*

Transit:
Proposed Ordinance 2016-0349

- Authorizes agreement for the sale of *environmental attributes* created when King County buses are powered by qualified renewable electricity

King County

Council-Adopted Goals & Policies

2015 Strategic Climate Action Plan (SCAP)

- Overall goal to reduce GHG emissions 80% by 2050
- Transit priority action to consider selling environmental attributes
- Building and Facilities Energy target for renewable energy production

Ordinance 17971

- Directs Metro Transit to create carbon offset program
- Requires the Wastewater Treatment Division to be carbon neutral by 2025

Ordinance 18106

- Directs Transit to consider monetizing "Renewable Identification Numbers"

Comprehensive Plan

- E-202: Maximize the creation of resources from waste products from county operations . . . in a manner that reduces greenhouse gas emissions and produces renewable energy

Strategic Plan

- Environmental Sustainability and Financial Stewardship

King County

King County Renewable Energy Leadership

Producing Renewable Energy

- **Wastewater and Landfill Gas**
- **Solar**
- ***We now produce energy equivalent to what we use to run county buildings and facilities***

Consuming Renewable Energy

- **Wastewater Treatment Plant operations**
- **Transportation biofuels**
- **Green power purchases**

King County

Current King County Monetization of Environmental Attributes

Cedar Hills Landfill

- **Environmental Attribute contract with Puget Sound Energy**

West Point Treatment Plant

- **Renewable electricity and related Environmental Attributes are sold to Seattle City Light**

King County

Public Benefits of Proposed Legislation

- Reduces Greenhouse Gas Emissions
- Supports Use of Renewable Transportation Fuels
- Creates Revenue to Invest in climate action
- Builds on county investments in renewable energy production and alternative fuel vehicles

King County

What is a RIN?

- RIN stands for "Renewable Identification Number"
- Comes from the EPA Renewable Fuel Standard
- Goal is to increase use of renewable fuels in transportation over time
- Each RIN is tied to a specific quantity of qualified renewable energy used in transportation

King County

What is a RIN? (continued)

- RINs must be purchased by "Obligated Parties" like oil producers, refiners and importers
- Tradable commodity; price fluctuates
- EPA sets renewable fuel volume requirements for each year
- Proposed Wastewater and Transit transactions take advantage of "Cellulosic" RIN category, which is growing

King County

The RIN Transaction: 3 Parties

1. Biofuel ***Producer***
2. Biofuel ***Consumer*** (Transportation Use)
3. RIN ***Purchaser*** (Obligated Party)

King County

Wastewater Ordinance

- Authorize agreement with IGI Resources for sale of biogas and RINs

- Reinvest revenue in actions that further SCAP goals
  - Examples: energy efficiency retrofits, solar

King County

Wastewater: How it works

- South Treatment Plant produces renewable biomethane
- We sell biomethane and environmental attribute (RINs)
- We get gas commodity value, plus 70% of RIN value
- Three year agreement with two, one-year optional extensions
- Estimated $4 million of additional biennial revenue

South Treatment Plant biomethane production

+

Natural gas vehicles consume an equal volumes of gas as the treatment plant produces

=

Tradable RIN + Sale of gas $$$

King County

Transit Ordinance

- Authorize agreement with **Element Markets** for the monetization of Environmental Attributes known as RINs
- Reinvest revenue in actions that further SCAP Goals
  - **Example:** Purchase biodiesel for Transit Fleet

King County

Transit: How it works

- Electric trolley and electric bus fleet consume electricity
- Transaction pairs renewable electricity produced at landfill-gas-to-energy plant with Transit's use to create RINs
- Agreement for 70%+ of RIN value
- Three year agreement with two, optional one-year extensions
- Estimated $1.6 million of new biennial revenue

Electricity produced with landfill gas

+

Electric buses consume an equal volume of electricity as the landfill produces

=

Tradable RIN $$$

King County

Common Approach to Contracting and Legislation

- **For both transactions, pursued contract approach that minimizes risk and optimizes revenue**
  - Issued *Request for Proposals for both transactions*
  - WTD and Transit used outside Counsel experienced with similar transactions.
  - King County PAO review
  - Further revisions identified by Council Central Staff

- **Both authorizing ordinances focus investments of revenue on actions that further SCAP goals**

King County

Next Steps

- **Establish RIN relationship *(DONE)***
- **If authorized by Council, execute contract documents**
- **Submit transaction to EPA for review and approval**
  - Estimated 3-6 month process for approval
  - Wastewater biomethane transaction type has track record with EPA; may go faster than Transit pathway
- **Environmental Attribute revenue begins accruing <u>after</u> EPA approval**
  - If approved, King County stands to gain more than $200,000 per month in new revenue

King County

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King County

Metropolitan King County Council
Transportation, Economy and Environment Committee

STAFF REPORT

Agenda Item:	9	**Name:**	Greg Doss, Jenny Giambattista
Proposed No.:	2016-0349	**Date:**	August 16, 2016

SUBJECT

An ordinance authorizing the Transit Division to enter into an agreement with Element Markets Renewable Energy, LLC, for the sale of Renewable Identification Numbers associated with Transit's electric trolley and battery bus fleets.

SUMMARY

According to Executive staff, Metro Transit has the potential under an Environment Protection Agency (EPA) program to generate a new revenue source based on the consumption of renewably-generated electricity associated with Transit's trolley buses and future battery buses. Upon Council approval, Transit intends to create this revenue source by selling Renewable Identification Numbers (RINs), which are credits that meet the requirements of the Federal Renewable Fuel Standard. (Please note that Executive staff have prepared a presentation for the Committee to provide more background on RINs and the Federal Renewable Fuel Standard. A copy of this presentation can be found as an Attachment to the staff report for Proposed Ordinance 2016-0339.)

The attached agreement provides for a contractor, Element Markets, LLC (EM) to receive a share of potential revenues in exchange for managing the RIN registration and sale process. According to Transit, the EPA has not yet approved a process or "pathway" to register and sell RINs. Under the terms of the contract, EM will be responsible for all aspects of the EPA approval process.

Transit staff have estimated annual revenues at approximately $840,000 per year and have indicated that financial risks to the County would be minimal, as discussed in the fiscal section of this report, if the RINs are not sold or if revenues are insufficient to cover EM's expenses. The contract allows other King County agencies or other jurisdictions to utilize EM to sell RINs under the same terms and provisions, and has a potential of increasing King County's share of revenues if this happens.

Council's Legal Counsel has reviewed the contract and worked with the PAO and Transit on potential changes. Attachment A to Amendment S1 reflects these potential changes. All of the changes in Attachment A to Amendment S1 have been agreed to by EM.

BACKGROUND

***Federal Renewable Fuel Standards and Renewable Identification Numbers (RINs)*:**

The Federal Code (Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007) created a Renewable Fuel Standard to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel. The United States Environmental Protection Agency (EPA) sets the Federal Renewable Fuel Standard each year, assigning obligated parties (defined as fuel refiners, blenders and importers) a renewable volume obligation.

The EPA uses Renewable Identification Numbers (RINs) to monitor obligated parties' compliance with the Renewable Fuel Standard. A RIN is a 38-character number assigned to each physical gallon of renewable fuel that is produced or imported. Renewable electricity can also be measured in RINs. Renewable fuels are assigned RIN values / numbers and then sold with gasoline products to help producers meet minimum statutory requirements. For example, 77,000 BTU/RIN is the equivalent of the energy content in one gallon of ethanol.

RINs are also bought and sold at daily commodity markets as an option for companies that cannot meet federal obligations through the use of renewable fuels alone. This is similar to the way that private companies or governments purchase carbon offsets as part of carbon neutrality programs.

Metro Transit and Renewable Identification Numbers:

According to Executive staff, Metro Transit has the potential to generate RINs that can be sold to a third party, based on the consumption of renewably-generated electricity associated with Transit's trolley buses and future battery buses.

Metro Transit staff have negotiated a contract with a third party vendor, EM, to register and sell RINs on appropriate commodities markets. This vendor will then revert to King County a portion of the net proceeds, which Transit staff estimate will reach $840,000 per year starting in 2017. This contract is discussed further in the Analysis section.

Legislative History:

Ordinance 17971 required the Executive to report to Council on potential options for structuring a carbon offset program, potential buyers of the offsets, and the costs and revenues of implementing the program. On June 1, 2015, the Executive submitted in response to this requirement a report prepared by a consultant which, according to Metro Transit staff, concluded that pursuing transit carbon offsets at that time may not be financially viable[1].

In addition to examining carbon offsets, the report also examined a number of other environmental attributes which could be sold. The report identified a potential revenue

[1] Report 2015-RPT0081

source that could be created by selling RINs. In September 2015, the Council passed Ordinance 18106, which amended Ordinance 17971 to expand the Transit Carbon Offset Program to include environmental attributes—any environmental benefit that can be monetized. This includes the sale of RINs.

Transit provided some general background on the RIN certification and sale process in a report transmitted on December 1, 2015 (please see Attachment 4 of this staff report for a copy of that report). The report shows how the County will maximize financial returns, shows how the RIN sales will provide a stable revenue source and explains how the proposed transaction process ensures both maximum price and transparency. This report was required by Ordinance 18106.

ANALYSIS

Contract Summary:
Proposed Ordinance 2016-0349 authorizes the Transit Division to enter into an agreement with Element Markets Renewable Energy, LLC, (EM) for the sale of Renewable Identification Numbers (RINs) and other potential environmental attributes associated with Transit's electric trolley and battery bus fleets.

The contract requires EM to deliver to Metro specific units of Renewable Energy Rights (RERs), which are environmental attributes / credits resulting from the creation of electricity from the combustion of biogas. The RERs will be procured from a facility chosen by EM. At this time, Metro believes that EM will choose to acquire the RERs from a landfill operating in Oregon.

The RERs are then matched with a comparable measure of electricity (Kilowatt hours) used in the operation of Transit's electric trolley and battery bus fleets. Under the Federal guidelines described above, this transaction creates the RINS that EM will register and sell on appropriate commodity markets.

According to Transit, the proposed transaction process must be approved by the EPA. Transit reports that creating RINS from electric powered busses has not been done before. Under the terms of the contract, EM will be responsible for all aspects of the EPA approval process.

Council legal staff, the PAO, Transit and EM have revised the contract language to allow the County to suspend the contract if revenues are insufficient to cover expenses. In such case, the County may request a suspension if it has three consecutive months of insufficient revenues and if revenues are also insufficient in the preceding six month period in the aggregate.

Finally, the contract allows other governments to use the terms and conditions for their own separate agreements with Element Markets. The provisions relevant to this "piggybacking" option can be found in Schedule 32 attached to the contract. If revenues from Transit's RIN sales or from Transit's RIN sales in combination with RIN sales from other public agencies participating under Section 32, exceed $400,000, Transit's share of revenues from the sale of Transit RINS increase from 70 percent to 75 percent of net revenues.

Analysis of the Contract:

Contract provisions and changes included in Amendment S1 are summarized below.

Section 1: Description of contract documents. This section describes the contract documents.

Amendment S1. Amendment S1 includes technical edits made to the name of documents following review by Council's Legal Counsel.

Section 2: Definitions. This section includes definitions for terms used in the contract. Key terms defined include:

- Metro's Revenue Percentage: In each twelve month period of the contract beginning on the commencement date, the Metro Percentage shall be 70 percent of net revenue until the aggregate total of gross revenue and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds $400,000. Thereafter, the Metro Percentage shall be 75 percent of Net Revenue for the remainder of the applicable twelve month period.
- Net revenue is the gross revenue less expenses incurred by EM.
- PEV (Plug-in-Vehicle) load is the electricity consumption of Metro's electric trolley and battery bus fleets, electric vehicle charging stations and any other electric vehicle load that qualifies under the Renewable Fuel Standards Program.

Amendment S1. Amendment S1 includes technical edits following review by Council's Legal Counsel and the PAO.

Section 3: Description of Transaction. Element Markets (EM) will match a renewable energy provider's RERs with King County's vehicle electric load and create RINs (Renewable Identification Numbers). EM and King County will share revenues from the sale of RINs.

Section 4: Contract Term. The contract shall extend for three years with two one-year extensions at Metro's discretion. Should there be a change in the Federal Renewable Fuel Standard (RFS) which prevents the sale of RINs, the contract can be terminated. EM is determined to be the generator of RINs for purposes of registration with the EPA unless Metro is required to be the generator. Metro will have the option of suspending and ultimately terminating the contract if the quarterly sales of RINs create a financial liability for King County.

Amendment S1. Changes were made in Amendment S1 to clarify that if Metro is required to register its RINs, EM agrees to provide assistance, as requested by Metro. If such assistance is insufficient and no revenues are generated, the County may decide to pull the funding for this contract and terminate for non-appropriation as set forth in the new section 18.2. The County would pay EM only for the work performed to the date of the notice of termination.

Sections 5-8: Quantity, Exclusivity, Registration and Ongoing Information Requirements. These sections specify that the quantity is based on Metro's actual

electric vehicle load, that EM has the exclusive right to sell Metro's RINs, that EM is responsible for registering King County's RINs with the EPA and that EM will provide Metro with copies of all documents filed or received from the EPA. Finally, that Metro will provide EM with information necessary to file with EPA and to sell RINs. This includes utility billing information and assurances that EM has sole rights to Metro's RINs.

Section 9: RIN/Other EV Credit Generation. This section specifies that EM will seek to classify King County's RINs as D3 RINs (the highest value type of RIN) or such other code if it will result in higher value. The section also requires EM to generate the maximum number of RINs and other environmental attributes, if applicable, as is permitted by EPA.

Section 10: Contract RIN sales. The section describes how RINs will be sold by EM. Among the provisions are that King County RINs will be bundled with RINs from other customers in larger sales to receive higher prices. RINs can be sold in the futures market if approved by King County. The minimum price for RINs will be the market price of D5 RINs plus 50 percent of the Cellulosic Waiver Credit[2] (a price set by EPA). King County can elect to receive RINs rather than money should it so desire. EM will engage a firm to perform a Quality Assurance Program once such programs are certified by EPA. Other departments in King County can use this contract to have EM sell their RINs.

Amendment S1. Following review by the PAO and Council's Legal Counsel, language has been included in Amendment S1 to clarify the conditions under which a Quality Assurance Program (QAP) contractor would be hired.

Section 11. This section intentionally left blank.

Section 12: Expenses. Specifies that EM will be responsible for paying any and all expenses incurred with the generation and sale of RINs, except that certain expenses will be subject to reimbursement from gross revenue. Reimbursement for four categories of expenses is capped at $45,000 annually. These include third party costs for EPA registration, Quality Assurance Program costs, site visits, annual audits, and travel expenses for third parties.

Other expenses are not subject to the cap and should gross revenue be insufficient to cover those expenses, they would be reimbursed to EM by the County. These include utility costs, if any, associated with collection and reporting of data, procurement costs for renewable energy credits, any costs associated with generating other environmental attributes, and tax payments associated with RIN sales but not including EM income tax payments. However, given the anticipated revenues, Transit reports it is unlikely these expenses would exceed revenues.

[2] EPA requires more Cellulosic RINs to be purchased than are currently generated. The EPA therefore issues a "Cellulosic Waiver Credit" which parties can purchase to help meet their cellulosic RIN requirement. https://www.epa.gov/renewable-fuel-standard-program/notice-cellulosic-waiver-credit-price-calculation-2016

Amendment S1. Following review by the PAO and Council's Legal Counsel, Amendment S1 includes several modifications to this section. The reimbursable expenses were expanded to include on the list of expected expenses the annual third party review specified in Section 15. To ensure that the County would be receiving its own distinct report and audit, EM requested that the expenses cap be increased from $40,000 to $45,000.

An additional change negotiated after this legislation was transmitted, and included in Amendment S1, is a new provision that there is a price limit of three dollars per Renewable Energy Right (RER) on the purchase price EM will pay for any RER, except if otherwise having received prior approval from Transit.

Additionally, following review by the PAO and Council's Legal Counsel, language has been included in Amendment S1 that allows Metro to suspend the contract if insufficient revenue is received in any three consecutive months of the delivery period; and if revenues are insufficient to cover costs in the aggregate over the prior six months.

New provisions were added in Amendment S1 to address the potential of insufficient revenue from the sale of RINs to compensate EM. This can be found in new section 12.2 and 12.2 in the Attachment to Amendment S1.

Section 13: Delivery of Renewable Electricity Rights (RERs). This section specifies how RERs (the renewable energy attributes EM will be purchasing from the Oregon landfill that will be matched with Transit's electric vehicle energy use) will be registered to Transit.

Section 14: Payment. This section specifies payment and reporting terms. EM will pay Metro the applicable percentage of net revenues on a monthly basis. EM will report on gross and net revenues on a monthly basis and the number of RINs sold as well as any unsold RINs. EM will provide King County with market data on a monthly basis using both published and unpublished sources. EM will provide annually information on how Metro sales compare with published and unpublished data including a comparison with the D5 plus 50% of the cellulosic waiver credit (minimum price).

Amendment S1. Following review by the PAO and Council's Legal Counsel, Amendment S1 includes language that the monthly report on revenues include a detailed list of parties to whom the gross revenue is attributable. This information is included to help King County determine when EM has achieved $400,000 in RIN sales (see Section 2) if other jurisdictions use the contract for their own sales.

Section 15: Contract RINs and other EV Credit Annual Review. EM will conduct an annual audit of Metro's RINs transactions. This audit will provide information on the number of RINs delivered, the accounting of contract RINs, and the sales price for RINs.

Amendment S1. Following review by the PAO and Council's Legal Counsel, Amendment S1 includes language to modify the annual review requirement to specify that the review be written and specific to King County, and listed associated expenses in Section 12 (ii) (Quality Assurance costs and annual third party review costs).

Section 16: Mutual Representations and Warranties. EM warranties that it has the capacity to deliver renewable energy to King County and perform its obligations.

Section 17: Representations and Warranties of EM. EM represents that the renewable credits that it delivers to King County are owned by EM, that the electricity was generated with renewable energy based on reasonable inquiry. EM warranties that the renewable energy it procures meets EPA pathway requirements.

Amendment S1. Following review by the PAO and Council's Legal Counsel, Amendment S1 includes language that the warranties specify that the RERs provided to Metro will meet federal requirements for the creation of RINs.

Section 18: Termination Default. This section specifies the terms under which the County may terminate the contract. If the contractor does not perform the work, and has not resolved a notice to cure then the contract can be cancelled.

Amendment S1. Amendment S1 includes a new section for termination for Non-Appropriation that was added following review by the PAO. This is standard language used in County contracts.

Section 19: Retention of Records. EM will maintain records for six years. EM will allow access to records for auditing. The contract is considered a public record, but if EM considers any portion confidential, such portion should be labeled as such. If a request is made for disclosure of such portion, the County will determine whether the material should be made available under the Public Records Act.

Section 20: Legal Relations; Indemnity and Insurance. EM is acting as a corporation and not as an entity of another company. EM is responsible for taxes and other requirements. The County is indemnified from all suits and claims against EM or its agents. EM shall maintain general and automotive liability and workers compensation and employer's liability in amounts specified in the contract.

The PAO has reviewed this language and has advised that this is standard insurance language that is acceptable to Risk Management.

Section 21: Conflicts of Interest. The parties shall not take positions which conflict with its position in this contract. No brokerage fees will be paid or gratuities. No County employees are allowed to assist in the preparation of proposals or contracts with a third party, including vendor while in County employment or for one year afterwards.

Section 22: Intellectual Property. This section provides the County with rights to use any systems that EM develops as part of this contract.

Section 23 and Section 24: Nondiscrimination and Payment of a Living Wage, Notices. These are the standard provisions for County contracts.

Section 25: Assignment. The contract is binding on EM. EM is allowed to transfer this contract to another qualified firm with written permission from King County. It is also allowed to assign the contract to a wholly-owned subsidiary without written

permission from the County provided specified documentation regarding the subsidiary's qualifications are provided to the County in advance.

Amendment S1. Following review by the PAO and Council's Legal Counsel, Amendment S1 includes modified language that provides assurances that EM will not be released from its obligations under the contract if the contract is assigned to another entity other than a wholly-owned subsidiary.

Sections 26-31: Amendment, Waiver, Severability, Complete Agreement, Mediation or Arbitration, Applicable Law and Forum. Amendments may be made in writing on mutual agreement by both parties. Waivers shall not be permitted. On severability, if a portion of the contract is unenforceable the remaining portion of the contract shall be valid. This contract governs services by EM. In the cases of disputes, mediation or arbitration shall be used if direct negotiations are unsuccessful. The contract is governed by the laws of the State of Washington.

These sections are standard in similar County contracts.

Amendment S1. Amendment S1 includes technical changes to clarify language in Section 29.

Sections 32-36: Other public Agency orders, Force Majeure, Recycled Products Policy, Third Party Beneficiaries, Counterparts. Other public agencies may use this contract if they execute an agreement similar to Schedule 32, which is attached, contractors shall use recycled products when practical, Third Party Beneficiaries are not prohibited, the contract may be executed in counterparts, each of which can be considered an original.

