

17434

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10-15-2012

Council Meeting

Sponsor: Joe McDermott

phh

Proposed No.: 2012-0345

Joe McD MOVED

PASSED: 8-0 PVK Excused

1 **AMENDMENT TO PROPOSED ORDINANCE 2012-0345, VERSION 1**

2 Delete Attachment A and insert "Attachment A, dated 10-15-2012"

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5 **EFFECT: Inserts the correct version of the lease into the document.**

Lease #

LEASE AGREEMENT

For Community Solar Project at Vashon Transfer Station

1. **PARTIES.** This Lease agreement ("Lease") is executed by and between KING COUNTY, a home rule charter county and political subdivision of the State of Washington, the Backbone Campaign, an Oregon non-profit corporation doing business in Washington State ("Lessee"), and is effective as of the date it is fully executed by Lessee and King County ("Effective Date"). This Lease is executed when signed, dated, and acknowledged by Lessee and King County. Together, King County and Lessee are each referred to herein as a "Party" and together as the "Parties."
2. **PREMISES.** King County hereby leases to Lessee, upon the following terms and conditions, the premises as depicted on the diagram in Exhibit A, attached to and incorporated herein by this reference (the "Premises"), which Premises consist of a portion of the real property commonly known as Vashon Transfer Station, 18900 Westside Highway SW, Vashon, WA 98070 and legally described as:

LEGAL DESCRIPTION.

SW 1/4 OF SW 1/4 LESS HWY TGW S 1/2 OF NW 1/4 OF SW 1/4 LYING NLY & ELY OF
NLY & ELY MGN OF HWY TGW W 280 FT OF SW 1/4 OF NE 1/4 OF SW 1/4 ALL
LOCATED IN 36-23-02 AKA POR OF KC LEGAL LOT L07M0018 DATED 05-03-07

Also known as King County Assessor's Tax Parcel No. 3623029009.

3. **TERM.**
 - A. The Lease term shall commence upon Lessee formally taking possession of the Premises on a date determined by mutual agreement ("Commencement Date"), and end at 11:59 PM on the 30th day of June, 2020 ("Expiration Date"), unless the Lease is renewed or extended. If the Washington State solar incentive program codified at RCW 82.16.110-.120 ("State Solar Incentive") is extended beyond June 30, 2020, then the Term shall be automatically extended and shall expire (a) upon the expiration of the extended State Solar Incentive, or (b) twenty (20) years after the Commencement Date, whichever occurs first.
 - B. If King County is unable to deliver possession of the Premises by the Commencement Date as a result of causes beyond King County's reasonable control, King County shall not be liable for any damage caused for failing to deliver possession, and this Lease shall not be void or voidable. Lessee shall not be liable for rent until King County delivers possession of the Premises to Lessee, which date shall then become the Commencement Date.
 - C. Lessee may terminate this Lease at any time, without cause, upon not less than ninety (90) days prior written notice to King County; but in no event shall Lessee's termination relieve

Lessee of any duties or obligations under Sections 7, 10, 11, 13, or 18 of this Lease, or any other obligation or liability under this Lease that by its nature survives termination.

- D. If Lessee fails to complete the Improvements as defined in Section 6 within twelve (12) months of the Commencement Date, then this Lease shall automatically terminate without further action of either Party and without further liability or obligation of either Party hereto. Termination under this Section 3.D is not subject to dispute resolution under Section 14. Termination under this Section 3.D shall not relieve Lessee of any duties or obligations under Sections 7, 10, 11, 13, or 18 of this Lease, or any other obligation or liability under this Lease that by its nature survives termination.

4. RENT.

- A. Lessee shall be and hereby is obligated to pay to King County the sum of two thousand dollars (\$2,000.00) as rent payable for every calendar month of the Term (hereinafter called "Rent"). Rent shall be due by thirtieth day of September each year, except as otherwise reduced by Section 4.C. To the extent applicable by law, and consistent with Subsection 16.B of this Lease, Lessee shall also pay a Leasehold Excise Tax (presently 12.84%). As set forth in Section 4.D, below, and except for the Winding Up Period as defined in Section 7.D the Rent shall automatically and immediately increase if Lessee holds over beyond the expiration or earlier termination of the Term. All Rent and Leasehold Excise Tax shall be made payable to the King County Office of Finance and shall be sent to:

Solid Waste Division
King County Department of Natural Resources and Parks
201 S Jackson Street, #701, Seattle, WA 98104

- B. The Rent and Leasehold Excise Tax are exclusive of any other sale, franchise, business or occupation, local improvement district tax, or other tax or assessment that may exist at the time this Agreement is executed or arise during the term thereof. Should any such taxes apply during the term of this Lease, then the Rent shall be increased by such amount.
- C. Notwithstanding any provision of this Agreement to the contrary, and except for the Winding Up Period under Section 7.D, Lessee shall be entitled to a credit against payment of monthly Rent (the "Rent Credit") equal to the production meter totals shown on King County's monthly electric utility bill, multiplied by the cost per kilowatt-hour charged to King County by the utility serving the Premises. Any difference between Rent and the Rent Credit for the twelve months from July 1st to the following June 30th shall be reconciled annually in the third quarter of that calendar year via invoice or warrant from King County to Lessee. King County will promptly supply to Lessee each year, as soon as practical after June 30th, King County's electric utility bills for the Premises or other information necessary for the Lessee to apply for any available solar incentive payments. Lessee understands, acknowledges, and agrees that the Rent Credit shall not apply towards any Leasehold Excise Tax ("LET") due under Subsection 16.B.

Example of Rent/Rent Credit Calculation:

Rent = \$2,000 -

Rent Credit ([production meter totals on King County's monthly electric utility bill] x [cost per kWh charged to King County by utility]) - \$2,500

Utility meter service fee = \$0

Net payment: \$2,000 rent - \$2500 Rent Credit + \$50 utility meter service fees = \$450 due from King County to Lessee in the first quarter of Year 2

LET payment: \$256.80 due from Lessee to King County in the first quarter of Year 2

Any Rent not offset by the Rent Credit would be paid by check by Lessee to King County. Any Rent Credit above the value of Rent would be paid by warrant by King County to Lessee.

- D. HOLDING OVER. If the Lessee holds over after the expiration or earlier termination of the Term or the Winding Up Period as defined in Section 7.D hereof without the express written consent of King County, Lessee shall become a tenant at sufferance only at a rental rate equal to one hundred-fifty percent (150%) of the Rent in effect upon the date of such expiration or termination (prorated on a daily basis), and otherwise subject to the terms, covenants, and conditions herein specified so far as applicable. Acceptance by King County of Rent or application of the Rent Credit after such expiration or earlier termination shall not result in a renewal of this Lease, nor affect King County's right of re-entry or any rights of King County hereunder or as otherwise provided by law. If Lessee fails to surrender the Premises upon the expiration or earlier termination of this Lease despite demand to do so by King County, Lessee shall indemnify and hold King County harmless from all loss or liability including, without limitation, any claim made by any succeeding Lessee founded on or resulting from such failure to surrender, together with interest, attorney's fees, and costs.
- E. Any dispute arising under or relating to Subsection 4.A-C shall be resolved using the dispute resolution process set forth in Section 14 of this Lease. Subsection D is not subject to dispute resolution under Section 14.

5. LIMITATION ON USE.

- A. Subject to the other restrictions on use included in this Lease, Lessee shall use the Premises for the following purposes only and for no other use or purpose: The installation, construction, operation, maintenance, and repair of improvements consisting of a solar array not to exceed 66 kilowatt, including photovoltaic cells, inverters, production meters, supporting structures, utility connections, security fencing, and other minor improvements or betterments relating to the solar array, all as described or illustrated in **Exhibit B** attached hereto, which exhibit is incorporated by this reference as if fully set forth herein (the "Improvements"). The Improvements shall include an exterior disconnect switch, which switch shall be the sole means of after-hours response. The Improvements shall include measures to inhibit vegetation (such as landscape fabric, weed barrier, mulch, bark, gravel, or other ground cover, etc) so as to minimize the need for landscape maintenance around and under the solar array.
- B. Except as authorized under Paragraph A of this Section 5, Lessee may make no installation, alteration, addition, or improvement to the Premises without King County's

prior written consent, which consent may not be unreasonably withheld by King County if the installation, alteration, addition or improvement is reasonably necessary for Lessee to effectuate the uses authorized in Paragraph A of this Section 5..

