

Res 628

Dane County Contract Cover Sheet

Dept./Division	LWRD
Vendor Name	CLEAN FUEL DANE LLC
Vendor MUNIS #	26170
Brief Contract Title/Description	SECOND AMENDMENT TO EQUIPMENT LEASE
Contract Term	6 years with renewal options
Total Contract Amount	\$ 0

Contract # <small>Admin will assign</small>	10336C
Addendum	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Type of Contract	
<input type="checkbox"/>	Dane County Contract
<input type="checkbox"/>	Grant
<input type="checkbox"/>	County Lessee
<input checked="" type="checkbox"/>	County Lessor
<input type="checkbox"/>	Intergovernmental
<input type="checkbox"/>	Purchase of Property
<input type="checkbox"/>	Property Sale
<input type="checkbox"/>	Other

Purchasing Authority	<input type="checkbox"/> \$10,000 or under – Best Judgment (1 quote required)	
	<input type="checkbox"/> Between \$10,000 – \$36,000 (\$0 – \$25,000 Public Works) (3 quotes required)	
	<input type="checkbox"/> Over \$36,000 (\$25,000 Public Works) (Formal RFB/RFP required)	RFB/RFP #
	<input type="checkbox"/> Bid Waiver – \$36,000 or under (\$25,000 or under Public Works)	
	<input type="checkbox"/> Bid Waiver – Over \$36,000 (N/A to Public Works)	
	<input checked="" type="checkbox"/> N/A – Grants, Leases, Intergovernmental, Property Purchase/Sale, Other	

MUNIS Req.	Org Code	Obj Code	Amount	\$
Req #	Org Code	Obj Code	Amount	\$
Year	Org Code	Obj Code	Amount	\$


Resolution	A resolution is required if the contract exceeds \$100,000 (\$40,000 Public Works). A copy of the Resolution must be attached to the contract cover sheet.			
	<input type="checkbox"/> Contract does not exceed \$100,000 (\$40,000 Public Works) – a resolution is not required.			
	<input type="checkbox"/> Contract exceeds \$100,000 (\$40,000 Public Works) – resolution required.	Res #	628	
	<input checked="" type="checkbox"/> A copy of the Resolution is attached to the contract cover sheet.	Year	2018	

Contract Review/Approvals				
Initials	Dept.	Date In	Date Out	Comments
MG	Received by DOA	5/22/19		
CA	Controller		5/22/19	
PCP	Purchasing	5/24/19	5/24/19	
CB	Corporation Counsel	5/24/19	5/24/19	Ex. A + Face Blank; They should be added prior to resolution.
✓	Risk Management	5/23/19	5/23/19	
	County Executive			

Dane County Dept. Contact Info		Vendor Contact Info	
Name	LAURA HICKLIN	Name	Craig Murphy
Phone #	6082243765	Phone #	5174203514
Email	HICKLIN.LAURA@COUNTYOFDANE.COM	Email	craig.murphy@brightmarkenergy.com
Address	5201 FEN OAK DRIVE	Address	235 Pine St Suite 1100 San Fran CA 94104

Certification: The attached contract is a:	
<input type="checkbox"/>	Dane County Contract <u>without</u> any modifications.
<input type="checkbox"/>	Dane County Contract <u>with</u> modifications. The modifications have been reviewed by:
<input checked="" type="checkbox"/>	Non-standard contract.

Contract Cover Sheet Signature

Department Approval of Contract		
Dept. Head / Authorized Designee	Signature	Date
		5/22/18
	Printed Name	
	Laura Hicklin	

Contracts Exceeding \$100,000

Major Contracts Review – DCO Sect. 25.11(3)

Director of Administration	Signature	Date
	Comments	
Corporation Counsel	Signature	Date
	Comments	

AUTHORIZING RENEWABLE NATURAL GAS (RNG) ACCESS AGREEMENT AND
LEASE AMENDMENTS TO BME DANE HOLDINGS, LLC

Clean Fuel Dane, LLC has requested authorization from Dane County to assign the rights and obligations of the ground and equipment lease that run with the anaerobic digester located in the Town of Vienna with a street address of 6307 Cuba Valley Road, Dane, WI 53529 ("Digester") to BME Dane Holdings, LLC.

The Department of Waste & Renewables and the Department of Land & Water Resources have worked with both Clean Fuel Dane, LLC and BME Dane Holdings, LLC regarding the assignment, which is part of a larger plan to transition the digester from electrical production to RNG production. The RNG produced at the Digester would then be transported to the County's interconnection station at the landfill for injection.

NOW, THEREFORE, BE IT RESOLVED that the Dane County Executive and Dane County Clerk are authorized to execute, on behalf of Dane County, a Ground Lease Amendment, Equipment Lease Amendment, and RNG Access Agreement with Clean Fuel Dane, LLC and or BME Dane Holdings, LLC as appropriate.