These sections are standard in similar agreements with the County.

Amendment S1. Amendment S1 includes technical changes to clarify language in Section 32 – Other Public Agency Orders.

Schedule 32: Form of Agreement. This section allows other public agencies to use the Metro contract to sell RINs on the same terms as Metro Transit.

Exhibit A -1: Sample Form of Metro Attestation: This form certifies, for the EPA, that EM has control of Metro's renewable energy rights necessary to conduct the transaction that establishes RINs.

Exhibit A-2: Form of RER Delivery Attestation. This form certifies that EM delivered renewable energy rights from a landfill and that the rights were not used by EM for another purpose other than conveyance to Metro. Furthermore, the title to the renewable rights was transferred to Metro at the same time as consumption of the electricity.

Fiscal Estimates:

Transit staff have indicated that the sale of RINs will produce approximately $840,000 per year, or $1.7 million in the 2017-18 biennium. This calculation was determined by estimating revenues and subtracting expenses. The attached Fiscal Note as transmitted (Attachment 5) shows the original assumptions supporting the estimated revenues. It also predicted that revenues would accrue to Transit in 2016, which upon further analysis seems unlikely. As a result, Executive staff prepared a revised Fiscal Note, which is included as Attachment 6 to this staff report. This note has similar assumptions, but notes that revenues will not accrue until 2017.

Transit staff have indicated that there is some element of uncertainty when estimating the price of RINs. Staff have indicated that the RIN market may be volatile because it is related to the price of oil, which has varied considerably over the last year. Finally, Transit staff acknowledge some uncertainty for revenue estimation related to the number of RINs that Transit can produce if ridership and service assumptions change.

Revenues: The number of RINs sold is based on the amount of energy consumed by the electric trolley fleet in 2015. Executive staff determined the price estimate for the RINs by examining historical prices for similar credits, and then reducing the price by 25 percent in order to ensure the Division was not overestimating the amount of revenue the contract would generate.[3]

Metro Percent of Revenue: In each twelve month period of the contract, the Metro percentage of revenues is 70 percent of the net revenue, until the aggregate total of gross revenue, and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds $400,000. Thereafter, the Metro percentage shall be 75 percent of net revenue for the remainder of the applicable twelve month period.

Expenses: The $840,000 is a final revenue estimate that will become available to Transit after EM deducts its expenses for registering and selling the RINS. The cost for EM to register and sell RINs is estimated between 25 percent and 30 percent of net revenues, depending on whether RIN sales exceed $400,000. Under the contract, EM is also entitled to deduct from revenues $45,000 for expenses associated with EPA registration, a quality assurance program review, a review by a third party, and necessary site visits and travel costs. Details for EM's expenses can be found in section 2.14 and 12.0 of the contract.

What if RINS don't sell? If EM does not get EPA approval to sell the RINs, it will not generate expenses that will be billable to Metro. If EM generates and sells RINs that produce revenues, but those revenues are insufficient to cover EM's costs, then Metro may be liable for such costs up to $45,000. In such case, the County may suspend the contract if it has incurred three consecutive months of insufficient revenues and if revenues are also insufficient in the preceding six month period in the aggregate.

[3] Transit staff determine the RIN price by using a 5-year average of D5 RINs plus the price of the Cellulosic waiver credit. The product was multiplied by 0.75.

However, Transit staff indicate that it is extremely unlikely that revenues would be insufficient to cover costs.

Charges that Metro may incur regardless of RIN sales: It is possible that Seattle City Light (SCL) would charge the County to create data systems that will allow SCL to report monthly electricity usage associated with the RINS. Transit staff have indicated that such costs would be one-time and minimal.

AMENDMENT

A Striking Amendment (S1) can be found in Attachment 2 to this staff report. (An illustrative track changes version of the Striking Amendment and Attachment can be found in Attachment 3.) This amendment replaces the original contract with the contract that was modified following review by the PAO and Council's Legal Counsel. Executive staff and EM concur with the changes made in Amendment S1.

Amendment S1 makes technical, legal changes to the original ordinance to ensure that other jurisdictions may use the contract and also makes a number of changes to the contract (Attachment A to Amendment S1). Substantive, non-technical changes include (as described in more detail above):

- Section 1: Technical clarifications regarding contract documents
- Section 2. Technical clarifications regarding definition of terms
- Section 4: Clarification to terms of agreement that if Metro is required to register its RINs, EM agrees to provide assistance as requested by Metro
- Section 10: Clarification language added about the conditions under which a Quality Assurance Program (QAP) contractor would be hired.
- Section 12: Added modifications to note that reimbursable expenses would be expanded to include annual third party review and increases the expenses cap from $40,000 to $45,000 to ensure the County would be receiving its own distinct report from this review. Also added language to allow Metro to suspend the contract if insufficient revenue is receive in any three consecutive months and if revenues are insufficient to cover costs in the aggregate over the prior six months.
- Section 14: Monthly report on revenues will include a detailed list of parties to whom the gross revenue is attributable, which will help County determine when EM has achieved $400K in RINs sales.
- Section 15: Annual review report must be specific to King County.
- Section 17: Warranties specify that the RERs provided to Metro will meet federal requirements for the creation of RINs.
- Section 18: Includes standard County contract language regarding termination for non-appropriation. Clarifies that the County would pay EM only for the work performed to the date of the notice of termination.
- Section 25: Adds language noting that EM will not be released from its obligations if it assigns the contract to another entity other than a wholly-owned subsidiary.
- Section 29: Technical changes to clarify language.
- Section 32: Technical changes to clarify language.

ATTACHMENTS

1. Proposed Ordinance 2016-0349 and Attachments
2. Amendment S1 and Attachments
3. Illustrative Track Changes version of S1 and Attachments
4. December 2015 Report on Monetizing Transit Environmental Attributes
5. Fiscal Note as Transmitted
6. Revised Fiscal Note
7. Transmittal Letter

INVITED

- Rob Gannon, Interim General Manager, King County Metro Transit
- Gary Prince, Special Projects / Economist, Transportation – Metro Transit Division
- Janine Joly, Prosecuting Attorney's Office

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1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

KING COUNTY

Signature Report

August 12, 2016

Ordinance

Proposed No. 2016-0349.1 **Sponsors** Dembowski

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

STATEMENT OF FACTS:

1. The transit division operates a fleet of one hundred fifty-nine electric trolley buses in the city of Seattle. In 2016, it will also operate three battery buses and may operate significantly more in the future.

2. The electric trolley buses operated by the transit division have over twenty million boardings per year and are a major component of the public transportation system.

3. Under the United States Environmental Protection Agency's Renewable Fuel Standards Program, consumption of renewably generated electricity to power the trolley buses and the battery buses has the potential to create Renewable Identification Numbers ("RINs"), which can

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

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

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

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

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

8. Under K.C.C chapter 4.56, sales of rights, title or interests in emissions credits, offsets or allowances or renewable energy certificates, credits, benefits, environmental air quality credits and any similar rights, title or interests held by the county are exempt from the real and personal

property requirements of this chapter when unique circumstances are present. The sales may be made in the best interests of the public to a person or entity through a direct agreement negotiated by the county executive and approved by the county council.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

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

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

SECTION 3. Moneys from the sale of Renewable Identification Numbers shall be allocated to the originating division and shall be used to further the goals outlined in the 2015 Strategic Climate Action Plan.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

Attachments: A. Renewable Energy Attributes Contract

RENEWABLE ENERGY ATTRIBUTES CONTRACT ("Contract")

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

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

1. Contract Documents

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

2. Certain Definitions

2.1. Accepted: (i) With respect to the Renewable Electricity Rights (RERs) delivered by EM hereunder, receipt by the County of the RERs in the applicable tracking system or via written attestation, as applicable; (ii) with respect to the Metro Percentage (defined in Section 2.14), receipt of the funds in accordance with Section 14, subject to audit as provided in Section 15.

2.2. Cellulosic Waiver Credit: The cellulosic biofuel waiver credit for the applicable compliance year determined and published by EPA under 40 C.F.R. §80.1456.

2.3. Change in Law: Defined in Section 4.0.

2.4. Commencement Date: Defined in Section 4.0.

2.5. Consulting Agreement: A Services Agreement, which if executed by and between EM and the County, governs certain services to be provided to the County by EM relating to execution of the transactions contemplated in this Contract.

2.6. Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms and conditions or scope of Work, signed by both parties, with or without notice to the sureties.

2.7. Contract RIN(s): A RIN (or RINs, as applicable) generated by EM with respect to the PEV Load in accordance with the Pathways.

2.8. Day: Calendar day.

2.9. Delivery Period: Defined in Section 4.0.

2.10. Excepted Expenses: Defined in Section 12.0.

2.11. Initial Delivery Period: Defined in Section 4.0.

2.12. Gross Revenue: Revenue actually received by EM from the sale of Contract RINs (and Other EV Credits, as applicable) during a given period.

2.13. KCC: The King County Code.

2.14. Metro Percentage: The percentage of Net Revenue payable to the County under this Contract. In each twelve (12) month period of the Contract beginning on the Commencement Date, the Metro Percentage shall be 70% of Net Revenue until the aggregate total of Gross Revenue and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds $400,000. Thereafter the Metro Percentage shall be 75% of Net Revenue for the remainder of the applicable twelve (12) month period.

2.15. Net Revenue: For a given period, Gross Revenue less Excepted Expenses.

2.16. Other EV Credit(s): Credits generated under a low carbon fuel standard program or any other program that emerges where the transaction contemplated in this Agreement is eligible to generate tradable credit(s) in addition to RINs.

2.17. Plug-in Electric Vehicle ("PEV") Load: The electricity consumption of Metro's electric trolley and battery bus fleets, electric vehicle charging stations and any other electric vehicle load that qualifies as of the date hereof or in the future to generate RINs under the Renewable Fuel Standards program, metered in a manner permissible under the Renewable Fuel Standard Pathways II. PEV Load does not include electricity consumption from Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.

2.18. Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration.

2.19. Renewable Electricity Right or "RER": The environmental attributes and benefits resulting from the generation and delivery to the electricity grid of one (1) megawatt-hour (MWh) of renewable electricity generated from the combustion of biogas procured from a source facility chosen by EM and approved by the County, which approval shall not be unreasonably withheld.

2.20. Renewable Fuel Standard Pathways II or "Pathways": The requirements established by the U.S. Environmental Protection Agency (EPA) for RIN generation from renewable electricity under Renewable Fuel Standards program set forth in Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Misfueling Mitigation Requirements, 79 FR 42128 (July 18, 2014).

2.21. Renewable Identification Numbers or "RINs": A unique number generated to represent a volume of renewable fuel pursuant to 40 C.F.R. §§80.1425 and 80.1426.

2.22. Renewable Fuel Standards program or "RFS2": The renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010, as amended, restated or supplemented to date.

2.23. Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

2.24. System: Collectively, Metro's electric trolley fleet, battery bus fleet, and electric vehicle charging stations, and any other electric vehicle load that qualifies for RIN generation under RFS2. System does not include Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.

2.25. Work: Everything to be provided and done by the Contractor or its Subcontractors for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.

3.0 Description of Transaction

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

4.0 Contract Term

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

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

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

In the event there is a determination by EPA that Metro must be the generator of the RINs, EM agrees to assist Metro with the establishment of an account in the EPA Moderated Transaction System (EMTS). Metro will appoint EM as its agent to perform the generation of the Contract RINs for Metro, and following generation, will transfer the Contract RINs to an EM account in EMTS from which EM will market and sell the Contract RINs.

EM's obligation to generate Contract RINs associated with RERs delivered to Metro prior to the last day of the Delivery Period and to remit the Metro Percentage of Net Revenue associated therewith will survive termination until revenue from all RERs delivered to Metro is realized through the sale of the Contract RINs.

5.0 Quantity

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

6.0 Exclusivity

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

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

7.0 Registration Information

EM will be responsible for registering the System with the U.S. Environmental Protection Agency ("EPA") or other regulating entity as applicable to generate RINs under RFS2 or to generate Other EV Credits under another applicable program, as applicable (each, a "Registration"). EM will complete registration requirements for Contract RIN sales pursuant to the terms of the Consulting Agreement if one is executed. Any EPA registration requirements not covered by a Consulting Agreement will be completed by EM pursuant to this Contract.

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

8.0 Ongoing Information Requirements

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

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

9.0 RIN/Other EV Credit Generation

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

10.0 Contract RIN Sales

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

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

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

10.3 If commercially reasonable, Contractor shall engage a firm to perform a review of the Contract RINs under an EPA-approved QAP (the "Quality Assurance Program") during the Initial Delivery Period. Contractor's expenses in connection with the Quality Assurance Program shall be considered Excepted Expenses pursuant to Section 12 and deductible under clause (ii) thereof.

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

11.0 This section intentionally left blank.

12.0 Expenses

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

(i) Third-party costs for initial EPA registration;

(ii) Quality Assurance Program costs;

(iii) Two (2) annual site visits to the renewable energy resource from which the RERs are procured;

(iv) Travel expenses for third parties;

(v) Costs or payments associated with Seattle City Light, but not including payments owed by EM for utility service to its facilities;

(vi) RER procurement costs;

(vii) Costs associated with the generation and sale of Other EV Credits, provided that the parties have executed the written amendment related to revenue for such credits described in Section 3;

(iix) Tax payments associated with Contract RIN sales, but not including any income taxes for which EM is responsible;

provided that the aggregate amount of the expenses listed in clauses (i) through (iv) of this Section 12 deducted from Gross Revenue in any calendar year may not exceed the greater of 5% of that year's Gross Revenue or $40,000 (the "Expense Cap").

The County shall reimburse EM for any of the above expenses incurred in connection with performance of EM's obligations hereunder; provided that with respect to the expenses listed in clauses (i) through (iv), EM shall be responsible for all such expenses exceeding the Expense Cap in each calendar year.

In no event shall EM be entitled to reimbursement under this Contract for any expense that was or will be reimbursed by the County to EM under the Consulting Agreement.

13.0 Delivery of RERs

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

14.0 Payment

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

14.2 For each month of the Delivery Period in which Contract RINs or Other EV Credits are generated and sold, as applicable, EM will prepare and provide Metro with a document showing: (i) Gross Revenue for the Contract RINs or Other EV Credits sold during such month; (ii) the gross revenue attributable to any RINs sold pursuant to Section 32, in the aggregate, to the extent permitted by the applicable third party, with a list of all third parties to whom the gross revenue is

attributable (to the extent permitted by the applicable third party); (iii) the Net Revenue from such Contract RINs or Other EV Credits, as applicable; (iv) an itemized list of all Excepted Expenses deducted from Gross Revenue; (v) the Metro Percentage, (vi) the date of sale and price per unit for all Contract RINs or Other EV Credits sold during such month, (vii) the number of Contract RINs or Other EV Credits generated and remaining unsold, if any and (iix) the number of RERs delivered to Metro with respect to the PEV Load for such month and the number of Contract RINs or Other EV Credits generated or to be generated therefrom.

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

14.4 By March 31 of each year of the Delivery Period, EM shall provide the County with a report of the prior year's Contract RINs sales as compared to market sales using a benchmark price equal to the average of the daily mean prices set forth in the OPIS price assessment range for D5 RINs plus fifty percent (50.0%) of the Cellulosic Waiver Credit, or another benchmark as may be mutually agreed by the parties. EM will present statistical information relating the prices received by Metro with these prices.

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

15.0 Contract RINs and Other EV Credits Annual Review

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

16.0 Mutual Representations and Warranties

Each party represents and warrants to the other party as of the date of this Contract, and as of the date of each delivery of RERs that (i) it has, and at all times during the term of this Contract will have, all necessary power and authority to execute, deliver, and perform its obligations under this Contract; (ii) the execution, delivery, and performance of this Contract has been duly authorized by all necessary action and does not violate any of the terms or conditions of its governing documents, or any contract to which it is a party, or any law or other legal or regulatory determination applicable to it; (iii) there is

no pending or (to its knowledge) threatened litigation, arbitration, or administrative proceeding that materially adversely affects its ability to perform its obligations under this Contract and (iv) there is no provision of governing law that would limit either (a) the enforceability of this Contract against it or (b) the exercise of any rights or remedies of the other party set forth herein.

17.0 Representations and Warranties of EM

EM represents and warrants to Metro that as of the date of each transfer hereunder (i) each RER meets the specifications set forth in this Contract; (ii) EM has good and marketable title to the RERs; (iii) all right, title and interest in and to the RERs are free and clear of any liens, taxes, claims, security interests, or other encumbrances; (iv) EM did not sell, market, or otherwise represent as renewable energy the electrical energy that was generated with the RERs; (v) neither EM nor any other party, to the knowledge of EM following reasonable inquiry, used the electrical energy that was generated with the RERs to meet any federal, state, or local renewable energy requirement, renewable energy procurement standard, renewable portfolio standard, or other renewable energy mandate; and (vi) . EXCEPT FOR ANY WARRANTIES EXPRESSLY MADE IN THIS CONTRACT, EM EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

18.0 Termination Default

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

1. A "notice to cure" shall be served on the Contractor by certified or registered first class mail in accordance with Section 24. The Contractor shall have ten (10) Days from the date of receipt to cure the default or provide the County with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, acting reasonably, the County may terminate the Contract by serving a "notice of termination" in accordance with Section 24 setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work performed and Accepted less any damages to the County caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the County to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

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

19.1 Retention of Records. The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

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

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

19.4 Public Records Requests.

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

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

20.0 Legal Relations; Indemnity and Insurance

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

20.2 Indemnification and Hold Harmless. To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold harmless the County, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the Work provided by or on behalf of the Contractor. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the County and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such Work; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. In the event that the County incurs any judgment, award and/or expense or cost, including attorney fees, arising from the provisions of this Indemnification Section, or to enforce the

provisions of this Indemnification Section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor. For the avoidance of doubt, any differences between the amounts realized from the sale of Contract RINs or Other EV Credits and any benchmark or other market pricing data or the amount of Gross Revenue or Net Revenue generated from the sale of Contract RINs or Other EV Credits relative to any benchmark are not considered losses subject to this Section 20.2. The indemnification obligation of Contractor under this Section 20.2 applies only to the portion of such loss, cost, penalty or other claim to which the County would not have been subject in the absence of Contractor's Work under this Contract.

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

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

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

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

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

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

A. Minimum Scope and Limits of Insurance

The Contractor shall maintain limits no less than,

1. General Liability: $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a $2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations. Professional Liability, Errors and Omissions: $1,000,000 Per Claim and in the Aggregate
2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition.
3. Workers' Compensation: Statutory requirements of the State of residency, and
4. Employers' Liability or "Stop Gap" coverage: $1,000,000

B. Other Insurance Provisions and Requirements

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

All Liability Policies except Workers Compensation and Professional Liability:

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

All Policies:

a. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

b. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor

c. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) Days prior written notice, has been given to the County.

d. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

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

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

C. Subcontractors

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

21.0 Conflicts of Interest and Non-Competitive Practices

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

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

(i) EM and certain of its affiliates are in the business of acquiring, divesting, marketing and generating renewable credits, including renewable transportation credits (RINs), in some cases in transactions similar to those contemplated in this Contract;

(ii) Nothing in this Contract is meant to limit or prevent EM or its affiliates from conducting its respective businesses; and

(iii) Neither EM nor any affiliate or Subcontractor thereof is acting as a fiduciary to the County with respect to any products or services provided to the County under or in connection with this Contract.

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

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

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

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

22.0 INTELLECTUAL PROPERTY

22.1 Patents, Copyrights and Rights in Subject data

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

The Contractor agrees that the ownership of any plans, drawing, designs, Scope of Work, computer programs, technical reports, operating manuals, calculations, notes and other work submitted or which is

specified to be delivered under this Contract, whether or not complete (referred to in this subsection as "Subject Data") shall be vested in the County, with the exception of (i) any material or result previously created or prepared by Contractor; and (ii) any intellectual property or proprietary materials of Contractor; in each case excluding any data pertaining specifically to the County ("Contractor Data").

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

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

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

(i) stipulate that materials or results created under this Contract are licensed, not sold and that title to and ownership of said materials or results or derivative works remain with the County; and

(ii) disclaim all express and implied warranties on behalf of the County, and exclude liability of the County and its officials, employees, agents and assigns for any special, indirect, exemplary, incidental, special, punitive or consequential damages, even if the County was informed or knew or should have known of the possibility of such damages and loss; and the County's sole liability for damages will be limited to direct damages in the amount of $100.

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

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

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

22.2 Nondisclosure of Data. Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the prior express written approval of the County; provided that distribution to EPA or other regulatory bodies as required to perform Contractor or Subcontractor's obligations under this Contract is permitted with the prior written consent of the County, not to be unreasonably withheld, delayed or conditioned.

