Board Office Use: Legislative File Info.				
File ID Number	24-1941			
Introduction Date	08-21-2024			
Enactment Number				
Enactment Date				



Memo

**To** Facilities Committee

From Kyla Johnson-Trammell, Superintendent; Preston Thomas, Chief Systems & Services

Officer; Kenya Chatman, Executive Director, Facilities

**Board Meeting Date** August 21, 2024

**Subject** Purchase and Sale Agreement - Anew EV, LLC – Sale of Renewable Energy

Certificates (REC) – Division of Facilities Planning and Management

**Action Requested** Approval by the Facilities Committee of the Purchase and Sale Agreement by and

between the District and Anew EV, LLC, Houston, TX, for the latter to purchase Renewable Energy Certificates (REC) generated from OUSD at \$11.50 per SREC for a three-year term, with anticipated annual revenue of approximately \$80,000.00, with sales scheduled to commence on August 29, 2024, covering the period from June

2024 through June 2027, pursuant to the Agreement.

**Discussion** This Purchase and Sale Agreement is for the Sale of Renewable Energy Certificates

(REC) by District.

LBP (Local Business Participation Percentage) 00.00%

**Recommendation** Approval by the Facilities Committee of the Purchase and Sale Agreement by and

between the District and Anew EV, LLC, Houston, TX, for the latter to purchase Renewable Energy Certificates (REC) generated from OUSD at \$11.50 per SREC for a three-year term, with anticipated annual revenue of approximately \$80,000.00, with sales scheduled to commence on August 29, 2024, covering the period from June 2024

through June 2027, pursuant to the Agreement.

Fiscal Impact Fund- 1 – General Fund

**Attachments** • Contract Justification Form

• Agreement, including Exhibits

Routing Form



## **CONTRACT JUSTIFICATION FORM**

# This Form Shall Be Submitted to the Board Office With Every Agenda Contract.

Legislative File ID No. 24-1941
Department: <u>Facilities Planning and Management</u>
Vendor Name: Anew EV, LLC
Project Name: Facilities Planning and Management Project No.: 24153
Contract Term: Intended Start: <u>08/29/2024</u> Intended End: <u>06/30/2027</u>
Total Cost Over Contract Term: Estimated Annual Revenue of approximately \$80,000, depending on the amount of RECs sold.  Approved by: Preston Thomas Is Vendor a local Oakland Business or has it met the requirements of the
Local Business Policy?    Yes (No if Unchecked)
How was this contractor or vendor selected?
The vendor was hired through a competitive sale solicitation facilitated by Terra Verde.
Summarize the services or supplies this contractor or vendor will be providing.
The vendor will purchase solar RECs from OUSD at \$11.50 per SREC for a two-year term.
Was this contract competitively bid? ☐ Check box for "Yes" (If "No," leave box unchecked)
If "No," please answer the following questions:
1) How did you determine the price is competitive?

2) Please check the competitive bidding exception relied upon: **Construction Contract:** Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19) ☐ CMAS contract [may only include "incidental work or service"] (Public Contract Code §§10101(a) and 10298(a)) – contact legal counsel to discuss if applicable ☐ Emergency contract (Public Contract Code §§22035 and 22050) – contact legal counsel to discuss if applicable □ No advantage to bidding (including sole source) – contact legal counsel to discuss if applicable ☐ Completion contract – contact legal counsel to discuss if applicable ☐ Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable* ☐ Design-build contract RFQ/RFP process – contact legal counsel to discuss if applicable ☐ Energy service contract – *contact legal counsel to discuss if applicable*  $\Box$  Other: - *contact legal counsel to discuss if applicable* **Consultant Contract:** ☐ Architect, engineer, construction project manager, land surveyor, or environmental services – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), and (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.) ☐ Architect or engineer when state funds being used – selected (a) based on demonstrated competence and professional qualifications (Government Code §4526), (b) using a fair, competitive RFP selection process (Government Code §§4529.10 et seq.), and (c) using a competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50) ☐ Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – contact legal counsel to discuss if applicable  $\Box$  For services other than above, the cost of services is \$114,500 or less (as of 1/1/24) □ No advantage to bidding (including sole source) – contact legal counsel to discuss if applicable Purchasing Contract:  $\square$  Price is at or under bid threshold of \$114,500 (as of 1/1/24) ☐ Certain instructional materials (Public Contract Code §20118.3)