**SECOND
AMENDMENT TO
EQUIPMENT LEASE**

This Second Amendment to the Equipment Lease (this "Amendment") is dated this ___ day of June, 2019 by and between Clean Fuel Dane, LLC, a Delaware limited liability company ("Lessee"), and the County of Dane, Wisconsin, a Wisconsin quasi-municipal corporation (the "Lessor"). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Equipment Lease (as defined below).

WHEREAS, Lessor and Lessee, as the assignee of Clear Horizons Dane, LLC, a Wisconsin limited liability company, have entered into that certain Equipment Lease dated June 23, 2010, as amended by the First Amendment to Equipment Lease dated November 9, 2012 (collectively, the "Equipment Lease"); and

WHEREAS, Clean Fuel Partners, a Delaware limited liability company and the owner of all of the outstanding membership interests of Lessee ("CFP"), and BME Dane Holdings LLC ("BME") have entered that certain Membership Interest Purchase Agreement dated December 31, 2018 (as amended, the "Purchase Agreement"), pursuant to which BME shall acquire from CFP all of the outstanding membership interests of Lessee; and

WHEREAS, it is a condition precedent to BME's obligation to close the transactions contemplated by the Purchase Agreement that the parties execute and Lessee deliver this Amendment to BME; and

WHEREAS, pursuant to Section 19 of the Equipment Lease, the parties hereto desire to amend the Equipment Lease as provided herein and to ratify and affirm the terms of the Equipment Lease as amended herein; and

WHEREAS, the parties' obligations pursuant to this Amendment are conditioned upon the closing of the transactions contemplated by the Purchase Agreement.

For good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Amendment of Section 5. Section 5 of the Equipment Lease is hereby amended to read in its entirety as follows:

"5. Repairs, Improvements and Replacement. During the term of the Equipment Lease, Lessee, at its own cost and expense, shall keep the Equipment in good repair, condition and working order and shall furnish any and all parts, mechanisms and devices required to keep the Equipment in good mechanical working order. In the event that Equipment requires replacement or Lessee makes any improvements to the Equipment, Lessee shall provide such replacement or make such improvements to the Equipment, Lessee shall provide such replacement or make such improvements at its own cost in such manner as it reasonably deems prudent. The Lessor hereby consents to any such

modifications, replacement or improvements. Any parts installed or replacements made by the Lessee upon any item of Equipment pursuant to Section 4 or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 5 or which meet the other requirements of this Section 5 shall in each case be considered accessions to such item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. Title to any readily removable additions (including, without limitation, any new biogas upgrade equipment purchased by Lessee or leased from a third party) or improvements to the Equipment made, built, installed or modified by the Lessee (collectively, the "**Lessee Additions**") shall remain with the Lessee. Exhibit F attached hereto contains a full list of Lessee Additions as of the date hereof and such exhibit may be modified and updated from time to time by the mutual consent of the parties following the installation of additional Lessee Additions. If the Lessee shall at its cost cause Lessee Additions to be made to any item of Equipment, the Lessee may, or at the request of the Lessor, the Lessee shall, prior to the return of such item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such item of Equipment."

2. Amendment of Section 11. Section 11(a)(ii) of the Equipment Lease is hereby amended by adding at the end thereof the following additional clause:

"notwithstanding the foregoing, any acquisition of at least a majority of the outstanding membership interests of Lessee by BME or any of its affiliates, pursuant to the Purchase Agreement or by means of any other transaction or series of related transactions (including, without limitation, a merger, consolidation or reorganization of the Lessee with or into another corporation), or a sale of all, or substantially all of the assets of the Lessee to BME or any of its affiliates, shall not be deemed an Event of Default pursuant to this Equipment Lease and shall be expressly permitted."

3. Amendment of Exhibit A. Exhibit A of the Equipment Lease is hereby amended to read in its entirety as set forth on Exhibit A attached hereto.

4. Addition of Exhibit F. A new Exhibit F (Lessee Additions) is hereby added to and fully incorporated into the Equipment Lease in its entirety as set forth on Exhibit F attached hereto.

5. Full Force and Effect. Except as modified above, all other terms and provisions of the Equipment Lease shall remain in full force and effect in accordance with their terms, and the parties hereby ratify and affirm the terms of the Equipment Lease, as amended, effective as of the date hereof.

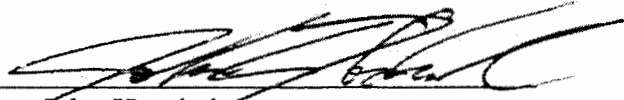
6. Miscellaneous. This Amendment shall be deemed to be an amendment to the Equipment Lease. All references to the Equipment Lease in any other document, instrument, agreement or writing executed hereafter shall be deemed to refer to the Equipment Lease as amended

hereby. This Amendment shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Equipment Lease as of the date first written above.

CLEAN FUEL DANE, LLC

By: 
Name: John Haeckel
Title: Chief Executive Officer

COUNTY OF DANE

By: _____
Name: _____
Title: _____

AMENDED EXHIBIT A

Equipment List¹

¹ Equipment List to be updated.

EXHIBIT F

Lessee Additions²

²List of Lessee Additions to date to be provided.