22.3 Non-Disclosure Obligation. While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish any information marked "Confidential", "Proprietary" or "Business Secret" to any third party with the exception of (i) its Affiliates, advisors and agents who (a) have a need to know such information in connection with Contractor's obligations under this Contract and (b) have agreed in writing to obligations of

confidentiality and non-disclosure with respect to such information and (ii) to the EPA or other governing body, consultants or agents thereof as reasonably necessary or required to generate the Contract RINs or Other EV Credits (including registration, verification and compliance filings). Contractor shall notify the County of any such required disclosure and cooperate with the County to limit such disclosure and/or obtain confidential treatment of such information. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

23.0 Nondiscrimination and Payment of a Living Wage

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

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

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

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

23.4 Nondiscrimination in Subcontracting Practices. During the term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person because of their sex, race, color, marital status, national origin, religious

affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification.

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

23.6 Small Contractors and Suppliers Policy.

Policy

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

Inquiries and Information Regarding King County Certified SCS Firms

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

Definitions

The following definitions shall apply throughout this Section.

1. “Administrator“ means the Director of Finance.
2. “Certified SCS Firm” means a business that has applied for participation in King County's Contracting Opportunities Program, and has been certified as an SCS by the King County BDCC office.
3. “Small Contractor or Supplier” or “(SCS)” means that a business and the person or persons who own and control it are in a financial condition, which puts the business at a substantial disadvantage in attempting to compete for public contracts. The relevant financial condition for eligibility under the Contracting Opportunities Program is based on a dollar ceiling for standard business classifications that is set at fifty percent (50%) of the Federal Small Business Administration (SBA) small business size standards using the North American Industrial Classification System (NAICS), and an Owners' Personal Net Worth less than $750K dollars.

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

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

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

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

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

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

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

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

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

24.0 Notices

All notices, demands, and other communications hereunder shall be effective only if given in writing and shall be deemed given (i) when delivered in person; (ii) when delivered by private courier (with

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

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

25.0 Assignment

This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may transfer or assign this Contract, in whole or in part, without the other party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Metro agrees to provide such consent to an assignment by EM to another wholly-owned subsidiary of Element Markets, LLC, subject to receipt of documentation evidencing, in Metro's reasonable discretion, that such affiliate (i) has the relevant registrations, qualifications and resources to perform EM's obligations under this Contract; which will be deemed to be satisfied in the event such affiliate is utilizing the same personnel and obtains the same licenses or registrations held by EM; and (ii) agrees to assume all rights and obligations of EM hereunder. Upon any transfer or assignment permitted by this Contract, the assignor shall be released from its obligations hereunder to the extent such obligations are assumed by the assignee.

26.0 Amendment

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

27.0 No Waiver

No delay or omission by a party in the exercise of any right under this Contract shall be taken, construed, or considered as a waiver or relinquishment thereof. If any of the terms and conditions herein are breached and thereafter waived in writing by a party, such waiver is limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

28.0 Severability

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

29.0 Complete Agreement

Together with the Consulting Agreement, which if executed, governs services provided by Contractor related to this Contract, this Contract represents the parties' final and mutual understanding concerning its subject matter. It replaces and supersedes any prior agreements or understandings with respect to its subject matter, whether written or oral. Except as may be specifically stated to the contrary in this Contract or the Consulting Agreement, as applicable, to the extent any term is addressed in both the Consulting Agreement and this Contract, the terms of this Contract will govern.

30.0 Mediation or Arbitration

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

31.0 Applicable Law and Forum

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

32.0 Other Public Agency Orders

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

33.0 Force Majeure

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

34.0 Recycled Products Policy

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

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

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

35.0 No Third Party Beneficiary

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

36.0 Counterparts

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

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

Element Markets Renewable Energy, LLC	**King County Department of Transportation, Metro Transit Division**
Signature: *Date:*	*Signature:* *Date:*
Printed Name: *Title:*	*Printed Name:* *Title:*

Schedule 32.0
FORM OF AGREEMENT

AGREEMENT

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

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

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

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

1. **Agreement.** Except to the extent provided in Section 2 of this Agreement, Counterparty hereby agrees to be bound by all the terms, conditions, covenants, obligations, liabilities and undertakings to which Metro is subject under the Metro Contract, all with the same force and effect as if Counterparty were to have executed the Metro Contract in place of Metro. Any representations and warranties made by Metro in the Metro Contract are deemed made by Counterparty to Consultant as of the date of this Agreement. The terms and conditions of the Metro Contract, attached as Exhibit A hereto, are hereby incorporated by reference and made a part of this Agreement as if fully restated in this Agreement.

2. **Modifications to Metro Contract.** For the purposes of this Agreement, the following terms and conditions will modify the terms of the Metro Contract as follows:

[*LIST MODIFICATIONS/ADDITIONS TO CONTRACT*]

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

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

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

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

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

[COUNTERPARTY]

By:_____

Name:
Title:

AGREED TO AND ACCEPTED:

ELEMENT MARKETS RENEWABLE
ENERGY, LLC

By:_____

Name:
Title:

Exhibit A-1

Sample Form of Metro Attestation

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

(1) Metro accepted delivery of [_____] renewable energy rights ("RERs") from Element Markets Renewable Energy, LLC or its designee ("EM"), representing the environmental attributes and benefits resulting from the generation and delivery to the electricity grid of the equivalent number of megawatt-hours (MWh) of renewable electricity generated from the combustion of biogas of an equivalent quantity to the number of megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses (the "System").

(2) Metro has not sold or transferred the RERs, and will not sell or transfer, the RERs in whole or in part (including the right to generate RINs from the underlying renewable energy) to any party.

(3) Metro has not generated, and will not generate, any RINs associated with the electricity consumed by the System during the Attestation Period.

(4) Metro has not transferred the right to generate RINs associated with the electricity consumed by the System during the Attestation Period to any party other than EM.

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

KING COUNTY DEPARTMENT OF TRANSPORTATION, METRO TRANSIT DIVISION

By: _____

Name:

Title:

Exhibit A-2

Form of RER Delivery Attestation

RENEWABLE ENERGY RIGHTS SUPPLIER ATTESTATION

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

(i) The Renewable Energy Rights were produced through the conversion of organic matter at a landfill, manure digester or sewage waste treatment facility.

(ii) The electricity to which the Renewable Energy Rights relate was generated from landfill gas consisting of a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure.

(iii) The Renewable Energy Rights have not been sold by EM to any party and have not been used by EM for any purpose other than conveyance to Metro in accordance with the Agreement.

(iv) Title to the Renewable Energy Rights was transferred from EM to Metro immediately prior to Metro matching the Renewable Energy Rights with the megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses during the Attestation Period pursuant to the Agreement.

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

Signed: _____

Name: _____

Title: _____

Date: Click here to enter a date.

[Blank Page]

ATTACHMENT 2

August 16, 2016

S1

GD

Sponsor: Dembowski

Proposed No.: 2016-0349

STRIKING AMENDMENT TO PROPOSED ORDINANCE 2016-0349, VERSION 1.

On page 1, beginning on line 9, strike everything through page 3, line 56, and insert:

"1. The transit division operates a fleet of one hundred fifty-nine electric trolley buses in the city of Seattle. In 2016, it will also operate three battery buses and may operate significantly more in the future.

2. The electric trolley buses operated by the transit division have over twenty million boardings per year and are a major component of the public transportation system.

3. Under the United States Environmental Protection Agency's Renewable Fuel Standards Program, consumption of renewably generated electricity to power the trolley buses and the battery buses has the potential to create Renewable Identification Numbers ("RINs"), which can be sold to companies that blend gasoline for the retail market and have Environmental Protection Agency-mandated Renewable Fuel Obligations.

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

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

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

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

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

9. In accordance with the King County charter section 230.10.10, revenues received by the transit division from the sale of RINs associated with its electric trolley and battery bus fleets may only be used for specified purposes.

10. Under K.C.C chapter 4.56, sales of rights, title or interests in emissions credits, offsets or allowances or renewable energy certificates, credits, benefits, environmental air quality credits and any similar rights, title or interests held by the county are exempt from the real and personal property requirements of this chapter when unique circumstances are present. The sales may be made in the

best interests of the public to a person or entity through a direct agreement negotiated by the county executive and approved by the county council.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

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

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

SECTION 3. Revenues from the sale of Renewable Identification Numbers shall be allocated to the originating department or division and shall be used to further the goals outlined in the 2015 Strategic Climate Action Plan as applicable to the originating department or division."

Delete Attachment A, Renewable Energy Attributes Contract, dated July 11, 2016, and insert Attachment A, dated Renewable Energy Attributes Contract, dated August 16, 2016.

EFFECT: Makes technical, legal changes to the original ordinance. Substitutes revised contract, including changes to:.

- ***Section 1: Technical clarifications regarding contract documents***
- ***Section 2. Technical clarifications regarding definition of terms***
- ***Section 4: Clarification to terms of agreement that if Metro is required to register its RINs, EM agrees to provide assistance as requested by Metro.***

- ***Section 10: Clarification language added about the conditions under which a Quality Assurance Program (QAP) contractor would be hired.***
- ***Section 12: Added modifications to note that reimbursable expenses would be expanded to include annual third party review and increases the expenses cap from $40,000 to $45,000 to ensure the County would be receiving its own distinct report from this review. Also added language to allow Metro to suspend the contract if insufficient revenue is receive in any three consecutive months and if revenues are insufficient to cover costs in the aggregate over the prior six months.***
- ***Section 14: Monthly report on revenues will include a detailed list of parties to whom the gross revenue is attributable, which will help County determine when EM has achieved $400K in RINs sales.***
- ***Section 15: Annual review report must be specific to King County.***
- ***Section 17: Warranties specify that the RERs provided to Metro will meet federal requirements for the creation of RINs.***
- ***Section 18: Includes standard County contract language regarding termination for non-appropriation. Clarifies that the County would pay EM only for the work performed to the date of the notice of termination.***
- ***Section 25: Adds language noting that EM will not be released from its obligations if it assigns the contract to another entity other than a wholly-owned subsidiary.***
- ***Section 29: Technical changes to clarify language.***
- ***Section 32: Technical changes to clarify language.***

RENEWABLE ENERGY ATTRIBUTES CONTRACT ("Contract")

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

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

1. Contract Documents

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

2. Certain Definitions

2.1. Accepted: (i) With respect to the Renewable Electricity Rights (RERs) delivered by EM hereunder, receipt by the County of the RERs in the applicable tracking system or via written attestation, as applicable; (ii) with respect to the Metro Percentage (defined in Section 2.14), receipt of the funds in accordance with Section 14, subject to audit as provided in Section 15.

2.2. Cellulosic Waiver Credit: The cellulosic biofuel waiver credit for the applicable compliance year determined and published by EPA under 40 C.F.R. §80.1456.

2.3. Change in Law: Defined in Section 4.0.

2.4. Commencement Date: Defined in Section 4.0.

2.5. Not used.

2.6. Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms and conditions or scope of Work, signed by both parties, with or without notice to the sureties.

2.7. Contract RIN(s): A RIN (or RINs, as applicable) generated by EM with respect to the PEV Load in accordance with the Pathways.

2.8. Day: Calendar day.

2.9. Delivery Period: Defined in Section 4.0.

2.10. Excepted Expenses: Defined in Section 12.0.

2.11. Initial Delivery Period: Defined in Section 4.0.

2.12. Gross Revenue: Revenue actually received by EM from the sale of Contract RINs (and Other EV Credits, as applicable) during a given period.

2.13. KCC: The King County Code.

2.14. Metro Percentage: The percentage of Net Revenue payable to the County under this Contract. In each twelve (12) month period of the Contract beginning on the Commencement Date, the Metro Percentage shall be 70% of Net Revenue until the aggregate total of Gross Revenue and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds $400,000. Thereafter the Metro Percentage shall be 75% of Net Revenue for the remainder of the applicable twelve (12) month period.

2.15. Net Revenue: For a given period, Gross Revenue less Excepted Expenses.

2.16. Other EV Credit(s): Credits generated under a low carbon fuel standard program or any other program that emerges where the transaction contemplated in this Contract is eligible to generate tradable credit(s) in addition to RINs.

2.17. Plug-in Electric Vehicle ("PEV") Load: The electricity consumption of Metro's electric trolley and battery bus fleets, electric vehicle charging stations and any other electric vehicle load that qualifies as of the date hereof or in the future to generate RINs under the Renewable Fuel Standards program, metered in a manner permissible under the Renewable Fuel Standard Pathways II. PEV Load does not include electricity consumption from Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.

2.18. Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration.

2.19. Renewable Electricity Right or "RER": The environmental attributes and benefits resulting from the generation and delivery to the electricity grid of one (1) megawatt-hour (MWh) of renewable electricity generated from the combustion of biogas procured from a source facility chosen by EM and approved by the County, which approval shall not be unreasonably withheld.

2.20. Renewable Fuel Standard Pathways II or "Pathways": The requirements established by the U.S. Environmental Protection Agency (EPA) for RIN generation from renewable electricity under Renewable Fuel Standards program set forth in Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Misfueling Mitigation Requirements, 79 FR 42128 (July 18, 2014).

2.21. Renewable Identification Numbers or "RINs": A unique number generated to represent a volume of renewable fuel pursuant to 40 C.F.R. §§80.1425 and 80.1426.

2.22. Renewable Fuel Standards program or "RFS2": The renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010, as amended, restated or supplemented to date.

2.23. Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

2.24. System: Collectively, Metro's electric trolley fleet, battery bus fleet, and electric vehicle charging stations, and any other electric vehicle load that qualifies for RIN generation under RFS2. System does not include Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.

2.25. Work: Everything to be provided and done by the Contractor or its Subcontractors for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.

3.0 Description of Transaction

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

4.0 Contract Term

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

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

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

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

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

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

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

5.0 Quantity

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

6.0 Exclusivity

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

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

7.0 Registration Information

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

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

8.0 Ongoing Information Requirements

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

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

9.0 RIN/Other EV Credit Generation

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

10.0 Contract RIN Sales

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

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

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

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

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

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

11.0 This section intentionally left blank.

12.0 Expenses

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

(i) Third-party costs for initial EPA registration;

(ii) Quality Assurance Program costs and annual third party review under Section 15.0;

(iii) Two (2) annual site visits to the renewable energy resource from which the RERs are procured;

(iv) Travel expenses for third parties;

(v) Charges from utilities for costs to generate RINs and to meet EPA and QAP audit and data requirements, but not including payments owed by EM for utility service to its facilities;

(vi) RER procurement costs, provided that EM shall not be entitled to deduct or be reimbursed for the purchase price of any RER exceeding three dollars unless EM received prior approval in writing from the County for such purchase;

(vii) Costs associated with the generation and sale of Other EV Credits, provided that the parties have executed the written amendment related to revenue for such credits described in Section 3;

(viii) Tax payments associated with Contract RIN sales, but not including any income taxes for which EM is responsible;

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

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

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

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

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

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

13.0 Delivery of RERs

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

14.0 Payment

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

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

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

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

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

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

15.0 Contract RINs and Other EV Credits Annual Review

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

16.0 Mutual Representations and Warranties

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

17.0 Representations and Warranties of EM

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

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

18.0 Termination Default

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

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

18.2 Termination for Non-Appropriation

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

1. Subject to subsection 2., the County will be liable only for payment in accordance with the terms of this Contract for Work performed prior to the effective date of termination;

2. Payment, if any, associated with such termination shall not exceed the appropriation for the biennium in which termination occurs; and

3. The Contractor shall be released from any obligation to provide further Work under the Contract affected by the termination.

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

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

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

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

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

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

19.4 Public Records Requests.

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

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

20.0 Legal Relations; Indemnity and Insurance

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

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

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

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

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

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

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

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

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

A. Minimum Scope and Limits of Insurance

The Contractor shall maintain limits no less than,

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

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

B. Other Insurance Provisions and Requirements

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

All Liability Policies except Workers Compensation and Professional Liability:

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

All Policies:

a. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

b. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor

c. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) Days prior written notice, has been given to the County.

d. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

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

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

C. Subcontractors

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

21.0 Conflicts of Interest and Non-Competitive Practices

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

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

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

(i) EM and certain of its affiliates are in the business of acquiring, divesting, marketing and generating renewable credits, including renewable transportation credits (RINs), in some cases in transactions similar to those contemplated in this Contract;

(ii) Nothing in this Contract is meant to limit or prevent EM or its affiliates from conducting its respective businesses; and

(iii) Neither EM nor any affiliate or Subcontractor thereof is acting as a fiduciary to the County with respect to any products or services provided to the County under or in connection with this Contract.

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

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

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

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

22.0 INTELLECTUAL PROPERTY

22.1 Patents, Copyrights and Rights in Subject data

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

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

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

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

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

(i) stipulate that materials or results created under this Contract are licensed, not sold and that title to and ownership of said materials or results or derivative works remain with the County; and

(ii) disclaim all express and implied warranties on behalf of the County, and exclude liability of the County and its officials, employees, agents and assigns for any special, indirect, exemplary, incidental, special, punitive or consequential damages, even if the County was informed or knew or should have known of the possibility of such damages and loss; and the County's sole liability for damages will be limited to direct damages in the amount of $100.

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

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

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

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

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

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

23.0 Nondiscrimination and Payment of a Living Wage

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

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

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

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

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

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

23.6 Small Contractors and Suppliers Policy.

Policy

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

Inquiries and Information Regarding King County Certified SCS Firms

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

Definitions

The following definitions shall apply throughout this Section.

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

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

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

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

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

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

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

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

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

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

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

24.0 Notices

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

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

25.0 Assignment

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

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

26.0 Amendment

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

27.0 No Waiver

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

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

28.0 Severability

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

29.0 Complete Agreement

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

30.0 Mediation or Arbitration

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

31.0 Applicable Law and Forum

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

32.0 Other Public Agency Orders

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

33.0 Force Majeure

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

34.0 Recycled Products Policy

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

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

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

35.0 No Third Party Beneficiary

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

36.0 Counterparts

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

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

Element Markets Renewable Energy, LLC	**King County Department of Transportation, Metro Transit Division**
Signature: *Date:*	*Signature:* *Date:*
Printed Name: *Title:*	*Printed Name:* *Title:*

Schedule 32.0
FORM OF AGREEMENT

AGREEMENT

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

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

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

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

1. **Agreement.** Except to the extent provided in Section 2 of this Agreement, Counterparty hereby agrees to be bound by all the terms, conditions, covenants, obligations, liabilities and undertakings to which Metro is subject under the Metro Contract, all with the same force and effect as if Counterparty were to have executed the Metro Contract in place of Metro. Any representations and warranties made by Metro in the Metro Contract are deemed made by Counterparty to Consultant as of the date of this Agreement. The terms and conditions of the Metro Contract, attached as Exhibit A hereto, are hereby incorporated by reference and made a part of this Agreement as if fully restated in this Agreement. In consideration of using this Agreement, the Counterparty does not object to the Consultant providing Metro with data from the sales of RINS or other EV credits made under this Agreement, as contemplated by Section14 of the Metro Contract.

2. **Modifications to Metro Contract.** For the purposes of this Agreement, the following terms and conditions will modify the terms of the Metro Contract as follows:

[*LIST MODIFICATIONS/ADDITIONS TO CONTRACT*]

3. **Nature of Agreement**. Counterparty will be solely responsible for any liabilities, obligations and undertakings to Consultant under this Agreement. Metro is not a party to

this Agreement and nothing in this Agreement creates, or is intended to create, an obligation of any kind on the part of Metro to either Counterparty or Consultant.

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

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

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

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

[COUNTERPARTY]

By:_____

Name:
Title:

AGREED TO AND ACCEPTED:

ELEMENT MARKETS RENEWABLE
ENERGY, LLC

By:_____

Name:
Title:

Exhibit A-1

Sample Form of Metro Attestation

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

(1) Metro accepted delivery of [_____] renewable energy rights ("RERs") from Element Markets Renewable Energy, LLC or its designee ("EM"), representing the environmental attributes and benefits resulting from the generation and delivery to the electricity grid of the equivalent number of megawatt-hours (MWh) of renewable electricity generated from the combustion of biogas of an equivalent quantity to the number of megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses (the "System").

(2) Metro has not sold or transferred the RERs, and will not sell or transfer, the RERs in whole or in part (including the right to generate RINs from the underlying renewable energy) to any party.

(3) Metro has not generated, and will not generate, any RINs associated with the electricity consumed by the System during the Attestation Period.

(4) Metro has not transferred the right to generate RINs associated with the electricity consumed by the System during the Attestation Period to any party other than EM.

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

KING COUNTY DEPARTMENT OF TRANSPORTATION, METRO TRANSIT DIVISION

By: _____

Name:

Title:

Exhibit A-2

Form of RER Delivery Attestation

RENEWABLE ENERGY RIGHTS SUPPLIER ATTESTATION

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

(i) The Renewable Energy Rights were produced through the conversion of organic matter at a landfill, manure digester or sewage waste treatment facility.

(ii) The electricity to which the Renewable Energy Rights relate was generated from landfill gas consisting of a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure.

(iii) The Renewable Energy Rights have not been sold by EM to any party and have not been used by EM for any purpose other than conveyance to Metro in accordance with the Contract.

(iv) Title to the Renewable Energy Rights was transferred from EM to Metro immediately prior to Metro matching the Renewable Energy Rights with the megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses during the Attestation Period pursuant to the Contract.

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

Signed: _____

Name: _____

Title: _____

Date: Click here to enter a date.