☐ Data processing systems and supporting software – choose one of three lowest bidders (Public Contract

Code §20118.1)

Li Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – contact legal counsel to discuss if applicable
☐ CMAS contract [may only include "incidental work or service"] (Public Contract Code §§10101(a) and 10298(a)) – contact legal counsel to discuss if applicable
☐ Piggyback contract for purchase of personal property (Public Contract Code §20118) – contact legal counsel to discuss if applicable
☐ Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – contact legal counsel to discuss if applicable
☐ No advantage to bidding (including sole source) – contact legal counsel to discuss if applicable
Maintenance Contract:
$\square$ Price is at or under bid threshold of \$114,500 (as of 1/1/24)
☐ No advantage to bidding (including sole source) – contact legal counsel to discuss
☐ Other:

3) Explain in detail the facts that support the applicability of the exception marked above:

# RENEWABLE ENERGY CERTIFICATES ("RECs") PURCHASE AND SALE AGREEMENT ("Agreement")

Seller:	Oakland Unified School District	Address: 1011 Union Street, Oakland, CA, 94607			
Seller Contact:	Contact Name: Preston Thomas	Contact Telephone Number: 510.879.8000			
Buyer:	Anew EV, LLC	Contact E-mail: preston.thomas@ousd.org  Address: 3200 Southwest Freeway, Suite 1310, Houston			
Buyer Contact:	Contact Name: Emmet Walsh & Contract Admin	Texas, 77027  Contact Telephone Number: 281.712.5141  Contact E-mail: ewalsh@anewclimate.com & contractadmin@anewclimate.com			
Transaction Date:	August 29, 2024	contractadiffine allew climate.com			
Product:	The "Product" consists of any other				
Applicable Standard:	The "Applicable Standard" consists of (i) the California Renewable Portfolio Standard (the "RPS") contained in Cal. PUC §§ 399.11 - 399.33, (ii) the rules and regulations of any governmental authority having jurisdiction implementing the RPS or incorporating the provisions of the RPS by reference, and (iii) the operating rules of WREGIS, and any other reciprocal or successor registry in or through which any Product is created, transferred, imported, exported or retired.				
Vintage:	July 2024 – June 2027				
Facility:	Facilities Appended				
Quantity:	100% of the SRECs generated by the Facility on a uni Facility fails to produce SRECs, provided that Seller sl Facility that are not delivered to the Buyer.	t contingent basis. Seller shall not be liable for damages if the hall be liable to Buyer for any SRECs that are produced by the			
Contract Price:	\$11.50 per SREC				
Transfer of SRECs:	Seller shall transfer SRECs to Buyer on a quarterly basis, within (90) days of the conclusion of each calendar quarter.  Buyer's WREGIS Account: Element Markets EV, LLC # A6				
Payment:	Seller shall invoice Buyer for payment within (60) do Seller shall be due seven (7) days after receiving the rendered in the form of immediately available funds to by the parties. If either party fails to remit any am	ays following transfer of RECs to Buyer. Payment by Buyer to invoice from the Seller. All funds to be paid to Seller shall be (U.S. Dollars) by wire transfer or in such other form as agreed nount payable by it when due, interest on such unpaid portion in effect at the time as published in The Wall Street Journal			

# General Terms and Conditions:

Representations and Warranties of Seller. Seller represents and warrants to Buyer that as of and at the time of each transfer hereunder (i) each REC meets the specifications set forth in this Agreement; (ii) Seller has good and marketable title to the RECs; (iii) all right, title and interest in and to the RECs are free and clear of any liens, taxes, claims, security interests, or other encumbrances; and (iv) the RECs have not otherwise been, nor will be, sold, retired, claimed, used or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions, by Seller. SELLER EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

Representations and Warranties of each Party. As of the Transaction Date, each party hereby represents and warrants to the other party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; (iii) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; (iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses, bankruptcy principles, or the like; (v) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and (vi) it is not relying upon any representations of the other Party other than those expressly set forth herein,

Event of Default. For purposes of this Agreement, a party shall be in default (each of the following, an "Event of Default"): (i) if that party fails to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) business days of written notice from the other party; (ii) if that party materially breaches any or all of its obligations under this Agreement and such breach is not cured within fifteen (15) business days of written notice of such breach from the other party; (iii) if any representation or warranty made by a party pursuant to this Agreement proves to have been misleading or false in any material respect when made and such party does not cure the underlying facts so as to make such representation and warranty correct and not misleading within seven (7) business days of written notice from the other party; or (iv) if a Party makes an assignment or any general arrangement for the benefit of its creditors; files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors; has a petition filed against it; or otherwise becomes bankrupt or insolvent (however evidenced).