- C. Lessee shall pay for all costs, expenses, fees, services, and charges of all kinds for heat, light, water, gas, power, and telephone, and for all other public utilities used by Lessee on the Premises so that the same shall not become a lien against the Premises.
- D. (1) Lessee shall provide and allow unobstructed access over, across, and under the Premises for King County, and the Washington State Department of Ecology ("DOE") or other governmental authority (collectively "Authorities"), and their respective employees, agents, consultants, invitees, licensees and designees, for purposes of testing, monitoring, inspection, remediation, and other activities or purposes arising out of or relating to environmental contamination (each, "Environmental Access"). Lessee acknowledges that Environmental Access may occur at any time for any reason, without advance notice to Lessee, 24 hours a day 7 days a week, all in the sole and absolute discretion of King County, and its respective employees, agents, contractors, invitees, licensees or designees.

(2) As between King County and Lessee, King County shall be responsible for any damage to the Improvements resulting from Environmental Access contemplated under paragraph 5.D(1); provided that this paragraph 5.D(2) shall not operate to bar King County from seeking payment or contribution from, or shifting liability to, the person or entity that actually caused the damage.
- E. Lessee shall not obstruct activities or access to or placement of any test wells or other monitoring equipment or other facilities related to environmental contamination. King County, Authorities, and their respective employees, agents, contractors, invitees, licensees or designees shall have access to all test wells or other monitoring equipment or facilities now or later located on the Premises, at all times and without advance notice to Lessee.
- F. As between King County and Lessee, King County shall be responsible for any damage to the Improvements resulting from any activity by Authorities, their agents, employees, consultants, invitees, licensees and designees; provided that this paragraph 5.F shall not operate to bar King County from seeking payment or contribution from, or shifting liability to, the person or entity that actually caused the damage.
- G. Except for Lessee's obligations under Paragraphs D and E, any dispute arising under or relating to this Section 5 shall be resolved using the dispute resolution process set forth in Section 14 of this Lease.

6. LESSEE IMPROVEMENTS.

- A. Prior to constructing the Improvements, and as soon as is reasonably practical after this Lease is executed as defined in Section 1, Lessee shall submit to King County detailed plans and specifications ("Plans") for at least the first phase of the Improvements described in **Exhibit B**. Except as otherwise provided herein, Lessee shall be the legal and beneficial

owner of the Improvements at all times. The Improvements are personal property and shall not be deemed a part of, or fixture to, the Premises. The Improvements shall at all times retain the legal status of personal property as defined under Section 9 of the Uniform Commercial Code.

- B. Unless King County and Lessee mutually agree to a different timeline, King County Solid Waste Division (KCSWD) must provide any comments on the Plans to Lessee within fifteen (15) business days of receiving the Plans, or KCSWD will be deemed to have waived its opportunity to submit comments on the Plans. Lessee shall incorporate KCSWD's comments into the Plans, or shall address KCSWD's comments to KCSWD's satisfaction, unless individually or collectively it is not practicable to do so. For purposes of this Agreement, the term "practicable" means a proposed revision that is capable of being designed, constructed, and implemented in a reliable and effective manner including consideration of cost. When considering cost under this analysis, a proposed revision to the Plans shall not be considered practicable if the incremental costs of the proposal are disproportionate to the incremental degree of benefits provided by the proposal over the existing proposal or other lower cost alternatives.
- C.
 - (1) The Improvements shall be substantially complete, as evidenced by a final inspection and sign-off from all regulatory agencies with jurisdiction, with all work completed except for routine and customary punch list items, no later than one hundred eighty (180) days after (a) review of the Plans by KCSWD, or (b) Lessee's receipt of all necessary permits and approvals for the Improvements, whichever is later. The deadline for substantial completion of the Improvements may be extended upon the written agreement of Lessee and KCSWD, the approval of which shall not be unreasonably withheld by KCSWD.
 - (2) If construction of the Improvements is unreasonably delayed by action or inaction of KCSWD then KCSWD shall pay to Lessee liquidated damages in an amount equal to a reasonable estimate of the increment of investment cost recovery incentive that Lessee would have been eligible for under RCW 82.16.120(4) but for KCSWD's delay. Provided, that delay caused by or arising from action or inaction of other persons, entities, or agencies shall not render KCSWD liable for any liquidated damages.
- D. Lessee shall use licensed contractors to perform the work of installing, operating, maintaining, and repairing the Improvements. Lessee shall be responsible for the conduct of its contractors and subcontractors. King County shall have no contractual relationship with Lessee's contractors or subcontractors in connection with the Improvements. Lessee shall require its contractors and subcontractors to maintain insurance applicable to their activities and meeting the requirements in Section 11. Lessee shall provide copies of contracts and contractor insurance documentation to King County upon request.
- E. Lessee shall obtain from the local electric utility all consents or approvals that may be necessary for the construction, commissioning, operation, and decommissioning of the Improvements. Lessee shall be responsible to pay all direct and necessary costs for and arrange the interconnection of the Improvements with the local electric utility in a manner