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

King County

KING COUNTY

Signature Report

August 12, 2016

Ordinance

Proposed No. 2016-0349.1 **Sponsors** Dembowski

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

STATEMENT OF FACTS:

1. The transit division operates a fleet of one hundred fifty-nine electric trolley buses in the city of Seattle. In 2016, it will also operate three battery buses and may operate significantly more in the future.

2. The electric trolley buses operated by the transit division have over twenty million boardings per year and are a major component of the public transportation system.

3. Under the United States Environmental Protection Agency's Renewable Fuel Standards Program, consumption of renewably generated electricity to power the trolley buses and the battery buses has the potential to create Renewable Identification Numbers ("RINs"), which can

TRACK CHANGES ILLUSTRATIVE ONLY

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

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

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

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

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

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

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

TRACK CHANGES ILLUSTRATIVE ONLY

electric trolley and battery bus fleets may only be used for specified purposes.

~~8~~10. Under K.C.C chapter 4.56, sales of rights, title or interests in emissions credits, offsets or allowances or renewable energy certificates, credits, benefits, environmental air quality credits and any similar rights, title or interests held by the county are exempt from the real and personal property requirements of this chapter when unique circumstances are present. The sales may be made in the best interests of the public to a person or entity through a direct agreement negotiated by the county executive and approved by the county council.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

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

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

SECTION 3. ~~Moneys~~ Revenues from the sale of Renewable Identification Numbers shall be allocated to the originating department or division and shall be used to further the goals outlined in the 2015 Strategic Climate Action Plan as applicable to the originating department or division.

TRACK CHANGES ILLUSTRATIVE ONLY

KING COUNTY

Signature Report

August 12, 2016

Ordinance

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Proposed No. 2016-0349.1

Sponsors Dembowski

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

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

TRACK CHANGES ILLUSTRATIVE ONLY

RENEWABLE ENERGY ATTRIBUTES CONTRACT ("Contract")

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

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

1. Contract Documents

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

2. Certain Definitions

2.1. Accepted: (i) With respect to the Renewable Electricity Rights (RERs) delivered by EM hereunder, receipt by the County of the RERs in the applicable tracking system or via written attestation, as applicable; (ii) with respect to the Metro Percentage (defined in Section 2.14), receipt of the funds in accordance with Section 14, subject to audit as provided in Section 15.

2.2. Cellulosic Waiver Credit: The cellulosic biofuel waiver credit for the applicable compliance year determined and published by EPA under 40 C.F.R. §80.1456.

2.3. Change in Law: Defined in Section 4.0.

2.4. Commencement Date: Defined in Section 4.0.

~~2.5. Consulting Agreement: A Services Agreement, which if executed by and between EM and the County, governs certain services to be provided to the County by EM relating to execution of the transactions contemplated in this Contract.~~2.5. Not used.

2.6. Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms and conditions or scope of Work, signed by both parties, with or without notice to the sureties.

2.7. Contract RIN(s): A RIN (or RINs, as applicable) generated by EM with respect to the PEV Load in accordance with the Pathways.

2.8. Day: Calendar day.

2.9. Delivery Period: Defined in Section 4.0.

2.10. Excepted Expenses: Defined in Section 12.0.

2.11. Initial Delivery Period: Defined in Section 4.0.

2.12. Gross Revenue: Revenue actually received by EM from the sale of Contract RINs (and Other EV Credits, as applicable) during a given period.

2.13. KCC: The King County Code.

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2.14. Metro Percentage: The percentage of Net Revenue payable to the County under this Contract. In each twelve (12) month period of the Contract beginning on the Commencement Date, the Metro Percentage shall be 70% of Net Revenue until the aggregate total of Gross Revenue and gross revenue realized from any sale of RINs made by another public agency pursuant to Section 32.0 exceeds $400,000. Thereafter the Metro Percentage shall be 75% of Net Revenue for the remainder of the applicable twelve (12) month period.

2.15. Net Revenue: For a given period, Gross Revenue less Excepted Expenses.

2.16. Other EV Credit(s): Credits generated under a low carbon fuel standard program or any other program that emerges where the transaction contemplated in this ~~Agreement~~Contract is eligible to generate tradable credit(s) in addition to RINs.

2.17. Plug-in Electric Vehicle ("PEV") Load: The electricity consumption of Metro's electric trolley and battery bus fleets, electric vehicle charging stations and any other electric vehicle load that qualifies as of the date hereof or in the future to generate RINs under the Renewable Fuel Standards program, metered in a manner permissible under the Renewable Fuel Standard Pathways II. PEV Load does not include electricity consumption from Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.

2.18. Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration.

2.19. Renewable Electricity Right or "RER": The environmental attributes and benefits resulting from the generation and delivery to the electricity grid of one (1) megawatt-hour (MWh) of renewable electricity generated from the combustion of biogas procured from a source facility chosen by EM and approved by the County, which approval shall not be unreasonably withheld.

2.20. Renewable Fuel Standard Pathways II or "Pathways": The requirements established by the U.S. Environmental Protection Agency (EPA) for RIN generation from renewable electricity under Renewable Fuel Standards program set forth in Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Misfueling Mitigation Requirements, 79 FR 42128 (July 18, 2014).

2.21. Renewable Identification Numbers or "RINs": A unique number generated to represent a volume of renewable fuel pursuant to 40 C.F.R. §§80.1425 and 80.1426.

2.22. Renewable Fuel Standards program or "RFS2": The renewable energy program and policies established by the Environmental Protection Agency and published on March 26, 2010 (at 75 Fed. Reg. 14670) and which became effective on July 1, 2010, as amended, restated or supplemented to date.

2.23. Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

2.24. System: Collectively, Metro's electric trolley fleet, battery bus fleet, and electric vehicle charging stations, and any other electric vehicle load that qualifies for RIN generation under RFS2. System does not include Metro VanPool, Metro VanShare, or VanPool and VanShare vehicle charging stations.

2.25. Work: Everything to be provided and done by the Contractor or its Subcontractors for the fulfillment of the Contract and shall include services, goods and supplies specified under this Contract, including Contract Amendments.

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3.0 Description of Transaction

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

4.0 Contract Term

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

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

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

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

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

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

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

5.0 Quantity

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

6.0 Exclusivity

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

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

7.0 Registration Information

EM will be responsible for registering the System with the U.S. Environmental Protection Agency ("EPA") or other regulating entity as applicable to generate RINs under RFS2 or to generate Other EV Credits under another applicable program, as applicable (each, a "Registration"). EM will complete registration requirements for Contract RIN sales pursuant to the terms of ~~the Consulting Agreement if one is executed. Any EPA registration requirements not covered by a Consulting Agreement will be completed by EM pursuant to this Contract.~~this Contract.

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

8.0 Ongoing Information Requirements

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

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

9.0 RIN/Other EV Credit Generation

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

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PEV Load, the Other EV Credits generated will be equal to the quantity permitted under the applicable statutes, rules or regulations.

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10.0 Contract RIN Sales

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

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

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

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

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

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

11.0 This section intentionally left blank.

12.0 Expenses

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

(i) Third-party costs for initial EPA registration;

(ii) Quality Assurance Program costs~~;~~ and annual third party review under Section 15.0;

(iii) Two (2) annual site visits to the renewable energy resource from which the RERs are procured;

(iv) Travel expenses for third parties;

~~(v) Costs or payments associated with Seattle City Light~~(v) Charges from utilities for costs to generate RINs and to meet EPA and QAP audit and data requirements, but not including payments owed by EM for utility service to its facilities;

(vi) RER procurement costs~~;~~, provided that EM shall not be entitled to deduct or be reimbursed for the purchase price of any RER exceeding three dollars unless EM received prior approval in writing from the County for such purchase;

(vii) Costs associated with the generation and sale of Other EV Credits, provided that the parties have executed the written amendment related to revenue for such credits described in Section 3;

(~~iix~~viii) Tax payments associated with Contract RIN sales, but not including any income taxes for which EM is responsible;

provided that the aggregate amount of the expenses listed in clauses (i) through (iv) of this Section 12 deducted from Gross Revenue in any calendar year may not exceed the greater of 5% of that year's Gross Revenue or $~~40~~45,000 (the "Expense Cap").

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

~~In no event~~EM shall ~~EM be entitled~~provide the County with an invoice and supporting documentation as required by the County for such expenses. The County shall pay the invoice within ninety days of receipt of the invoice and the required supporting documentation.

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

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

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

13.0 Delivery of RERs

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

14.0 Payment

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

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

14.3 At least once per month during the Delivery Period, EM shall provide the County with the market price per unit for RINs that are comparable to Contract RINs, as obtained from publicly available sources such as Argus or OPIS or from independent broker quotes, if no public source is available. While EM will make commercially reasonable efforts to supply the County with the

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foregoing information, the ~~Parties~~parties acknowledge that as of the date of this Contract a market price does not exist, and failure to provide such information to the extent it is not reasonably available will not result in or constitute a default or breach of this Contract by EM.

14.4 By March 31 of each year of the Delivery Period, EM shall provide the County with a report of the prior year's Contract RINs sales as compared to market sales using a benchmark price equal to the average of the daily mean prices set forth in the OPIS price assessment range for D5 RINs plus fifty percent (50.0%) of the Cellulosic Waiver Credit, or another benchmark as may be mutually agreed by the parties. EM will present statistical information relating the prices received by Metro with these prices.

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

15.0 Contract RINs and Other EV Credits Annual Review

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

16.0 Mutual Representations and Warranties

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

17.0 Representations and Warranties of EM

EM represents and warrants to Metro that as of the date of each transfer hereunder (i) each RER meets the specifications set forth in this Contract; (ii) EM has good and marketable title to the RERs; (iii) all right, title and interest in and to the RERs are free and clear of any liens, taxes, claims, security interests, or other encumbrances; (iv) EM did not sell, market, or otherwise represent as renewable energy the

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electrical energy that was generated with the RERs; (v) RERs that EM transfers to Metro meet the requirements of 42 U.S.C. §7546 for the generation of RINs neither EM nor any other party, to the knowledge of EM following reasonable inquiry, used the electrical energy that was generated with the RERs to meet any federal, state, or local renewable energy requirement, renewable energy procurement standard, renewable portfolio standard, or other renewable energy mandate; and (~~vi)~~ vii) EXCEPT FOR ANY WARRANTIES EXPRESSLY MADE IN THIS CONTRACT, EM EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

18.0 Termination Default

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

1. A "notice to cure" shall be served on the Contractor by certified or registered first class mail in accordance with Section 24. The Contractor shall have ten (10) Days from the date of receipt to cure the default or provide the County with a detailed written plan for review and acceptance, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, acting reasonably, the County may terminate the Contract by serving a "notice of termination" in accordance with Section 24 setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work performed and Accepted less any damages to the County caused by or arising from such default. All termination payment requests are subject to an analysis of cost or price by the County to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall ~~in no way~~neither relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

18.2 Termination for Non-Appropriation

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

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

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

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

19.1 Retention of Records. The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

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

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

19.4 Public Records Requests.

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

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

20.0 Legal Relations; Indemnity and Insurance

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

20.2 Indemnification and Hold Harmless. To the maximum extent permitted by law and except to the extent caused by the sole negligence of the County, the Contractor shall indemnify and hold

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harmless the County, its officers, agents and employees, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind or nature arising out of, in connection with, or incident to the Work provided by or on behalf of the Contractor. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, under any industrial insurance act, including Title 51 RCW, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In addition, the Contractor shall protect and assume the defense of the County and its officers, agents and employees in all legal or claim proceedings arising out of, in connection with, or incidental to such Work; and shall pay all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by the County on account of such litigation or claims. In the event that the County incurs any judgment, award and/or expense or cost, including attorney fees, arising from the provisions of this Indemnification Section, or to enforce the provisions of this Indemnification Section, any such judgment, award, fees, expenses and costs shall be recoverable from the Contractor. For the avoidance of doubt, any differences between the amounts realized from the sale of Contract RINs or Other EV Credits and any benchmark or other market pricing data or the amount of Gross Revenue or Net Revenue generated from the sale of Contract RINs or Other EV Credits relative to any benchmark are not considered losses subject to this Section 20.2. The indemnification obligation of Contractor under this Section 20.2 applies only to the portion of such loss, cost, penalty or other claim to which the County would not have been subject in the absence of Contractor's Work under this Contract.

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

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

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

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

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

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

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A. Minimum Scope and Limits of Insurance

The Contractor shall maintain limits no less than,

1. General Liability: $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a $2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations. Professional Liability, Errors and Omissions: $1,000,000 Per Claim and in the Aggregate
2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition.
3. Workers' Compensation: Statutory requirements of the State of residency, and
4. Employers' Liability or "Stop Gap" coverage: $1,000,000

B. Other Insurance Provisions and Requirements

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

All Liability Policies except Workers Compensation and Professional Liability:

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

All Policies:

a. The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

b. Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor

c. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after forty-five (45) Days prior written notice, has been given to the County.

d. Insurance coverage is to be placed with insurers with a Bests' rating of no less than A: VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

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

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

C. Subcontractors

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

21.0 Conflicts of Interest and Non-Competitive Practices

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

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

(i) EM and certain of its affiliates are in the business of acquiring, divesting, marketing and generating renewable credits, including renewable transportation credits (RINs), in some cases in transactions similar to those contemplated in this Contract;

(ii) Nothing in this Contract is meant to limit or prevent EM or its affiliates from conducting its respective businesses; and

(iii) Neither EM nor any affiliate or Subcontractor thereof is acting as a fiduciary to the County with respect to any products or services provided to the County under or in connection with this Contract.

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

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

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

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

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3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

22.0 INTELLECTUAL PROPERTY

22.1 Patents, Copyrights and Rights in Subject data

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

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

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

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

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

(i) stipulate that materials or results created under this Contract are licensed, not sold and that title to and ownership of said materials or results or derivative works remain with the County; and

(ii) disclaim all express and implied warranties on behalf of the County, and exclude liability of the County and its officials, employees, agents and assigns for any special, indirect, exemplary, incidental, special, punitive or consequential damages, even if the County was informed or knew or should have known of the possibility of such damages and loss; and the County's sole liability for damages will be limited to direct damages in the amount of $100.

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

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

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

22.2 Nondisclosure of Data. Data provided by the County either before or after Contract award shall only be used for its intended purpose. ~~Contractors and Subcontractors shall~~Contractor shall not utilize nor distribute the County data in any form without the prior express written approval of the County; provided that distribution to EPA or other regulatory bodies as required to perform ~~Contractor or Subcontractor's~~Contractor's obligations under this Contract is permitted with the prior written consent of the County, not to be unreasonably withheld, delayed or conditioned. Contractor shall include this provision in all its subcontracts and require its subcontractors to strictly comply with its terms.

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

23.0 Nondiscrimination and Payment of a Living Wage

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

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

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

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

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

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

23.6 Small Contractors and Suppliers Policy.

Policy

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

Inquiries and Information Regarding King County Certified SCS Firms

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

Definitions

The following definitions shall apply throughout this Section.

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

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

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

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

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

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

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

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

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

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

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

24.0 Notices

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

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

25.0 Assignment

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

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

26.0 Amendment

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

27.0 No Waiver

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

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

28.0 Severability

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

29.0 Complete Agreement

~~Together with the Consulting Agreement, which if executed, governs services provided by Contractor related to this Contract, this~~This Contract represents the parties' final and mutual understanding concerning its subject matter. It replaces and supersedes any prior agreements or understandings with respect to its subject matter, whether written or oral. ~~Except as may be specifically stated to the contrary in this Contract or the Consulting Agreement, as applicable, to the extent any term is addressed in both the Consulting Agreement and this Contract, the terms of this Contract will govern.~~

30.0 Mediation or Arbitration

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

31.0 Applicable Law and Forum

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

32.0 Other Public Agency Orders

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

33.0 Force Majeure

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

34.0 Recycled Products Policy

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

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

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

35.0 No Third Party Beneficiary

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

36.0 Counterparts

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

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

Element Markets Renewable Energy, LLC	**King County Department of Transportation, Metro Transit Division**
Signature: *Date:*	*Signature:* *Date:*
Printed Name: *Title:*	*Printed Name:* *Title:*

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Schedule 32.0
FORM OF AGREEMENT

AGREEMENT

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

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

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

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

1. **Agreement.** Except to the extent provided in Section 2 of this Agreement, Counterparty hereby agrees to be bound by all the terms, conditions, covenants, obligations, liabilities and undertakings to which Metro is subject under the Metro Contract, all with the same force and effect as if Counterparty were to have executed the Metro Contract in place of Metro. Any representations and warranties made by Metro in the Metro Contract are deemed made by Counterparty to Consultant as of the date of this Agreement. The terms and conditions of the Metro Contract, attached as Exhibit A hereto, are hereby incorporated by reference and made a part of this Agreement as if fully restated in this Agreement. In consideration of using this Agreement, the Counterparty does not object to the Consultant providing Metro with data from the sales of RINS or other EV credits made under this Agreement, as contemplated by Section14 of the Metro Contract.

2. **Modifications to Metro Contract.** For the purposes of this Agreement, the following terms and conditions will modify the terms of the Metro Contract as follows:

[*LIST MODIFICATIONS/ADDITIONS TO CONTRACT*]

3. **Nature of Agreement**. Counterparty will be solely responsible for any liabilities, obligations and undertakings to Consultant under this Agreement. Metro is not a party to

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this Agreement and nothing in this Agreement creates, or is intended to create, an obligation of any kind on the part of Metro to either Counterparty or Consultant.

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

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

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

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

[COUNTERPARTY]

By:_____

Name:
Title:

AGREED TO AND ACCEPTED:

ELEMENT MARKETS RENEWABLE
ENERGY, LLC

By:_____

Name:
Title:

TRACK CHANGES ILLUSTRATIVE ONLY

Exhibit A-1

Sample Form of Metro Attestation

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

(1) Metro accepted delivery of [_____] renewable energy rights ("RERs") from Element Markets Renewable Energy, LLC or its designee ("EM"), representing the environmental attributes and benefits resulting from the generation and delivery to the electricity grid of the equivalent number of megawatt-hours (MWh) of renewable electricity generated from the combustion of biogas of an equivalent quantity to the number of megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses (the "System").

(2) Metro has not sold or transferred the RERs, and will not sell or transfer, the RERs in whole or in part (including the right to generate RINs from the underlying renewable energy) to any party.

(3) Metro has not generated, and will not generate, any RINs associated with the electricity consumed by the System during the Attestation Period.

(4) Metro has not transferred the right to generate RINs associated with the electricity consumed by the System during the Attestation Period to any party other than EM.

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

KING COUNTY DEPARTMENT OF TRANSPORTATION, METRO TRANSIT DIVISION

By: _____

Name:

Title:

TRACK CHANGES ILLUSTRATIVE ONLY

Exhibit A-2

Form of RER Delivery Attestation

RENEWABLE ENERGY RIGHTS SUPPLIER ATTESTATION

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

(i) The Renewable Energy Rights were produced through the conversion of organic matter at a landfill, manure digester or sewage waste treatment facility.

(ii) The electricity to which the Renewable Energy Rights relate was generated from landfill gas consisting of a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure.

(iii) The Renewable Energy Rights have not been sold by EM to any party and have not been used by EM for any purpose other than conveyance to Metro in accordance with the ~~Agreement~~Contract.

(iv) Title to the Renewable Energy Rights was transferred from EM to Metro immediately prior to Metro matching the Renewable Energy Rights with the megawatt-hours (MWh) of electricity consumed by its trolley fleet and battery powered buses during the Attestation Period pursuant to the ~~Agreement~~Contract.

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

Signed: _____

Name: _____

Title: _____

Date: Click here to enter a date.

TRACK CHANGES ILLUSTRATIVE ONLY

King County

Report on Monetizing Transit Environmental Attributes

December 1, 2015

Metro Transit Division
King Street Center
201 S. Jackson Street
Seattle, WA 98104
(206) 553-3000

Report on Monetizing Transit Environmental Attributes
Response to Council Ordinance 18106

Introduction

The King County Council adopted Ordinance 18106 on September 8, 2015. This ordinance directed the Executive to prepare two reports concerning the potential revenues to transit by December 1, 2015.

The first report requires an evaluation of:

> *"potential revenues to transit if either a low carbon fuel standard, such as is used in California and British Columbia, or a cap-and-trade system, such as in California, or both, were enacted in Washington."*

The second report requires Metro to explain its

> *"option for monetizing the renewable identification numbers that might come from the operation of the transit division's electric trolley fleet and battery buses operated with renewably-generated electricity. The report shall propose a process that maximizes financial returns, provides a stable revenue source and explains how the proposed transaction process ensures both maximum price and transparency. The report shall also describe options for the marketing of renewable identification numbers[1]".*

For convenience, the two reports are combined into one, with Section A focused on potential impacts and revenues to transit from a low carbon fuel standard and/or cap-and-trade program, and Section B addressing the potential for revenue from the sale of Renewable Identification Numbers (RINs) associated with the electricity used to operate our all-electric battery and trolley fleets.