Remedies upon Default. If either Party is in default, the non-defaulting party may select any or all of the following remedies: (i) upon two (2) business days' written notice to the defaulting party, terminate this Agreement, (ii) withhold any payments and deliveries due in respect of this Agreement, and (iii) exercise such other remedies available at law or in equity.

If Buyer is in default and Seller elects to terminate this Agreement, then Buyer shall pay Seller, within ten (10) business days of invoice receipt, an amount equal to the sum of (i) the contract price multiplied by the quantity for any RECs delivered to Buyer for which Seller has not been paid, and (ii) the positive difference, if any, obtained by subtracting the market price, as reasonably determined by Seller, for the RECs from the contract price multiplied by the quantity of RECs not received, plus reasonable third party fees (including broker fees) and legal costs incurred by Seller in enforcement and protection of its rights under this Agreement and obtaining an agreement, if any, to sell the RECs not transferred hereunder. Seller shall not be required to enter into an agreement with a third party to sell RECs not transferred hereunder in order to determine the market price of such RECs hereunder.

If Seller is in default and Buyer elects to terminate this Agreement, then Seller shall pay Buyer, within ten (10) business days of invoice receipt, an amount equal to the positive difference, if any, obtained by subtracting the contract price from the market price, as reasonably determined by Buyer, for the RECs multiplied by the quantity of RECs not delivered, plus reasonable third party fees (including broker fees) and legal costs incurred by Buyer in enforcement and protection of its rights under this Agreement. In no event does the foregoing relieve Buyer of its obligation to pay Seller the contract price multiplied by the quantity for any RECs delivered to Buyer for which Seller has not been paid. Buyer shall not be required to enter into an agreement with a third party to purchase RECs not transferred hereunder in order to determine the market price of such RECs hereunder.

<u>Limitations of Liability</u>. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOSS OF PROFITS (EXCEPT TO THE EXTENT THAT ANY DIRECT DAMAGES INCLUDE AN ELEMENT OF PROFIT).

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); (iii) when transmitted by facsimile (with confirmation of transmission); or (iv) 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 above (or to such other address furnished in writing by one party to the other party).

Assignment. This Agreement 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 Agreement, 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, either Party may, without the prior consent of the other Party, transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (and without relieving itself from liability hereunder).

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

No Waiver. No delay or omission by a party in the exercise of any right under this Agreement 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.

<u>Severability.</u> If any provision or portion of this Agreement 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.

<u>Complete Agreement</u>. This Agreement represents the parties' final and mutual understanding concerning its subject matter. It replaces and supersedes any prior agreements or understandings, whether written or oral.

<u>Governing Law.</u> This Agreement shall be construed in accordance with and governed by the laws of the State of California, excluding any choice of law or conflicts of law rules or principles that would result in application of the laws of a different jurisdiction.

<u>Dispute Resolution.</u> Any dispute or claim between the parties arising from this Agreement not resolved by negotiation in good faith within thirty (30) days of receipt of notice of a dispute hereunder will be settled by arbitration pursuant to the then applicable Commercial Arbitration Rules of the American Arbitration Association. Any pre-arbitral dispute resolution negotiations shall be conducted by senior representatives from each party who are authorized to resolve any such dispute. The arbitration shall be held in Alameda County, California. Either party may initiate such arbitration upon seven (7) days advance written notice to the other party. The parties shall equally advance the costs of the arbitrator and arbitration hearing, provided, that the arbitrator may award costs of arbitration as part of any award. The parties agree that any determination of the arbitrator shall be final and binding and that judgment on the award in arbitration may be entered in any court of competent jurisdiction.

<u>Counterparts.</u> This Agreement 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. PDF transmission of any signed original document, and retransmission of any PDF transmission, will be the same as delivery of any original document.

<u>Forward Contract.</u> This Agreement constitutes a "forward contract" and each party represents and warrants that it is a "forward contract merchant" within the meaning of the Title 11 United States Bankruptcy Code.