Executive Summary

The report examines three potential funding sources for public transit involving environmental attributes. Two of these funding sources, cap-and-trade and low carbon fuel standards, do not currently exist in the State of Washington or exist in only limited form. Federal law has established a third funding source, RINs, which has the potential to provide ongoing funding to Metro Transit.

Washington Governor Jay Inslee proposed cap-and-trade legislation in 2014, but it was not passed by the Legislature. The Governor has indicated that he will not implement a low carbon fuel standard through the executive rulemaking process. Instead, the Governor has directed the Department of Ecology to develop rules implementing a cap on carbon emissions tied to air quality permits. This report provides revenue estimates for Metro Transit if a cap-and-trade and/or low carbon fuel standard program were implemented in Washington and modeled on the existing California systems. This report also examines the carbon tax structure in British Columbia.

RINs are created through federal legislation and there is an existing market in the sale of RINs. Based on analysis referenced in this report, the best prospect for generating revenue from environmental attributes to Metro Transit comes from the sale of RINs associated with Metro's electric trolley fleet and battery buses. One million dollars is the estimated annual gross revenue at current prices but it should

[1] Ordinance 18106, section 3

be noted that RINs prices are volatile. The sale of RINs associated with increased use of biodiesel in the transit fleet offers future potential revenue if the price of biodiesel decreases or the cost of RINs rises.

The sale of environmental attributes can have consequences for the County's emissions. An important policy consideration in examining the sale of each type of environmental attribute is how sales impact the County's ability to meet the emissions reduction targets adopted by the Council in the Strategic Climate Action Plan (SCAP).

This report describes how RINs are created and how Metro Transit proposes to transact and receive funding. The Executive plans to transmit an ordinance to authorize the sale of RINs in the first quarter of 2016.

Section A: Cap-and-Trade System and Low Carbon Fuel Standard

Cap-and-Trade

A cap-and-trade (C&T) program is designed to set an annual cap on carbon emissions of regulated entities, which declines over time. Regulated entities that exceed the cap must purchase (trade) emissions from those who have made emission reductions. C&T systems are in place in Europe, California, portions of New England, and other locations.

Washington State Governor Inslee's proposed C&T program, the 2015 Carbon Pollution Accountability Act, would have reduced carbon by setting an annual limit on the total amount of carbon pollution that Washington's commercial and industrial emitters may release into the air. The market would have been structured to require major polluters to become regulated entities, and purchase "allowances" for the pollution they emit. Allowed emissions would be gradually reduced each year as the number of available allowances declines. Polluters would be able to either invest in cleaner technology and reduce their operational emissions, or pay for allowances that will increase in cost over time.

As proposed, the Governor's Carbon Pollution Accountability Act was projected to generate one billion dollars annually to support the State of Washington budget. Revenues generated by the proposed Carbon Pollution Accountability Act were to be re-invested by the State to promote further emissions reductions, expand transit, support education, address potential regressive effects on low-income communities, and support Washington companies that may be at a disadvantage against competitors in regions where no such policy exists. The Carbon Pollution Accountability Act did not pass the legislature.

In California, the C&T program has been in place since 2012 ("California Global Warming Solutions Act"). Proceeds from their quarterly auctions of allowances are deposited into a Greenhouse Gas Reduction Fund (GGRF). The State then appropriates those funds to a variety of agencies to implement programs designed to further reduce greenhouse gas emissions and maximize benefits to disadvantaged communities. California's Air Resource Board (ARB) provides the guidelines that funding recipients must follow to qualify for funding from the GGRF. In the 2014-2015 biennium, California appropriated $241 million to transit programs from the GGRF's total appropriation of $832 million. This included $191 million to high-speed rail, $25 million for capital improvements to integrate state and local rail and other transit systems, and $25 million for bus and rail operations. We are not aware of any transit agency in California that has sold carbon offsets although these are allowable commodities in California.

British Columbia (BC) has taken a different approach to carbon regulation by imposing a carbon tax. The tax has risen gradually from $10 per metric ton to $30 in 2015. The tax is designed to be revenue neutral by reducing other taxes as carbon tax revenues have increased. The tax appears to have lowered overall carbon emissions per capita in British Columbia[2]. The tax has altered the price of fuels, which are a major component of any transit agency's budget, but changes in the international prices have far overshadowed price impacts. BC Transit is subject to both the fuel tax and the carbon tax, but receives a portion of fuel taxes[3].

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[2] http://business.financialpost.com/fp-comment/b-c-s-carbon-tax-shift-works
http://www.sightline.org/2014/03/11/all-you-need-to-know-about-bcs-carbon-tax-shift-in-five-charts/
[3] http://www.sbr.gov.bc.ca/documents_library/bulletins/mft-ct_005.pdf

Markets and Revenues

Metro Transit could receive funding from a C&T program in two ways. First, it could receive a direct allocation of auction proceeds, similar to California. Washington Governor Inslee's proposal could have provided direct transit funding. In the absence of action by the Legislature, it is not possible to estimate the amount that Metro Transit would have received. Second, Metro Transit could receive funding by selling carbon offsets into carbon markets, either regulated or voluntary. In May 2015, Metro Transit transmitted its study to the Council entitled "Feasibility Evaluation of the Sale of Metro Transit Carbon Offsets." This study evaluated the potential revenues to Metro Transit from the sale of carbon offsets under both voluntary and regulated C&T markets. The report describes how Metro Transit could create carbon offsets and their relationship to a C&T system. The report evaluated four projects to determine if they produced net revenues to Metro Transit[4]. The results from voluntary markets are provided in Table 1 below.

Table 1: Carbon Offset Net Revenue Estimates over Ten Year Crediting Period[5]

Project	10 Year Net Revenue	
	Low	High
Hybrid Bus Replacements	($100,596)	$523,294
Propane Paratransit Vehicle Conversions	($331,138)	($81,714)
More Efficient Trolley Bus Replacements	($297,790)	$5,800
Madison Corridor BRT Service	($359,392)	($155,862)

As noted in the report, only the hybrid bus fleet potentially produced net revenues. Other identified projects had smaller carbon savings, and the costs of registration and validation often exceeded the potential market value. Metro and Sound Transit are continuing to investigate the feasibility of selling carbon offsets.

Low carbon fuel standard

A low carbon fuel standard (LCFS) seeks to lower the carbon emissions for fuel usage by reducing the carbon intensity of fuels used in transportation. It does not seek to reduce overall consumption, but rather the emissions associated with the fuel itself. The LCFS can promote the use of alternative fuels such as propane or biodiesel.

With direction from the California Legislature through adoption of Assembly Bill 32 in 2006, the ARB approved regulations in 2009 to create a statewide low carbon fuel standard to lower the carbon intensity of fuels by ten percent by 2020. Their recent ARB ruling presents the California schedule for each fuel. We have reproduced the compliance schedule for gasoline's carbon intensity in Table 2 below[6].

Table 2: California LCFS Compliance Schedule for 2011 to 2020 for gasoline[7]

[4] Net revenues reflect the costs associated with registration, marketing, and auditing of environmental attributes.
[5] Feasibility Evaluation of the Sale of Metro Transit Carbon Offsets, Executive Summary, page 2.
[6] http://www.arb.ca.gov/regact/2015/lcfs2015/finalregorderlcfs.pdf page 32
[7] Feasibility Evaluation of the Sale of Metro Transit Carbon Offsets, Executive Summary, page 2.

As noted in Table 2, carbon intensity in 2020 is 10 percent below the 2015 level. Each year, the compliance schedule identified a smaller amount of allowed carbon intensity for all fuels in the market, forcing an increase in the share of less-carbon intense renewable fuels.

Carbon intensity is measured on a lifecycle or well-to-wheels basis in units of grams of carbon dioxide equivalent per unit energy of fuel (gCO2e/MJ). A LCFS is implemented using a system of credits and deficits, with each credit representing one metric ton of reduction. Credits are generated by transportation fuels that have a carbon intensity lower than the compliance schedule and deficits are generated by gasoline and diesel. At the end of each year, compliance is achieved by offsetting deficits with credits. Credits can be banked and traded and they do not lose value over time.

Year	*Average Carbon Intensity (gCO_2e/MJ)*
2010	Reporting Only
2011*	95.61
2012	95.37
2013**	97.96
2014	97.96
2015	97.96
2016***	96.50
2017	95.02
2018	93.55
2019	91.08
2020 and subsequent years	88.62

* The average carbon intensity requirements for years 2011 and 2012 reflect reductions from base year (2010) CI values for CaRFG (95.85) calculated using the CI for crude oil supplied to California refineries in 2006.
** The average carbon intensity requirements for years 2013 to 2015 reflect reductions from revised base year (2010) CI values for CaRFG (98.95) calculated using the CI for crude oil supplied to California refineries in 2010.
*** In 2015 the LCFS was readopted and the CI modeling updated. The average carbon intensity requirements for years 2016 to 2020 reflect reductions from revised base year (2010) CI values for CaRFG (98.47).

California, British Columbia, and the European Union have implemented a LCFS. In the State of Washington, implementation of a LCFS was preempted by a provision in legislation adopting the 2015 Statewide Transportation package. In Washington, Clean Fuel Standard policy would have reduced carbon by setting limits on the amount of carbon pollution resulting from types of transportation fuels used in the State. The proposed Washington market would have been structured to allow fuel producers and importers to purchase credits from other producers and importers who have generated or banked credits and are willing to sell them. Emissions would be reduced, as the amount of carbon pollution a producer or importer emits becomes more restricted over ten years, requiring fuel producers and importers to gradually introduce less-polluting fuels. This is similar to the California standard that seeks to reduce carbon intensity over a ten-year period by ten percent[8]. The Governor has indicated he does not intend to pursue a LCFS in Washington[9].

Public transit agencies in California are able to generate LCFS credits when they use electricity in the operation of their "fixed guideway"[10] transit systems or when they use alternative fuels.

The calculation of LCFS credits involves a comparison of the carbon intensity of the fuel used, prior to the switch, compared to the carbon intensity of the fuel used after the program. LA Metro has used this with its compressed natural gas bus fleet. The recent ARB rule (footnoted above) describes in detail the calculation methods used. In California, the estimated annual revenues to transit systems operating fixed guideway systems are 40 to 100 million dollars.

[8] http://www.arb.ca.gov/regact/2015/lcfs2015/finalregorderlcfs.pdf Table 1 & 2, page 32-33
[9] http://www.governor.wa.gov/news-media/inslee-directing-ecology-develop-regulatory-cap-carbon-emissions
[10] Fixed guideways as used here is a California specific definition.

California estimates that 4.3 million metric tons of greenhouse gas emissions were avoided from 2011 through 2014 (see Figure 1 below).

Figure 1: California LCFS Credit by year, 2011- 2014

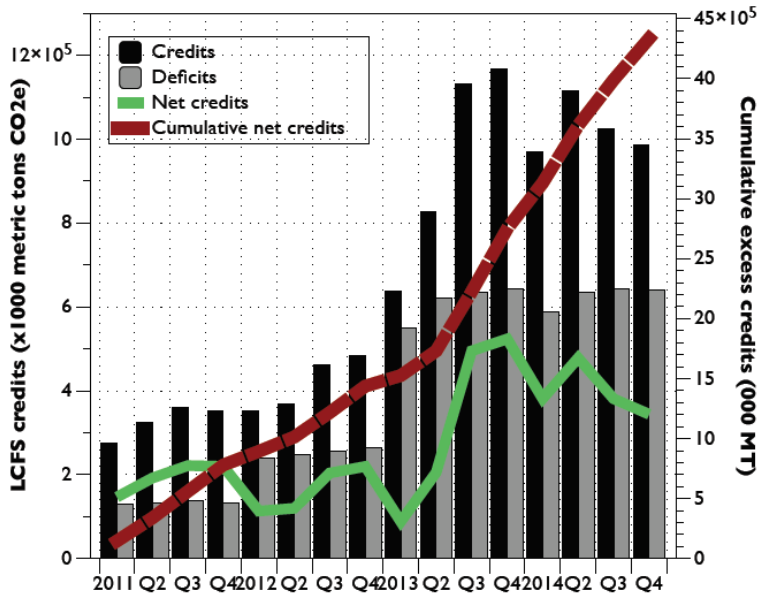

Figure 1. California LCFS carbon credits and deficits generated per quarter. Also shown are net credits per quarter (green line) and cumulative net credits (red line) on the secondary y-axis. Source: ARB (2015b)

British Columbia created a low carbon fuel standard called the Renewable and Low Carbon Fuel Requirements Regulation (RLCFRR)[11] that has two functions: first, to set requirements for five percent renewable content in gasoline and four percent renewable content in diesel fuel; and second, to set requirements for a ten percent reduction in carbon intensity between 2010 and 2020. In order for companies to comply with this requirement, they may need to purchase LCFS credits. The BC trolley fleet, like the King County Metro trolley fleet, could generate LCFS credits due to the comparison of the carbon intensity of electricity versus diesel fuel.

British Columbia indicates that the low carbon fuel standard has dramatically reduced carbon emissions in the province. BC estimates that over 2.4 million metric tons of greenhouse gas emissions were avoided from 2010 through 2014.

Markets and Revenues

In California, LCFS credits are sold in traded markets. Prices have fluctuated since the program was implemented but are expected to increase rapidly in coming years. California transit agencies, such as LA

[11] http://www.empr.gov.bc.ca/RET/RLCFRR/Pages/default.aspx

Metro, have also sold LCFS credits from the operation of their natural gas fleets. LA Metro earned over 240,000 credits by the end of 2013, and is projected to earn an additional 500,000 credits by 2020[12]. LA Metro recently sold credits for 70 dollars per ton and received four million dollars in revenues. They are anticipating higher prices in 2016 and more sales in the years ahead.

BC Transit agencies have also sold LCFS credits due to their trolley fleet using alternative transportation fuels (electricity). The BC program works much like the California program in that there is comparison of the use of electricity to propel vehicles compared to diesel. However, according to Translink, the Vancouver public transit agency, BC Hydro is receiving the revenues from the sale of LCFS from the trolley fleet.

If Washington adopted a LCFS program, Metro Transit could generate credits from existing activities through the trolley fleet or by using higher quantities of biodiesel or other alternative fuels. These two methods – the ARB fixed guideway formula for electric vehicles presented above or alternative fuels – are the two ways that Metro could receive funding from a LCFS program.

The amount of LCFS credits can be estimated using calculations based on ARB formulas presented in the recent ruling[13]. For "fixed guideway" systems, the formula calculates the amount of emissions displaced by fixed guideway systems, which includes trolley buses, using an energy efficiency value compared to diesel[14]. Based on this calculation, we estimate that the trolley fleet would generate approximately 5,000 LCFS credits. With a price range of 50 to 200 dollars per ton, this could result in revenues between 250,000 and one million dollars from the trolley fleet annually.

Metro could also generate LCFS credits by incorporating biodiesel into its fuel if there was a LCFS requirement in Washington. Incorporating one million gallons of biodiesel into Transit's annual fuel use, or about 10 percent, an additional 300,000 to one million dollars could be generated from the sale of biodiesel credits, based on a price range of 50 to 200 dollars per ton [15]. The value of credits from adding biodiesel fuel to the fleet would need to be offset against the higher price of biodiesel fuel which is currently estimated at an additional one million dollars, or approximately one dollar per gallon.

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[12] http://media.metro.net/board/Items/2014/05_may/20140522rbmitem48.pdf

[13] http://www.arb.ca.gov/regact/2015/lcfs2015/finalregorderlcfs.pdf page 45

[14] Credits = (91.4 – 49.4/3.1) * (64.8 million MJ) * 10^-6 = Credits/yr where the diesel "standard" is 91.4 gCO2e/MJ (from WA State LCFS Report), the Electricity Carbon Intensity – 49.4 gCO2e/MJ (from WA State LCFS Report), King County electricity consumption – 18 million kWh * 3.6 MJ/kWh = 64.8 million MJ

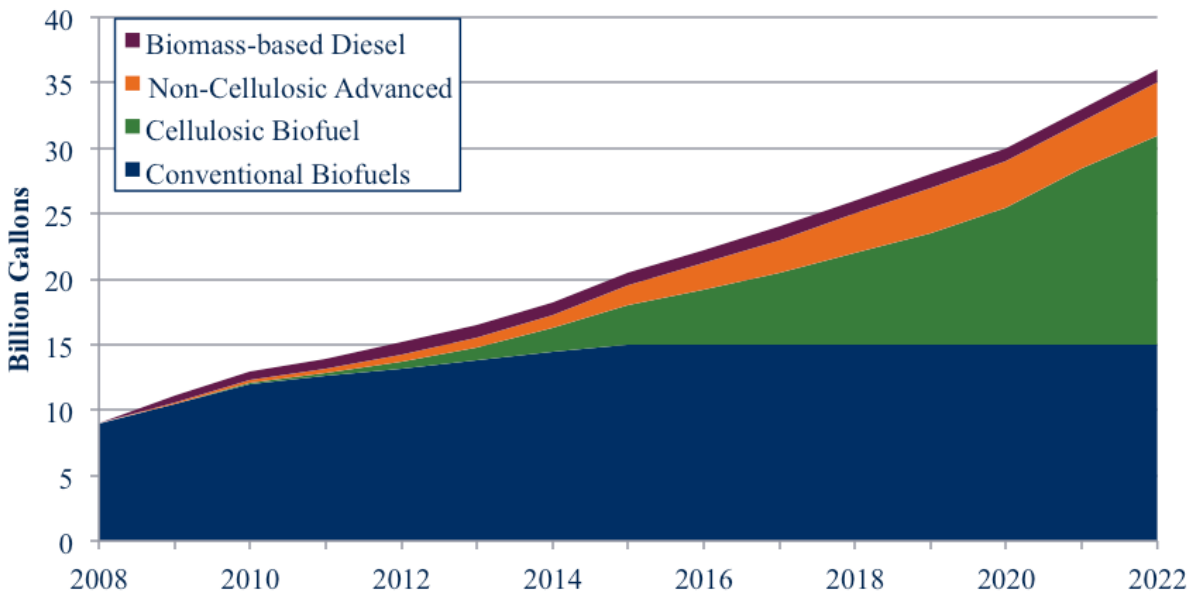
[15] Credits = (91.4 – 46) * 126.13 million MJ* 10^-6 = 5,726.3 credits/yr using the same diesel standard as above, a carbon intensity of biodiesel of 46, and 1 million gallons of biodiesel which contains 126.13 million MJ of energy.

Section B: Renewable Identification Numbers (RINs)

The Energy Independence and Security Act (2007), and the Energy Policy Act of 2005, require that transportation fuels contain a minimum percentage from renewable sources. The Environmental Protection Agency annually sets a nationwide requirement for each type of renewable fuel that must be used. The renewable requirement increases from 4.7 billion US gallons in 2007 to 36 billion US gallons by 2022.

The requirements apply to four different types of alternative fuels: biomass-based diesel, non-cellulosic advanced, cellulosic biofuel, and conventional biofuels (primarily ethanol). Annual consumption goals were identified when the bills passed and are shown in Figure 2 below[16].

Figure 2: Annual Renewable Fuel Goals, 2008- 2022



[16] http://www.c2es.org/federal/executive/renewable-fuel-standard

Table 3 describes the types of renewable fuels under the Renewable Fuel Standard[17] .

Table 3: RFS2 fuel categories and their D codes[18]

D Code	Fuel Category	RFS2 mandates fulfilled by this RIN type
D7	Cellulosic Diesel	Biomass-based Diesel, Cellulosic Biofuel, Advanced Biofuel, Renewable Fuel
D6	Renewable Biofuel	Only Renewable Biofuel
D5	Advanced Biofuel	Advanced Biofuel, Renewable Biofuel
D4	Biomass-based Diesel	Biomass-based Diesel, Advanced Biofuel, Renewable Biofuel
D3	Cellulosic Biofuel	Cellulosic Biofuel, Advanced Biofuel, Renewable Biofuel

Companies that refine, import, or blend fossil fuels are obligated to meet certain individual renewable fuel quotas, known as renewable volume obligations (RVO), based on the volume of fuel they introduce into the market. By fulfilling these requirements, the EPA projects that the industry will collectively satisfy the overall national quota. To ensure compliance, obligated parties are periodically required to demonstrate they have met their Renewable Fuel Standard quota by submitting a certain amount of RINs[19] to the EPA. Each gallon of renewable fuels is identified with a unique identifier – a renewable identification number (RIN).

Most consumers are familiar with ethanol being blended into gasoline a result of fuel producers meeting the Renewable Fuel Standard requirements. The requirement for fuels created from plant products, known as cellulosic biofuel, has been particularly difficult to meet as there are few on-road users of this fuel[20]. This requirement can be met by using electricity generated from landfills or wastewater treatment facilities for electric trolley fleets.

Each year the EPA establishes Renewable Fuel Standard targets to meet the statutory requirements. This spring the EPA released requirements for 2015-2017 that indicate support from the EPA for the production of cellulosic biofuel and thus a market for RINs produced by King County. [21]

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[17] http://www.theicct.org/sites/default/files/publications/ICCTbriefing_RINs_20140508.pdf

[18] http://www.theicct.org/sites/default/files/publications/ICCTbriefing_RINs_20140508.pdf

[19] A RIN is a 38-digit code that identifies either a single gallon of fuel (termed a "gallon-RIN" in the regulation), or a batch of multiple gallons (a batch-RIN). RINs are generated when a batch of biofuel has been produced or imported into the United States. A RIN contains information about where the biofuel came from, and about what has happened to it (i.e., whether that gallon has been supplied into the fuel market yet). A single batch RIN can represent up to 99,999,999 gallons of ethanol-equivalent fuel. The detail in a RIN is important to allowing accurate tracking and to reduce the risk of fraud. To compare fuel types, part of the code assigned to each RIN is a "D#" designation, with the "#" identifying the renewable fuel category. For example, cellulosic biofuel is a D3 RIN while advanced biofuel is a D5 RIN. Other RINs have similar transaction paths to the ethanol lifecycle presented in Figure 3

[20] Most ethanol is not considered a cellulosic biofuel. See https://en.wikipedia.org/wiki/Cellulosic_ethanol#Corn-based_vs._grass-based and http://www.earthisland.org/journal/index.php/elist/eListRead/is_cellulosic_ethanol_the_next_big_thing_in_renewable_fuels/

[21] http://www2.epa.gov/sites/production/files/2015-08/documents/420f15028.pdf

Metro's trolley fleet can use the Renewable Fuel Standard by "linking" to electricity produced from cellulosic biofuel (landfill electricity), which has the highest value of the renewable fuels.

The proposed transaction is that a renewable electricity energy supplier, which is generally a landfill or a wastewater treatment facility, will be linked to King County Metro's trolley fleet. This linkage "creates" RINs, which can then be sold to refineries to meet their Federal obligation for renewable fuels. This transaction does not change the physical consumption of electricity by King County and we will continue to receive electricity from Seattle City Light (SCL). King County also considers landfill energy to be carbon neutral, so this change has no impact on electricity consumed in SCL territory, and in Puget Sound Energy (PSE) territory emissions are reduced since landfill electricity is replacing PSE's energy portfolio. The ordinance on RIN sales will provide additional information on the impact to the County's carbon inventory and confirm the interpretation offered above.

Market and Potential Revenues

Metro's existing fleet of trolleys consumes approximately 18 million KWh of electricity. Using the standard conversion of 77,000 MMBTU per RIN, this is approximately 800,000 annual RINs. Traditionally, RINs sales proceeds are shared between the provider, the broker, and the consumer. Metro's proposed contract will be attached to an upcoming ordinance. Many of the provisions are described in summary below while the contract will provide additional detail.

Prices for Cellulosic (D3) RINs are difficult to determine, as the market is not large. As such, there is some uncertainty about the long-term price received by King County Metro Transit. Currently, the price for a D3 RIN is between 70 cents and one dollar. Using the lower end of the range, the total value of King County's RINs is approximately $560,000 after splitting revenues with the contract agent. King County's proposed contract provides that D3 RINs produced by King County will be sold at the highest possible price as determined by numerous mechanisms in the contract.

Contract Provisions

Council authorization for the sale of RINs is required Per K.C.C 4.56 and the Executive expects to transmit an ordinance authorizing the sale of RINs in the first quarter of 2016. In order for King County Metro Transit to accrue and sell RINs, both it and the electricity supplier must be certified with the EPA. The contract will describe the transaction process for King County RINs. In summary, the contract requires the seller, which would be a contractor on behalf of King County Metro, to identify and certify a renewable energy provider, such as a landfill that captures biogas to produce electricity, and ensure that their electricity production is sufficient to meet King County's needs. The proposed supplier, Short Mountain landfill in Goshen Oregon, already is a certified renewable energy provider. King County will need to become certified with the EPA and the proposed RIN transaction approved. This process is estimated to take three months. King County's Cedar Hills Regional Landfill was not selected as the source of electricity since it does not produce electricity for export. The South Wastewater Treatment Plant similarly does not produce electricity for export. Finally, at the West Point Wastewater Treatment Plant, the County entered into a long-term sales agreement with Seattle City Light in 2009 for both the renewably-generated electricity and the associated environmental attributes.

The seller is required to complete all registration and reporting requirements with the EPA and conduct annual quality assurance audits to ensure compliance with applicable requirements. The seller will transact RINs on a schedule and price range specified in the contract. The contractor and King County may agree to also pre-sell some portion of the RINs at a fixed price.

Proceeds would be transferred to King County on a monthly basis. The contract duration is three years with two one-year extensions at the discretion of the parties. The contract cannot be terminated, but there are provisions to discontinue sales by mutual agreement. A discontinuance could occur due to new markets, significant changes in prices, or other disruptive market changes.

The contract also allows other transit agencies throughout the country to sign on through a joinder. This joinder is intended to promote the adoption of electric vehicles in the transit industry and does not require any King County Metro involvement. Other transit agency participants are wholly separate from King County and are just using the agreed upon terms and contract developed by King County.

Summary of Markets for Environmental Attributes

Council Ordinance 18106 requested information on how Metro Transit could monetize environmental attributes. For most environmental attributes, state legislative action is needed to create a marketplace in Washington. Table 4 below describes the requirements for Metro Transit to receive revenues from different types of environmental attributes. At present, only RINs have significant revenue potential since they are already authorized in federal legislation.

Table 4: Status of Environmental Attribute Funding to Transit in Washington State

Environmental Attribute	Washington Market Status
Cap-and-Trade – Allocation of Revenues	Requires State legislative authorization to establish a WA market; revenue potential unknown
Cap-and-Trade – sale of carbon offsets	Requires State legislative authorization; however, earlier analysis indicates limited revenue potential once transaction costs factored in
Low Carbon Fuel Standard	Requires State legislative authorization or Governor's executive action to establish a WA market
Carbon Cap	State rules under development; not known if rules will create opportunity to sell credits
Renewable Identification Numbers (RINs)	Existing, federally regulated market with potential revenue from sale of RINs for electricity supplying electric trolleys and increased use of biodiesel (dependent on reduced price for biodiesel in future)

Policy consideration: Impact of sale of C&T, LCFS, or RINs on Meeting County Greenhouse Gas Reduction Targets

The sale of environmental attributes has potential to affect King County's inventory of operational greenhouse gas emissions and the County's ability to meet goals targets for reducing emissions. The 2015 King County Strategic Climate Action Plan (SCAP) includes a target to reduce operational greenhouse gas emissions by 25 percent by 2020, and to grow transit through 2020 with no increase in GHG emissions. With a C&T or LCFS program in place, Metro can sell emissions reductions as 'credits' or

'allowances' to other emitters who can then claim an emissions reduction. This would eliminate Metro's ability to claim that reduction as an increment towards meeting our SCAP targets. However, the revenue derived from the sale of environmental attributes could be used for other investments in emissions reduction activities in Metro Transit. Table 5 below illustrates these complex relationships

Table 5: Carbon and revenue impacts of potential environmental attribute sales by Metro Transit

Carbon and Revenue Impacts of the sale of Environmental Attributes by Metro Transit		
Regulatory Framework	**Impact on Carbon Emissions**	**Net Revenues if feasible in WA**
Cap and Trade offset sales		
• Hybrids	Selling offsets means GHG reductions associated with transition from diesel to hybrid buses could not be also claimed by King County	Uncertain to small
LCFS		
• Trolley Fleet	Selling LCFS credits means GHG reductions associated with trolley fleet use of renewable electricity could not be claimed by King County (~5,000 metric tons of carbon dioxide equivalent)	$250,000 to $ 1 million
• Biodiesel	GHG reductions associated with biodiesel usage could not also be claimed by King County	Likely costs exceed revenues given current LCFS and biodiesel prices.
• Battery Bus	GHG reductions associated with battery bus usage could not also be claimed by King County	Positive depending on size of fleet
RINS		
• Trolley Fleet	Selling the RINs would likely not King County's operational GHG footprint as SCL is carbon neutral	~$500,000
• Battery Bus	Use of renewable electricity and associated creation and sale of RINs to power the battery buses could reduce King County's operational GHG footprint by substituting renewable fuel for PSE based electricity	Positive
• Biodiesel	Reduces King County emission through the use of renewable fuel; Emissions change is the difference between diesel and biodiesel	Likely costs exceed revenues given current RIN and biodiesel prices.

Of the items described above, only RINs produce net revenues at this time, consistent with the objectives of Ordinance 18106. With a program to sell RINs-based on electricity use by Metro's trolley and battery bus fleet, Metro can utilize the Renewable Fuel Standard to link a renewable electricity producer with our consumption. This linkage can reduce operational emissions by shifting away from a

provider of carbon intensive electricity production to a source providing renewable carbon neutral electricity. This shift provides revenue to Metro from the sale of RINs, and allows further investment in renewably fueled transit options. Since Seattle City Light is already carbon neutral, there are no carbon impacts for the trolley fleet in this switch, but there would be beneficial carbon impacts for electricity consumed from other utilities that still use carbon intensive electrical production. The sale of RINs from increased use of biodiesel in the fleet could be a source of revenue in the future if the cost of biodiesel drops and/or the value of RINs increases. Even if revenue neutral, increased use of biodiesel would be consistent with emissions reduction targets set in the SCAP from increasing the use of alternative fuels. Metro Transit will continue to monitor biodiesel princes and assess potential for revenue from sale of RINs tied to increased biodiesel use.

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2015/2016 FISCAL NOTE

Ordinance/Motion:	
Title:	**Renewable Energy Attributes Contract**
Affected Agency and/or Agencies:	DOT
Note Prepared By:	Gary Prince
Date Prepared:	2/4/2016
Note Reviewed By:	Shelley De Wys
Date Reviewed:	2/20/2016

Description of request:

Provide for the sale of Renewable Identification Numbers by Metro Transit Division, and other County divisions.

Revenue to:

Agency	Fund Code	Revenue Source	2015/2016	2017/2018	2019/2020
DOT-Transit	4641	36999	432,100	1,728,400	1,728,400
TOTAL			**432,100**	**1,728,400**	**1,728,400**

Expenditures from:

Agency	Fund Code	Department	2015/2016	2017/2018	2019/2020
DOT-Transit	4641		432,100	1,728,400	1,728,400
TOTAL			**432,100**	**1,728,400**	**1,728,400**

Expenditures by Categories

	2015/2016	2017/2018	2019/2020
TOTAL	**0**	**0**	**0**

Does this legislation require a budget supplemental? **No**

Notes and Assumptions:

Expenditures will be made on projects which further the goals of the 2015 Strategic Climate Action Plan

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2015/2016 FISCAL NOTE

Ordinance/Motion:	
Title:	**Renewable Energy Attributes Contract**
Affected Agency and/or Agencies:	DOT
Note Prepared By:	Gary Prince
Date Prepared:	2/4/2016
Note Reviewed By:	Shelley De Wys
Date Reviewed:	2/20/2016

Description of request:

Provide for the sale of Renewable Identification Numbers by Metro Transit Division, and other County divisions.

Revenue to:

Agency	Fund Code	Revenue Source	2015/2016	2017/2018	2019/2020
DOT-Transit	4641	36999	0	1,677,200	1,677,200
TOTAL			**0**	**1,677,200**	**1,677,200**

Expenditures from:

Agency	Fund Code	Department	2015/2016	2017/2018	2019/2020
DOT-Transit	4641		0	1,677,200	1,677,200
TOTAL			**0**	**1,677,200**	**1,677,200**

Expenditures by Categories

	2015/2016	2017/2018	2019/2020
TOTAL	**0**	**0**	**0**

Does this legislation require a budget supplemental? **No**

Notes and Assumptions:

Revenues are estimated based on the 2015 trolley consumption and prices based on 75% of the five year average of D5 RINs plus the EPA cellusoic waiver credit price. Currently this is estimated at 1.49 per RIN.

RIN values fluctuate with market conditions and the price of oil. RIN quantities fluctuate on service levels, ridership, and vehicle operating conditions.

Expenditures will be made on projects which further the goals of the 2015 Strategic Climate Action Plan

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ATTACHMENT 7

June 28, 2016

The Honorable Joe McDermott
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember McDermott:

This letter transmits an ordinance authorizing King County to sell environmental attributes generated through the electricity consumed by the Metro Transit Division's (Metro) trolley fleet and other King County electrically fueled vehicles. Per K.C.C 4.56, sales of rights, title or interests in emissions credits, offsets or allowances or renewable energy certificates, credits, benefits, environmental air quality credits and any similar rights, title or interests held by the County requires Council authorization. The sale of attributes would be executed through a Renewable Energy Attributes Contract with Element Markets Renewable Energy, LLC, the leading producer and marketer of environmental commodities in the United States.

Metro operates the nation's second largest electric trolley fleet with 159 electric trolleys operating within the City of Seattle. The trolley fleet generates more than 20 million boardings per year and is a critical component of the County's transit fleet. Recently, Metro has also taken delivery of three battery-powered buses for testing and piloting purposes and, if they are successful in operation, may operate more in the future.

The Environmental Protection Agency's (EPA) expanded Renewable Fuel Standard (RFS2) requires oil refiners and importers ("obligated parties") of both gasoline and diesel fuel to ensure that a portion of the nation's transportation fleet is fueled using renewable fuels. Linking Metro's electricity consumption to a renewable energy provider, and subsequent approval by the EPA, will lead to the creation of Renewable Identification Numbers (RINs) which can be sold to obligated parties to meet their RFS2 requirements. RINs are credits used for compliance, and are the "currency" of the RFS program. Metro is estimated to create nearly 800,000 RINs annually.

In 2015, King County issued a Request for Proposals (RFP) for the sale of the RINs associated with the trolley fleet and other applicable King County vehicles. After an evaluation of the proposals received, Element Markets was selected as the preferred seller of RINS. The draft contract between King County and Element Markets details compensation to

King County for the sale of the RINs. The sale of RINS will provide revenue to Metro that will be used to support Metro's initiatives to reduce greenhouse gas emissions and to address the goals set forth by the 2015 Strategic Climate Action Plan (SCAP). Metro will be among the first entities to apply for RIN creation from electric transportation. Based on current market conditions, Metro expects to receive annually over $580,000 after paying administrative costs. Metro plans to use this revenue to expand its vehicle electrification program and alternative fuels purchases, and other investments to reduce carbon emissions and promote renewable and alternative fuels.

Two reports were recently submitted to the King County Council describing environmental attributes and their monetary value. The next steps in this process are to take the action outlined in this ordinance, which creates the environmental attributes, and to proceed with the sale of RINs. The sale of environmental attributes is consistent with the King County Strategic Plan and the SCAP. The sale of attributes provides additional revenues to Metro which promotes the Strategic Plan goal of environmental sustainability. Furthermore, Metro's participation in these markets provides local and national leadership to encourage additional investments in renewable and carbon reducing activities consistent with the SCAP.

Climate change and social equity are closely linked. According to the 2014 King County Equity and Social Justice Annual Report, promoting "healthy built and natural environments" is one of the 14 determinants of equity. This project addresses this determinant by "moving upstream" to reduce greenhouse gases in order to contribute to and promote a healthy environment.

If you have any questions, please feel free to contact Gary Prince, Metro Transit Division, at 206-477-6017, or gary.prince@kingcounty.gov.

Sincerely,

Dow Constantine
King County Executive

Enclosures

cc: King County Councilmembers
ATTN: Carolyn Busch, Interim Chief of Staff
Anne Noris, Clerk of the Council
Carrie S. Cihak, Chief of Policy Development, King County Executive Office
Dwight Dively, Director, Office of Performance, Strategy and Budget
Harold S. Taniguchi, Director, Department of Transportation (DOT)
Rob Gannon, Interim General Manager, Metro Transit Division, DOT
Gary Prince, Economist, Metro Transit Division, DOT

King County

Metropolitan King County Council
Transportation, Economy and Environment Committee

STAFF REPORT

Agenda Item:	10	**Name:**	Paul Carlson
Proposed No.:	2016-0387	**Date:**	August 16, 2016

SUBJECT

Proposed Ordinance 2016-0387 would amend the King County Code to require King County Metro to prepare a transit restructure impact study for any proposed bus service change that would modify five or more bus routes providing service in any single County Council district.

SUMMARY

Proposed Ordinance 2016-0387 would require a transit restructure impact study for bus service change ordinances that would modify five or more routes providing service in any single County Council district. The proposed Code revision would expand the public outreach requirements relating to these proposed service changes while incorporating current public outreach practices of King County Metro. A draft transit restructure impact study would be released for public comment when a proposed service restructure is initially presented to the public. The final transit restructure impact study, including a record of public comments, would be transmitted to the Council along with a proposed service change ordinance.

The proposed ordinance would also update the King County Code references to public transportation plans, deleting one obsolete definition, adding new definitions, and changing the references in K.C.C. 28.94.020.

BACKGROUND

King County Metro Transit conducts public outreach on transit service changes and other proposed actions such as fare changes, establishment of new service types, and operational changes that affect riders. The King County Metro public outreach model is mentioned in K.C.C. 2.124.010. Its goals are further defined in the Strategic Plan for Public Transportation's Goal 7, Public Engagement and Transparency. The King County Metro Service Guidelines describes public engagement in more detail in the section titled Planning and Community Outreach. (For reference, Attachment 2 to this staff report consists of the Goal 7 section of the Strategic Plan for Public Transportation

and the King County Metro Service Guidelines sections titled Restructuring Service and Planning and Community Engagement.)

With each service change ordinance transmitted to the County Council, the Executive includes a Public Engagement Report that describes the outreach process for the service change, including a summary of comments received. Once a service change ordinance has been transmitted to the Council, further public comment opportunities are provided through the Council's review process, which may include one or more special committee meetings in the area(s) affected by the proposed service changes, testimony at one or more regular committee meetings, a public hearing at the full Council, and internet outreach.

A recent large-scale service change was the University Link restructure (Ordinance 18133), which was subject to a months-long King County Metro outreach effort with two major phases. The Public Engagement Report generated for the proposed service change was approximately 2,100 pages long. A primary reason for this proposed service change was to provide bus connections to the new Capitol Hill and University of Washington Light Rail Stations. The service change also modified bus routes to improve service reliability.

Because of this proposed service change's complexity and its impact on many transit riders' travel options, challenges for the public engagement process included:

- Ensuring a clear understanding of the tradeoff between one-seat rides and new trips involving transfers (both bus-light rail and bus-bus transfers);
- Explaining the positive and negative consequences for riders whose bus routes would be eliminated or revised; and
- Addressing the lack of certainty that local jurisdictions (specifically the City of Seattle) would allow Metro to follow proposed route alignments that required sign-off by the local jurisdiction.

For future restructure proposals, the draft transit restructure impact study is intended to help members of the public understand how the proposal is estimated to affect ridership, changes in the number of transfers required to complete trips that are previously capable of being completed on a single bus, operating costs, travel time, hours of operation, and frequency of service compared to the no-action alternative, which would be to retain the existing service in its current form. Information would also be provided on proposed capital expenditures, equity and social justice impacts, implementation of the Strategic Plan for Public Transportation and King County Metro Service Guidelines, and interagency agreements or partnerships required to implement the proposed change.

In reviewing the King County Code for this ordinance, Council staff identified obsolete references to the Comprehensive Plan for Public Transportation, an old plan that was repealed in 2011. To update the Code sections with these references, the proposed ordinance would delete the definition of "comprehensive plan" to mean the transit comprehensive plan (K.C.C. 28.92.050 proposed for deletion) and would add new definitions of the terms "King County Metro Service Guidelines," "Public engagement report," "Strategic Plan for Public Transportation," and "Transit restructure impact

study." References to the Comprehensive Plan for Public Transportation would be replaced by references to the Strategic Plan for Public Transportation and King County Metro Service Guidelines.

ANALYSIS

If enacted, Proposed Ordinance 2016-0387 would amend the King County Code to require a more explicit public outreach process, the transit restructure impact study, for proposed bus service changes that affect five or more bus routes providing service in any single Council District. This definition is intended to capture the characteristics of a restructure, a set of changes to bus routes in a geographic area that is described in the Service Guidelines. Because restructures vary in size, the ordinance terminology is used to ensure that the transit restructure impact study requirement would apply to all restructures involving five or more bus routes.

The transit restructure impact study would compare a proposed set of bus route changes to a "no action" alternative that would not change bus routes. A draft impact study would be released for public comment with at least 30 days for public comment; a final impact study would be transmitted along with the proposed service change ordinance. Much of the content of the draft and final impact studies would match information that is provided through current public outreach efforts. The proposed ordinance requires that some information, such as the impact on one-seat bus rides, would be provided.

AMENDMENT

Amendment 1 would revise subsection 8.B.3 of the proposed ordinance. Subsection 8.B defines the review process for the transit restructure impact study. Subsection 8.B.1 establishes requirements for the review schedule including a deadline for public comments on the draft impact study that must be at least 30 days following the release of the draft impact study. Subsection 8.B.2 requires a guide to the impact study process. The revision would clarify that the draft impact study would include the schedule and guide.