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

Seller: Oakland Unified Scho	ol District	Buyer: Anew EV, LLC		
Signature:	Title: _ Chief Systems + Services	Signature:	Title: EVP	
Printed Name: Preston Thomas	Date: 8/13/24	Printed Name: Randall Lack	Date:	

Approved as to form, OUSD Facilities Counsel

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); (iii) when transmitted by facsimile (with confirmation of transmission); or (iv) 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 above (or to such other address furnished in writing by one party to the other party).

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

Seller: Oakland Unified School District	Buyer: Anew EV, LLC	
Signature: Title: Chief Systems + Services	Signature: Kandall Lack	Title: EVP
Printed Name: Date: Preston Thomas 8/13/24	Printed Name: Randall Lack	Date:

## Appendix A - Facilities

Solar Site Name	AC Capacity
3051.31.M1077 - Oakland USD - Oakland - Brett Harte MS	200
3051.31.M1078 - Oakland USD - Oakland - Castlemont HS	364.6
3051.31.M1080 - Oakland USD - Oakland - Edna Brewer MS	160
3051.31.M1081 - Oakland USD - Oakland - Havenscourt MS	125
3051.31.M1082 - Oakland USD - Oakland - King Estates MS	110
3051.31.M1083 - Oakland USD - Oakland - Lowell MS	200
3051.31.M1084 - Oakland USD - Oakland - McClymonds HS	265
3051.31.M1085 - Oakland USD - Oakland - Montera MS	200
3051.31.M1086 - Oakland USD - Oakland - Oakland HS	375
3051.31.M1087 - Oakland USD - Oakland - Oakland Intl HS	100
3051.31.M1088 - Oakland USD - Oakland - Oakland Tech HS	450
3051.31.M1089 - Oakland USD - Oakland - Roosevelt HS	125
3051.31.M1090 - Oakland USD - Oakland - Sankofa Acad ES	50
3051.31.M1091 - Oakland USD - Oakland - Skyline HS	425
3051.31.M1092 - Oakland USD - Oakland - Westlake MS	100
3051.31.M1108 - Oakland USD - Oakland - Madison MS	200
Frick	139*
Highland	130*
Hoover	100*
Lockwood	255*
MLK	117*
The Center	117*
Woodland	284*

## \* kW-DC



## **DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM**

Project Information						
Project Sale of Renewable Energy Certificates (REC) Site 918						
	Basic Directio	ns				
Services cannot be provided until the contract is awarded by the Board <u>or</u> is entered by the Superintendent pursuant to authority delegated by the Board.						
Attachment x Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 x Workers compensation insurance certification, unless vendor is a sole provider						

Contractor Information								
Contractor Name				Emmet W	/alsh			
OUSD Vendor ID#	OUSD Vendor ID # N/A Title		Contract /	Adm.				
Street Address	Street Address 3200 Southwest Freeway, Suite 1310 City Ho Telephone 281-712-5141 Policy Expires		Ηοι	ıston	State	TX	Zip	77027
Telephone								
Contractor History	ory Previously been an OUSD contractor? 🗌 Yes 🖾 No 📗 Worked as an OUSD en			nploye	e? 🗌 Y	es 🛛 No		
OUSD Project # 24153								

Term of Original/Amended Contract			
Date Work Will Begin (i.e., effective date of contract)	08/29/2024	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	06/30/2027
		New Date of Contract End (If Any)	

Compensation/Revised Compensation			
If New Contract, Total Contract Price (Lump Sum)	\$ 00.00	If New Contract, Total Contract Price (Not To Exceed)	\$
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

If you ar	<b>Budget Information</b> If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office <u>before</u> completing requisition.				
Resource #	Funding Source	Org Key	Object Amount Code		
0940/0000	Fund 1 General	010-0940-0-0000-0000-8699-918-9180-9133-9999-2	8699	00.00	

Approval and Routing (in order of approval steps)					
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.					
	Division Head	Phone	510-535-7038	Fax	510-535-7082
1.	Director, Facilities				
	Signature Recyclination (Aug 14, 2024 15:53 PDT)		Date Approved	Aug 14, 2024	
2.	Counsel, Department of Facilities Planning and Management				
2.	Signature James Traber		Date Approved	8/13/24	
	Chief Systems & Services Officer				
3.	nature Preston Thomas (Aug. 14, 2024 23:32 PDT)		Date Approved	Aug 14, 2024	
	Chief Financial Officer				
4.	Signature		Date Approved		
	President, Board of Education				
5.	Signature		Date Approved		