ATTACHMENTS

1. Proposed Ordinance 2016-0387
2. King County Metro Service Guidelines – Public Engagement
3. Amendment 1

INVITED

- Betty Gulledge-Bennett, Communications Manager, King County Department of Transportation Director's Office
- Katie Chalmers, Service Planning Supervisor, King County Transit Division

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ATTACHMENT 1

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

King County

KING COUNTY

Signature Report

August 12, 2016

Ordinance

Proposed No. 2016-0387.1 **Sponsors** Dembowski

AN ORDINANCE relating to public transportation; requiring a transit restructure impact study for certain transit service changes that require approval by ordinance, and making technical corrections; amending Ordinance 11033, Section 5 and K.C.C. 28.94.020, adding new sections to K.C.C. chapter 28.92, adding a new section to K.C.C. chapter 28.94 and repealing Ordinance 11962, Section 3, and K.C.C. 28.92.050.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. **Findings:**

A. The transit division public engagement model, adopted by K.C.C. 2.124.010, and reflecting a League of Women Voters recommendation to the municipality of Metropolitan Seattle, provides for public involvement in bus service changes including documentation provided to the council.

B. The Strategic Plan for Public Transportation Goal 7, Public Engagement and Transparency, calls for robust public engagement that informs, involves and empowers people and communities. Detailed policy direction is outlined in Strategy 7.1.1, "engage the public in the planning process and improve customer outreach," and Strategy 7.2.1,

"communicate service change concepts, the decision-making process, and public transportation information in language that is accessible and easy to understand."

C. The King County Metro Service Guidelines, in its Planning and Community Engagement section, describes the significant planning process required to ensure that each major service change provides adequate public outreach.

D. The public engagement process for a service change affecting five or more routes that have scheduled service in any single King County council district can be more easily understood by members of the public through the provision of a transit restructure impact study that clearly describes the changes under consideration and clearly explains how a member of the public can comment on the proposed changes.

SECTION 2. Ordinance 11962, Section 3, and K.C.C. 28.92.050 are each hereby repealed.

NEW SECTION. SECTION 3. There is hereby added to K.C.C. chapter 28.92 a new section to read as follows:

King County Metro Service Guidelines means a planning document used to design, assess and implement transit service, approved by Ordinance 18301.

NEW SECTION. SECTION 4. There is hereby added to K.C.C. chapter 28.92 a new section to read as follows:

Public engagement report means a document that is submitted in conjunction with a transit service change ordinance and that:

A. Describes the public outreach and communications activities carried out for the proposed service change; and

B. Provides information on comments on the proposed service change submitted by individuals and organizations.

NEW SECTION. SECTION 5. There is hereby added to K.C.C. chapter 28.92 a new section to read as follows:

Strategic Plan for Public Transportation means a document establishing goals, objectives and strategies for the future development of public transportation in King county, as approved by Ordinance 18301.

NEW SECTION. SECTION 6. There is hereby added to K.C.C. chapter 28.92 a new section to read as follows:

Transit restructure impact study means a comprehensive assessment of the impacts of a proposed change to five or more regular routes that have scheduled service in any single King County council district and that would be subject to approval by ordinance under K.C.C. 28.94.020.B.

SECTION 7. Ordinance 11033, Section 5 as amended, and K.C.C. 28.94.020 are each hereby amended to read as follows:

The director shall implement the system of public transit routes and services described in this section.

A. Regular routes shall include numbered routes and descriptions therefor as established and revised from time to time by the council. The regular routes, including implementation dates, shall be described in a document called ((")Public Transit Regular Routes.(")) The director shall ensure that ((~~said~~)) the routes shall be operated and implemented except as otherwise provided in this section.

B.1. Changes to regular routes shall be subject to approval by the council except as specifically provided in this subsection.

~~1.~~ The director is authorized to approve and implement the following changes of established routes and schedules and to update the ((")Public Transit Regular Routes(")) document accordingly:

a. any single change or cumulative changes in a service schedule that affect the established weekly service hours for a route by twenty-five percent or less;

b. any change in route location that does not move the location of any route stop by more than one half mile; and

c. any changes in route numbers.

2. In addition, if, in the opinion of the director, an emergency exists that requires any change to established routes, schedules or classes of service, the director may implement such a change for such a period as may be necessary in the director's judgment or until such a time as the council shall establish by ordinance otherwise. Such changes that the director intends to be permanent shall be reported in writing to the chair of the council. If an emergency exists as provided for in this subsection B.2., the director may waive or discount fares otherwise established in K.C.C. chapter 4A.700.

3. Any service change proposal that requires approval by ordinance and that would change five or more regular routes that have scheduled service in any single King County council district, must include a final transit restructure impact study prepared in accordance with section 8 of this ordinance. The service change proposal may comprise a restructure as described in the King County Metro Service Guidelines.

C. Other routes, such as but not limited to tripper service, limited, special, customized and other types of transit routes, may be established by the director consistent with annual appropriations and the ((~~comprehensive~~)) Strategic ((~~p~~))Plan for Public Transportation and King County Metro Service Guidelines.

D. The director shall establish transit schedules for all routes and classes of service consistent with annual appropriations and the ((~~comprehensive~~)) Strategic ((~~p~~))Plan for Public Transportation and King County Metro Service Guidelines.

E. The director shall periodically review and evaluate the effectiveness of all public transit routes and services, requests for changes to the routes and services, and the requirements of the ((~~comprehensive~~)))) Strategic ((~~p~~))Plan for Public Transportation and King County Metro Service Guidelines and shall prepare recommendations to the council for changes to routes and services.

F. Within service area boundaries approved by the council and consistent with annual appropriations and the ((~~comprehensive~~)) Strategic ((~~p~~))Plan for Public Transportation and King County Metro Service Guidelines, the director is authorized to plan, implement and modify dial-a-ride service ("DART"), including, but not limited to, establishing general routes from which vehicles may deviate in response to demand.

G. The director is authorized and directed to establish such guidelines((~~,~~)) and procedures as may be necessary to implement the policies set forth in this chapter. In establishing such guidelines and procedures, the director shall provide for consultation with citizens and each component jurisdiction in advance of any major route or service changes affecting such jurisdictions.

NEW SECTION. SECTION 8. There is hereby added to K.C.C. chapter 28.94 a new section to read as follows:

A.1. The executive shall submit a draft transit restructure impact study to the public for comment in a manner consistent with subsection B. of this section.

2. The draft transit restructure impact study shall include, but not be limited to:

a. one or more proposals to change five or more regular bus routes by ordinance, with a description of each proposal's service changes and their estimated impacts on ridership, changes in the number of transfers required to complete trips that can now be completed on a single bus, operating costs, travel time, hours of operation, and frequency of service compared to a no-action alternative that does not change any bus routes;

b. proposed capital expenditures that would be required to deliver the proposal, that exceed the capital expenditures required to implement a no-action alternative that does not modify any bus routes;

c. a comparison of the equity and social justice impacts of the proposed changes and the no-action alternative;

d. an explanation of how each proposal implements the provisions of the Strategic Plan for Public Transportation and the King County Metro service guidelines; and

e. a summary of any existing, proposed, or contemplated interagency agreements, funding partnerships or other agreements with any private firm or any agency other than King County necessary to implement any proposed changes and a

comparison to any such agreements assumed by the no-action alternative that does not change any bus routes.

B. The process for review of a transit restructure impact study shall be consistent with the transit public involvement model established in K.C.C. 2.124.010 and with the community engagement and outreach provisions of the Strategic Plan for Public Transportation and King County Metro Service Guidelines. The review process shall at a minimum include the following:

1. A schedule for public participation including a deadline not fewer than thirty days from the release of the draft transit restructure impact study for submitting comments in response to the draft transit restructure impact study;

2. A guide to the impact study process that provides information on participation in the process and a description of the procedure and schedule for individuals and organizations to submit comments on the draft impact study; and

3. Provision for dissemination of the draft impact study consistent with the transit public involvement model established in K.C.C. 2.124.010 and with the process described in the Planning and Community Engagement section of the King County Metro Service Guidelines. The draft impact study shall consist of printed and electronic information which clearly defines and visually portrays, when possible, the range of options under consideration by the county. The information shall also include a description of any policy considerations, the deadline for submittal of public comments, the executive's anticipated date of transmittal of service change legislation to the council, opportunities for public participation, ways to obtain additional information, and

information on the submittal and review procedures for written comments and the name, address, telephone number and email address of the responsible official or officials.

C.1. The executive shall transmit a final transit restructure impact study, including a public engagement report, to the council with the associated proposed service change ordinance and shall notify all members of the public who have asked to be notified of the action. The transmittal to the council shall be in the form of a paper original and an electronic copy to the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers.

2. The final transit restructure impact study shall compare the executive's preferred alternative and a no-action alternative. The final transit restructure impact study shall provide, but not be limited to, the information required for the draft transit restructure impact study by subsection A.2. of this section, and shall include a list of all

categories of public comments submitted by the deadline required to be established by subsection B. of this section and the department's response to each category of comment.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

_____

J. Joseph McDermott, Chair

ATTEST:

_____

Anne Noris, Clerk of the Council

APPROVED this _____ day of _____, _____.

_____

Dow Constantine, County Executive

Attachments: None

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GOAL 7

PUBLIC ENGAGEMENT AND TRANSPARENCY

Promote robust public engagement that informs, involves, and empowers people and communities.

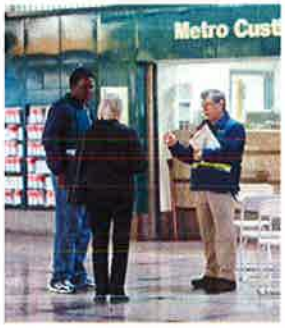
Metro is committed to informing and engaging the public as it develops products and services.

Objective 7.1: Empower people to play an active role in shaping Metro's products and services.

Metro is committed to being responsive and accountable to the public. One way Metro will meet this commitment is by continuing to conduct a community planning process and public outreach as part of any major service change or new service initiative. ***Intended outcome: The public plays a role and is engaged in the development of public transportation.***

- **Strategy 7.1.1: Engage the public in the planning process and improve customer outreach.**
  Metro's community engagement work is consistent with King County's Equity and Social Justice ordinance. Metro seeks to build its capacity to engage all communities in a manner that promotes and fosters trust among people across geographic, race, class and gender lines, resulting in more effective policies, processes, and services as well as supporting community-based solutions to problems.

  Metro's planning process provides opportunities for the public to help design public transportation services. It involves riders, non-riders, elected officials, community leaders, city and County staff members, and social service agencies. Outreach targets historically under-represented populations, using translated materials or interpretation services as needed. Metro uses public meetings, open houses and a sounding board process to engage customers. Metro also does extensive public communication using direct mail, newspaper and radio ads, surveys and online information, and continually explores new media to reach a larger audience. Metro will strive to involve the public early in any planning process and offer opportunities for ongoing involvement.



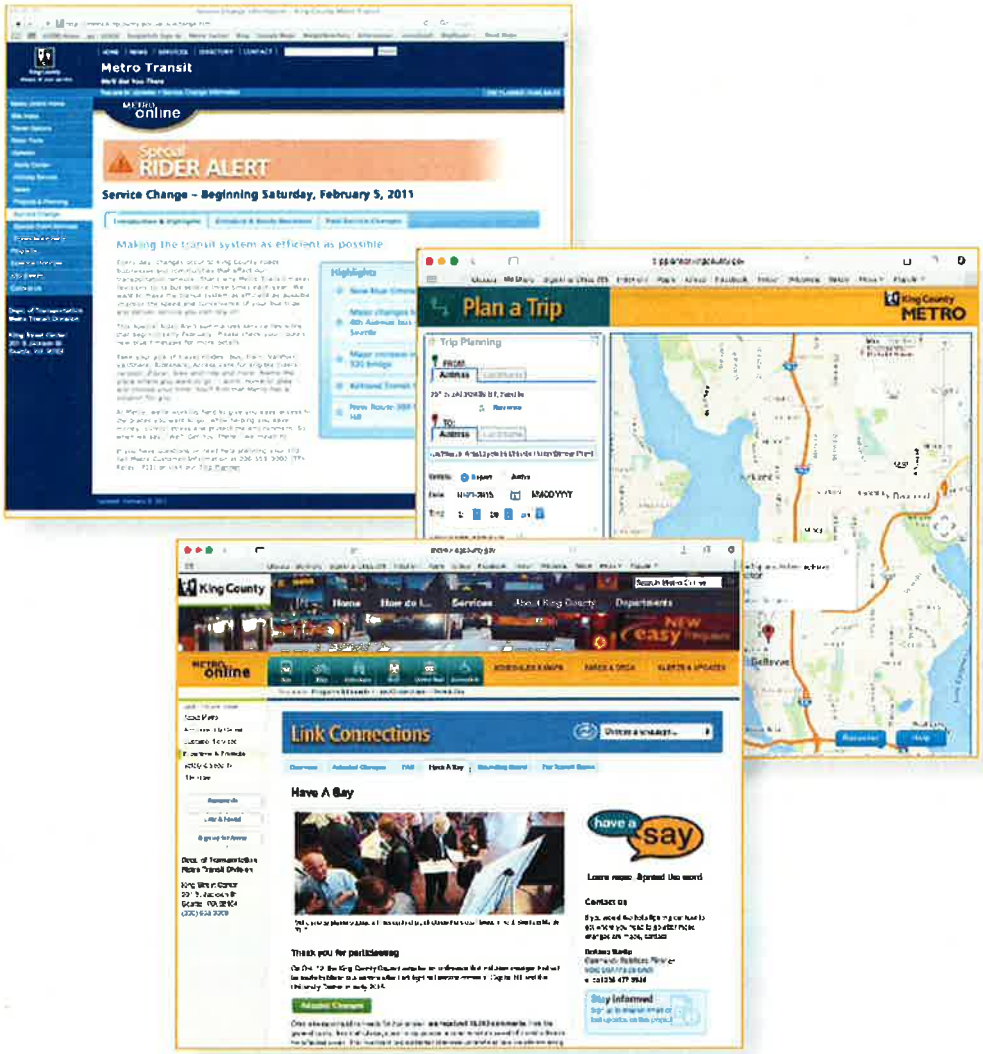
Objective 7.2: Increase customer and public access to understandable, accurate and transparent information.

Transparent decision-making processes and information will help build public trust in Metro and acceptance of the decisions made. ***Intended outcome: Metro provides information that people use to access and comment on the planning process and reports.***

- **Strategy 7.2.1: Communicate service change concepts, the decision-making process, and public transportation information in language that is accessible and easy to understand.**
  Metro's decision-making process should be clear, transparent and based on criteria that are easy for customers to understand. Metro considers equity and social justice in its decision-making process, particularly for people of color, low-income communities, people with limited English proficiency, and people with other communications barriers consistent with King County's Equity and Social Justice Ordinance, Executive Order on Translation, and federal law. Service guidelines and performance measures provide an outline of Metro's approach to decision-making. Guidelines are based on data that are understandable to the public and provide for a transparent process for making service allocation decisions. Performance measures will give the public a snapshot of Metro's performance on a systemwide level and allow for comparisons between service types and between peer

agencies. Using a variety of forums, media channels and accessible formats, Metro will reach out to customers and the public to share information on the decision-making process and on the performance measures that are the basis of Metro service changes and new service initiatives.

- **Strategy 7.2.2: Explore innovative ways to report to and inform the public.**
  New forums for public outreach can help Metro reach more new and existing riders and make it easier for them to find the information they need. Metro will continue providing information to the public through various channels including printed materials, Metro Online, social media and other channels.



RESTRUCTURING SERVICE

Service restructures are changes to multiple routes along a corridor or within a large area consistent with the service design criteria in this document. Restructures may be prompted by a variety of circumstances, and in general are made to improve the efficiency and effectiveness of transit service as a whole, to better integrate with the regional transit network, or to reduce Metro's operating costs because of budget constraints. When planning for service restructures, factors other than route performance are taken into account, such as large-scale service and capital infrastructure enhancements. Restructures may result in the modification, addition, and deletion of corridors that align with future corridors in the long-range plan. These changes must be approved by council as part of a service change package.

- Under all circumstances, whether adding, reducing or maintaining service hours, service restructures will have the goals of focusing frequent service on the service segments with the highest ridership and route productivity, creating convenient opportunities for transfer connections between services, and matching capacity to ridership demand to improve the productivity and cost-effectiveness of service.
- Service restructures to manage the transit system will have a goal of increasing ridership.
- Under service reduction conditions, service restructures will have an added goal of an overall net reduction of service hours invested.
- Under service addition conditions, service restructures will have the added goals of increasing service levels and ridership.

When one or more circumstances trigger consideration of restructures, Metro specifically analyzes:

- Impacts on current and future travel patterns served by similarly aligned transit services.
- Passenger capacity of the candidate primary route(s) relative to projected consolidated ridership.
- The cost of added service in the primary corridor to meet projected ridership demand relative to cost savings from reductions of other services.

Restructures will be designed to reflect the following:

- Service levels should accommodate a projected minimum of 80 percent of the expected passenger loads per the established loading guidelines.
- When transfers are required as a result of restructures, the resulting service will be designed for convenient transfers. Travel time penalties for transfers should be minimized.
- A maximum walk distance goal of 1/4 mile in corridors where service is not primarily oriented to freeway or limited-access roadways. Consideration may be given to exceeding this maximum distance where the walking environment supports pedestrians or at transfer locations between very frequent services.

Based on these guidelines, Metro will recommend specific restructures that have compatibility of trips, have capacity on the consolidated services to meet anticipated demand, and can achieve measurable savings relative to the magnitude of necessary or desired change.

After a service restructure, Metro will regularly evaluate the resulting transit services and respond to chronically late performance and passenger loads that exceed the performance management guidelines as part of the ongoing management of Metro's transit system.

Key reasons that will trigger consideration of restructures include:

Sound Transit or Metro service investments

- Extension or service enhancements to Link light rail, Sounder commuter rail, and Regional Express bus services.
- Expansion of Metro's RapidRide network, investment of partner or grant resources, or other significant introductions of new Metro service.

Corridors above or below the All-Day and Peak-Only Network target service level

- Locations where the transit network does not reflect current travel patterns and transit demand due to changes in travel patterns, demographics, or other factors.

Services compete for the same riders

- Locations where multiple transit services overlap, in whole or in part, or provide similar connections.

Mismatch between service and ridership

- Situations where a route serves multiple areas with varying demand characteristics or situations where ridership has increased or decreased significantly even though the underlying service has not changed.
- Opportunities to consolidate or otherwise reorganize service so that higher ridership demand can be served with improved service frequency and fewer route patterns.

Major transportation network changes

- Major projects such as SR-520 construction and tolling and the Alaskan Way Viaduct replacement; the opening of new transit centers, park-and-rides, or transit priority pathways.

Major development or land use changes

- Construction of a large-scale development, new institutions such as colleges or medical centers, or significant changes in the overall development of an area.

PLANNING AND COMMUNITY ENGAGEMENT

For each major service change, Metro will undertake a significant planning process that includes outreach to involve the public in shaping the change. Through the outreach, Metro planners will better understand community mobility needs, where people are traveling and when, and how to provide the best service possible. During the planning process, Metro typically will engage with the community through several phases of outreach, and will complete a comprehensive community engagement report at the end that summarizes the results of this work and how public input was used to shape a final recommendation for change.

Each outreach effort will be guided by several goals:

- Transit planners are informed by members of the public who are reflective of those who may be affected by the change.
- Metro's outreach process is transparent, accessible, welcoming and understandable. Participants understand what is being considered, the timeline and how decisions are made, and that their input is valuable and welcome.
- The outreach process is meaningful. Regardless of how participants feel about the final result, they can see how public input shaped what is being considered and the final result.

Outreach should be scaled relative to the magnitude of the change being considered as well as the potential impacts of the change on riders.

For each outreach effort, Metro should identify the demographics of those who may be affected by the change being considered. Then, outreach strategies should be designed to inform and solicit input from these populations, creatively seeking to engage those who would not otherwise learn about our process via mainstream communication channels.

These outreach strategies should include, but not be limited to, the following:

- posting of information at bus stops or onboard buses and at community gathering places such as libraries, schools, and community centers
- conversations with people on the bus and at stops, community events, and information tables
- public meetings
- questionnaires
- conversations with community or stakeholder groups
- online and/or mailed information, social media, news releases, and advertisements
- community advisory groups or sounding boards
- outreach to community groups in the Community Service Areas of unincorporated King County
- translation and distribution of materials in accessible formats and/or provision of interpretation for populations with limited or no English proficiency and people with disabilities

- work with community partners that serve transit riders, such as those with limited English proficiency, low-income and homeless populations, youth, minorities, people with disabilities, elderly people, and those who are currently unserved or underserved by transit, to engage these populations in formats, locations and at times that work best for them.

For service changes that affect multiple routes or large areas, Metro may convene a community-based sounding board composed of people who may be affected by the change. Sounding board members attend public meetings, offer advice about public outreach, and provide feedback about what changes to bus service would be best for the local communities. Metro should consider both sounding board recommendations and public feedback in developing recommendations.

Proposed changes may require County Council approval. The Council holds a public hearing before making a final decision on changes.

Through the planning and outreach process, Metro should strive to:

- Understand and address potential issues regarding major travel origins and destinations
- Engage with key stakeholders including community-based organizations and the general public to understand the needs of transit riders and potential riders, such as those with limited English proficiency, low-income and homeless populations, youth, minorities, people with disabilities and Access users, elderly people, and those who are currently unserved or underserved by transit
- Match community needs with service provided. Metro may identify potential alternative services projects through the planning and outreach process.

1

August 16, 2016

Sponsor: Rod Dembowski

[Drafter's Initials]

Proposed No.: 2016-0387

AMENDMENT TO PROPOSED ORDINANCE 2016-0387, VERSION 1

Beginning on page 7, line 142, strike everything through page 8, line 154, and insert:

"3. Provision for dissemination of the draft impact study consistent with the transit public involvement model established in K.C.C. 2.124.010 and with the process described in the Planning and Community Engagement section of the King County Metro Service Guidelines. The draft impact study shall consist of printed and electronic information which clearly defines and visually portrays, when possible, the range of options under consideration by the county. The draft impact study shall also include a description of any policy considerations, the schedule defined in subsection B.1. of this section, the guide defined in subsection B.2. of this section, the executive's anticipated date of transmittal of service change legislation to the council, ways to obtain additional information and the name, address, telephone number and email address of the responsible official or officials."

EFFECT: Deletes subsection 8.B.3 and replaces it with a revised subsection 8.B.3. The revision would clarify what is contained in the draft impact study.

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King County

Metropolitan King County Council
Transportation, Economy and Environment Committee

MEMORANDUM

Date: August 16, 2016

TO: Transportation, Economy and Environment Committee Members

FM: Mary Bourguignon, Council Staff

RE: Grant Alerts

The Transportation, Economy and Environment Committee has received notice that the Water, Land and Resources Division of the Department of Natural Resources and Parks has submitted the following grant requests to outside funders:

- *-16-039 Foothills Trail and Bridge Development*
- *16-040 Cougar Mountain Precipice Trailhead Development*
- *16-041 Skyway Parks Revitalization*
- *16-042 Lake to Sound Trail Development Segment A*
- *16-045 PSAR Large Cap - Lower Russell Road Levee Setback and Habitat Restoration*

ATTACHMENTS:
1. Grant Alert Forms

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16-039

King County
Office of Performance, Strategy and Budget
Chinook Building
401 Fifth Avenue, Suite 810
Seattle, WA 98104

RECEIVED
2016 JUL 20 AM 9: 13
CLERK
KING COUNTY COUNCIL

July 13, 2016

MEMORANDUM

TO: Joe McDermott, Chair, King County Council

FM: Jonathan Swift, Deputy Director, Office of Performance, Strategy and Budget

RE: Foothills Trail and Bridge Development

Enclosed is a King County Grant Alert, advising Council of the department's intent to apply for the above-entitled Grant. This grant application is due to grantor on 7/8/16 with a potential award of $500,000. If you have any questions, please contact Monica Leers, at 206-477-4575.

cc: King County Councilmembers
John Resha, Council Committee Staff
Patrick Hamacher, Senior Principal Legislative Analyst, BFM Staff
Anne Noris, Clerk of the Council
Jillian Andrews, Budget Analyst, Office of Performance, Strategy and Budget (PSB)
Lynn McKiernan Ngari, Grant Financial Officer, FBOD
Ayesha Kelly, Administrator, PSB
Jo Anne Fox, Budget Analyst, PSB

King County Grant Alert

JUL 11 2016

Department	DNRP
Division	Parks
Program	CIP
Contact	Monica Leers
Phone	(206) 477-4575

Foothills Trail and Bridge Development

Preliminary Project Title

REVIEW/APPROVAL

	Date Rec'vd	Date Appr'vd	Initials
Dept	7/11/16	7/11/16	
Budget	7/11/16	7/13/16	
OFM Control No.	16-039		

BASIC GRANT INFORMATION

Grantor
Washington Wildlife and Recreation Program - Trails

Application Due Date	Date Award to be Announced
July 8, 2016	June 1, 2017

Grantor's Statement of Intent in Letting Grant Proposal
WWRP provides funding assistance for land protection, park development, habitat conservation, farmlands preservation, and outdoor recreation facilities.

Potential King County Budget Impact

	2015	2016	2017	2018	2019
Potential Award Amount:			$ 2,800,000		
Required CX Cash Match:					
Required Other Match:			$ 7,325,000		
Total Potential Value:	$ -	$ -	$ 10,125,000	$ -	$ -
% of Fund Appropriation:					
Possible FTE Additions:			0.0		

Award Maximums: $ 500,000
Range of Years Covered: 2

Does this grant replace currently appropriated funds?
☐ YES ☒ NO
If yes, amount displaced:
Source of displace funds:

PRELIMINARY DESCRIPTION OF KING COUNTY PROPOSAL

The Foothills Trail and White River Bridge Development project will construct a 340-foot long bicycle and pedestrian bridge across the White River and develop a 1.10-mile-long trail segment that will connect the bridge to existing regional trails in the cities of Enumclaw and Buckley on the north and south sides of the river.

Future Funding Liabilities (including sun-setting costs, if applicable - see instructions,

EXISTING POLICY/PLAN ENABLING THIS GRANT

The 2014-2019 Parks, Trails and Open Space Levy, King County Comprehensive Plan, and the 2010 King County Open Space Plan all support this type of project.

REQUIRED KING COUNTY COUNCIL ACTION, IF APPLICABLE

☐ Implementation of this grant will require execution of an Interlocal Agreement. A transmittal of proposed legislation is forthcoming.
☐ Either the application or implementation would benefit from King County Council pre-authorization. A transmittal of proposed legislation is forthcoming.

16-040

RECEIVED
2016 JUL 20 AM 9:13
CLERK
KING COUNTY COUNCIL

King County
Office of Performance, Strategy and Budget
Chinook Building
401 Fifth Avenue, Suite 810
Seattle, WA 98104

July 13, 2016

MEMORANDUM

TO: Joe McDermott, Chair, King County Council

FM: Jonathan Swift, Deputy Director, Office of Performance, Strategy and Budget

RE: Cougar Mountain Precipice Trailhead Development

Enclosed is a King County Grant Alert, advising Council of the department's intent to apply for the above-entitled Grant. This grant application is due to grantor on 7/8/16 with a potential award of $500,000. If you have any questions, please contact Linda Frkuska, at 206-477-4484.

cc: King County Councilmembers
John Resha, Council Committee Staff
Patrick Hamacher, Senior Principal Legislative Analyst, BFM Staff
Anne Noris, Clerk of the Council
Jillian Andrews, Budget Analyst, Office of Performance, Strategy and Budget (PSB)
Lynn McKiernan Ngari, Grant Financial Officer, FBOD
Ayesha Kelly, Administrator, PSB
Jo Anne Fox, Budget Analyst, PSB

King County Grant Alert

Department	DNRP
Division	Parks
Program	CIP
Contact	Linda Frkuska
Phone	(206)477-4484

Cougar Mountain Precipice Trailhead Development

Preliminary Project Title

JUL 11 2016

REVIEW/APPROVAL

	Date Rec'vd	Date Appr'vd	Initials
Dept	7/11/16	7/11/16	
Budget	7/11/16	7/13/16	
OFM Control No.	16-040		

BASIC GRANT INFORMATION

Grantor
Washington Wildlife and Recreation Program - Local Parks

Application Due Date: July 8, 2016

Date Award to be Announced: June 1, 2017

Grantor's Statement of Intent in Letting Grant Proposal
WWRP provides funding assistance for land protection, park development, habitat conservation, farmlands preservation, and outdoor recreation facilities.

Potential King County Budget Impact

	2015	2016	2017	2018	2019
Potential Award Amount:			$ 500,000		
Required CX Cash Match:			$ -		
Required Other Match:			$ 634,600		
Total Potential Value:	$ -	$ -	$ 1,134,600	$ -	$ -
% of Fund Appropriation:					
Possible FTE Additions:			0.0		

Award Maximums: $ 500,000
Range of Years Covered: 2

Does this grant replace currently appropriated funds?
[ ] YES [X] NO
If yes, amount displaced:
Source of displace funds:

PRELIMINARY DESCRIPTION OF KING COUNTY PROPOSAL

Development of a new trailhead and parking lot creating a northeast entrance to Cougar Mountain Regional Wildlife Park.

Future Funding Liabilities (including sun-setting costs, if applicable - see instructions)

EXISTING POLICY/PLAN ENABLING THIS GRANT

The 2014-2019 Parks, Trails and Open Space Levy, King County Comprehensive Plan, and the 2010 King County Open Space Plan all support this type of project.

REQUIRED KING COUNTY COUNCIL ACTION, IF APPLICABLE

- [ ] Implementation of this grant will require execution of an Interlocal Agreement. A transmittal of proposed legislation is forthcoming.
- [ ] Either the application or implementation would benefit from King County Council pre-authorization. A transmittal of proposed legislation is forthcoming.

16-041

King County
Office of Performance, Strategy and Budget
Chinook Building
401 Fifth Avenue, Suite 810
Seattle, WA 98104

RECEIVED
2016 JUL 20 AM 9: 14
CLERK
KING COUNTY COUNCIL

July 13, 2016

MEMORANDUM

TO: Joe McDermott, Chair, King County Council

FM: Jonathan Swift, Deputy Director, Office of Performance, Strategy and Budget

RE: Skyway Parks Revitalization

Enclosed is a King County Grant Alert, advising Council of the department's intent to apply for the above-entitled Grant. This grant application is due to grantor on 5/20/16 with a potential award of $355,000. If you have any questions, please contact Frana Milan, at 206-477-4580.

cc: King County Councilmembers
John Resha, Council Committee Staff
Patrick Hamacher, Senior Principal Legislative Analyst, BFM Staff
Anne Noris, Clerk of the Council
Jillian Andrews, Budget Analyst, Office of Performance, Strategy and Budget (PSB)
Lynn McKiernan Ngari, Grant Financial Officer, FBOD
Ayesha Kelly, Administrator, PSB
Jo Anne Fox, Budget Analyst, PSB

King County Grant Alert

Department	DNRP
Division	Parks and Recreation Division
Program	CIP
Contact	Frana Milan
Phone	206-477-45080

Skyway Park Revitalization

Preliminary Project Title

JUN 29 2016

REVIEW/APPROVAL

	Date Rec'vd	Date Appr'vd	Initials
Dept	6/9/16	6/28/16	
Budget	6/29/16	7/13/16	
OFM Control No.	16-041 JA		

BASIC GRANT INFORMATION

Grantor
Land and Water Conservation Fund - Outdoor Recreation Legacy Partnership Program

Application Due Date
May 20, 2016

Date Award to be Announced
~~Spring 2017~~ June 1, 2017

Grantor's Statement of Intent in Letting Grant Proposal

The purpose of the LWCF-ORLP is to provide grants to acquire and/or develop public lands for outrdoor recreation purposes consistent with the LWCF, but specifically targeting projects located within or serving jurisdictions delineated by the Census Bureau from the 2010 Census as urbanized areas and located in or directly accessible to neighborhoods or communities that are underserved in terms of parks and recreation resources and where there are significant populations of people who are economically disadvantaged, minority and/or youth.

Potential King County Budget Impact

	2015	2016	2017	2018	2019
Potential Award Amount:			$ 355,000		
Required CX Cash Match:					
Required Other Match:			$ 372,000		
Total Potential Value:	$ -	$ -	$ 727,000	$ -	$ -
% of Fund Appropriation:			0.9%		
Possible FTE Additions:			0.0		

Award Maximums: $ 355,000
Range of Years Covered: 2

Does this grant replace currently appropriated funds?
☐ YES ☒ NO
If yes, amount displaced:
Source of displace funds:

PRELIMINARY DESCRIPTION OF KING COUNTY PROPOSAL

Revitalize Skyway Park by installing an open air mini soccer arena and rehabilitating grass playfields, expanding access to the park, and replacing/expanding a play area.

Future Funding Liabilities (including sun-setting costs, if applicable - see instructions,

EXISTING POLICY/PLAN ENABLING THIS GRANT

The 2014-2019 Parks, Trails and Open Space Levy, King County Comprehensive Plan, and the 2010 King County Open Space Plan all support this type of project.

REQUIRED KING COUNTY COUNCIL ACTION, IF APPLICABLE

☐ Implementation of this grant will require execution of an Interlocal Agreement. A transmittal of proposed legislation is forthcoming.
☐ Either the application or implementation would benefit from King County Council pre-authorization. A transmittal of proposed legislation is forthcoming.

16-1934-KCParks_Skyway_AuthorizingResolution

16-042

RECEIVED
2016 JUL 20 AM 9:14
CLERK
KING COUNTY COUNCIL

King County
Office of Performance, Strategy and Budget
Chinook Building
401 Fifth Avenue, Suite 810
Seattle, WA 98104

July 13, 2016

MEMORANDUM

TO: Joe McDermott, Chair, King County Council

FM: Jonathan Swift, Deputy Director, Office of Performance, Strategy and Budget

RE: Lake to Sound Trail Development, Segment A

Enclosed is a King County Grant Alert, advising Council of the department's intent to apply for the above-entitled Grant. This grant application is due to grantor on 7/8/16 with a potential award of $500,000. If you have any questions, please contact Monica Leers, at 206-477-4575.

cc: King County Councilmembers
John Resha, Council Committee Staff
Patrick Hamacher, Senior Principal Legislative Analyst, BFM Staff
Anne Noris, Clerk of the Council
Jillian Andrews, Budget Analyst, Office of Performance, Strategy and Budget (PSB)
Lynn McKiernan Ngari, Grant Financial Officer, FBOD
Ayesha Kelly, Administrator, PSB
Jo Anne Fox, Budget Analyst, PSB

King County Grant Alert

Department	DNRP
Division	Parks
Program	CIP
Contact	Monica Leers
Phone	(206) 477-4575

Lake to Sound Trail Development, Segment A

Preliminary Project Title

JUL 11 2016

REVIEW/APPROVAL

	Date Rec'vd	Date Appr'vd	Initials
Dept	7/11/16	7/11/16	
Budget	7/11/16	7/13/16	
OFM Control No.	16-042		

BASIC GRANT INFORMATION

Grantor
Washington Wildlife and Recreation Program - Trails

Application Due Date: July 8, 2016

Date Award to be Announced: June 1, 2017

Grantor's Statement of Intent in Letting Grant Proposal
WWRP provides funding assistance for land protection, park development, habitat conservation, farmlands preservation, and outdoor recreation facilities.

Potential King County Budget Impact

	2015	2016	2017	2018	2019
Potential Award Amount:			$ 500,000		
Required CX Cash Match:					
Required Other Match:			$ 1,691,586		
Total Potential Value:	$ -	$ -	$ 2,191,586	$ -	$ -
% of Fund Appropriation:					
Possible FTE Additions:					

Award Maximums: $500,000
Range of Years Covered: 2

Does this grant replace currently appropriated funds?
[ ] YES [X] NO
If yes, amount displaced:
Source of displace funds:

PRELIMINARY DESCRIPTION OF KING COUNTY PROPOSAL

The project will construct Segment A of the Lake to Sound (L2S) Trail, which runs from the Green River Trail near Fort Dent Park in the City of Tukwila through the Black River Riparian Forest to Naches Avenue SW in the City of Renton. Segment A of the L2S Trail will be 1.2 miles in length and will include construction of a 12-foot-wide paved, non-motorized, shared use path with 2-foot-wide gravel shoulders. Project improvements include a new 110-foot pedestrian bridge across the Black River and a street crossing with a pedestrian-activated flashing beacon at Monster Road.

Future Funding Liabilities (including sun-setting costs, if applicable - see instructions)

EXISTING POLICY/PLAN ENABLING THIS GRANT

The 2014-2019 Parks, Trails and Open Space Levy, King County Comprehensive Plan, and the 2010 King County Open Space Plan all support this type of project.

REQUIRED KING COUNTY COUNCIL ACTION, IF APPLICABLE

[ ] Implementation of this grant will require execution of an Interlocal Agreement. A transmittal of proposed legislation is forthcoming.
[ ] Either the application or implementation would benefit from King County Council pre-authorization. A transmittal of proposed legislation is forthcoming.

16-045

King County
Office of Performance, Strategy and Budget
Chinook Building
401 Fifth Avenue, Suite 810
Seattle, WA 98104

RECEIVED
2016 AUG -4 PM 3:57
CLERK
KING COUNTY COUNCIL

July 20, 2016

MEMORANDUM

TO: Joe McDermott, Chair, King County Council

FM: Jonathan Swift, Deputy Director, Office of Performance, Strategy and Budget

RE: PSAR Large Cap: Lower Russell Road Levee Setback and Habitat Restoration

Enclosed is a King County Grant Alert, advising Council of the department's intent to apply for the above-entitled Grant. This grant application is due to grantor on 8/12/2016 with a potential award of $6,500,000. If you have any questions, please contact Steve Bleifuhs, at 206-477-4726.

cc: King County Councilmembers
John Resha, Council Committee Staff
Patrick Hamacher, Senior Principal Legislative Analyst, BFM Staff
Anne Noris, Clerk of the Council
Jillian Andrews, Budget Analyst, Office of Performance, Strategy and Budget (PSB)
Lynn McKiernan Ngari, Grant Financial Officer, FBOD
Ayesha Kelly, Administrator, PSB
Jo Anne Fox, Budget Analyst, PSB

King County Grant Alert

Department	DNRP
Division	WLRD
Program	River and Floodplain Management
Contact	Steve Bleifuhs
Phone	477-4726

PSAR Large Cap: Lower Russell Road Levee Setback and Habitat Restoration

JUL 19 2016

Preliminary Project Title

REVIEW/APPROVAL

	Date Rec'vd	Date Appr'vd	Initials
Dept		7/13/16	
Budget		7/20/16	
OFM Control No.		16-045	

BASIC GRANT INFORMATION

Grantor
Washington State Recreation and Conservation Office, Puget Sound Partnership

Application Due Date	Date Award to be Announced
August 12, 2015	7/1/2017

Grantor's Statement of Intent in Letting Grant Proposal

The Puget Sound Acquisition and Restoration program (PSAR) was created in 2007 to help implement the most important habitat protection and restoration priorities for Puget Sound. Funding is appropriated by the Legislature through the Salmon Recovery Funding Board. The Puget Sound Partnership works with local entities to identify and prioritize projects. This funding is critical to advancing the most effective projects throughout our region.

Potential King County Budget Impact

	2015	2016	2017	2018	2019
Potential Award Amount:			$ 6,500,000		
Required CX Cash Match:					
Required Other Match: KC FCD			$ 12,000,000		
Total Potential Value:	$ -	$ -	$ 18,500,000	$ -	$ -
% of Fund Appropriation:	0.0%	0.0%	9.2%	0.0%	0.0%
Possible FTE Additions:					

Award Maximums: $ 6,500,000
Range of Years Covered: 1-2 years

Does this grant replace currently appropriated funds?
☐ YES ☒ NO
If yes, amount displaced:
Source of displace funds:

PRELIMINARY DESCRIPTION OF KING COUNTY PROPOSAL

The Lower Russell Road Levee Setback Project, which is being constructed on behalf of the KC FCD,will construct a 1.4 mile long setback levee and floodwall, reconnect between 33 and 50 acres of historical floodplain habitat, and enhance recreation. The project will improve flood protection and reduce flood risk, restore riparian and aquatic habitats, and relocate Van Doren's park to enable further habitat restoration. The PSAR Large Cap grant source will fund only habitat restoration components of the project since its fund allocation is specific to Puget Sound salmon recovery. The project is located along the right (east) bank of the Green River between river mile 17.85 (S 212th St) and river mile 19.25 (S 231st Way) in the City of Kent. Off-channel salmonid rearing and refuge habitat is degraded and greatly reduced from historical levels, and water temperatures exceed standards. These issues will be addressed by setting the levee/floodwall back the furthest extent practicable, excavating portions of the floodplain so it is inundated under the current altered hydrologic regime (flood frequency and magnitude have been decreased by re-routing the White River and controlling flood peaks at Howard Hanson Dam) to create rearing and refuge habitat for juvenile salmonids, and planting the riparian corridor.

Future Funding Liabilities (including sun-setting costs, if applicable - see instructions,

EXISTING POLICY/PLAN ENABLING THIS GRANT

King County Flood Control District's adopted 6-year CIP. King County Flood Hazard Mitigation Plan/General Policy G-2, G-4, G-9, and G-10 in Chapter 2, of the 2006 KCFHMP.

REQUIRED KING COUNTY COUNCIL ACTION, IF APPLICABLE

☐ Implementation of this grant will require execution of an Interlocal Agreement. A transmittal of proposed legislation is forthcoming.
☐ Either the application or implementation would benefit from King County Council pre-authorization. A transmittal of proposed legislation is forthcoming.

KING COUNTY FLOOD CONTROL ZONE DISTRICT NOTIFICATION

☒ A copy of this grant alert has been provided to the King County Flood Control Zone District's Executive Committee and Executive Director.