that includes bidirectional or "net metering." King County will enter into an agreement with the utility serving the Premises to implement net metering.

- F. Lessee shall be responsible for securing all governmental permits and approvals for the construction of the Improvements and shall be solely liable for all costs, including the costs of construction, maintenance and repair thereof. KCSWD will support Lessee in such efforts to the extent practicable within the limitations of then-existing budget, staffing, and authority. If required by a permitting agency, the Real Estate Services Section of the Facilities Management Division in the King County Department of Executive Services will provide Lessee with a form letter and a copy of the fully executed Lease to document that Lessee has the rights of use and possession of the Premises.
- G. Lessee shall, at Lessee's sole cost and expense, keep the Improvements in good condition and repair (ordinary wear and tear excepted), in compliance with all applicable laws and regulations, and in accordance with the generally accepted practices of the electrical industry in general and the solar generation industry in particular. Lessee shall keep the Premises clear of debris, waste material, and rubbish relating to the Improvements, and shall comply with such reasonable safety or security procedures as may be established by King County from time to time.
- H. King County and Lessee agree that from time to time it may be necessary for Lessee to interrupt the electricity production of the Improvements. Examples of necessary interruptions are: repairs to the solar array or its components or supporting structure; or the installation of additional arrays. When possible, Lessee shall provide notice of necessary interruptions to King County, the electrical utility serving the Premises, and any other interested persons or entities at least 48 hours in advance. Lessee shall limit such interruptions to the minimum duration possible. Lessee understands, acknowledges, and agrees that interruptions in electricity production shall not avoid or reduce Lessee's duty to pay Rent under this Agreement.
- I. If King County requires Lessee to interrupt or shut down production of electricity from the Improvements then Lessee shall be entitled to apply toward the Rent Credit an amount equal to the estimated value of the electricity and Renewable Energy Credits ("RECs") that would have been produced during the period of interruption or shut down required by King County. The Lessee shall also be entitled to apply toward the Rent Credit an amount equal to the estimated value of any available solar incentive payments that would have been earned during the period of interruption or shut down. Determination of the amount of electricity that would have been produced during such period shall be based, during the first year of operations, on the estimated levels of production used to calculate the initial Rent Credit and, after the first year of operations, based on actual production in the same period in the previous calendar year, unless Lessee and King County mutually agree in writing to a different methodology.
- J. Output from the Improvements shall be measured by meters installed in accordance with the Plans. Lessee shall test the meters as it deems appropriate in accordance with electrical industry standards, but not less than once in any two-year period. Lessee shall pay for such testing. If the meter is shown to be in error in Lessee's favor by more than five percent

(5%), then Lessee shall notify King County and shall adjust the records of the amount of electrical energy provided by the Improvements delivered based on the period that is half-way between the date of the testing that revealed the error and the prior testing date of the meter. If the Improvements produced more electricity than originally shown by the meter then Lessee shall be entitled to an additional Rent Credit, consistent with Section 4.C. If the Improvements produced less electricity than originally shown by the meter then Lessee shall pay any Rent due and owing consistent with Section 4.C.

- K. Lessee shall receive all incentive payments available under any solar incentive program applicable to the Improvements. Lessee shall be the owner of any environmental attributes (including, but not limited to those certain attributes known as RECs), any tax attributes that may arise from or relate to the Improvements, and any payments for energy capacity or ancillary services that may become available as a result of the construction or operation of the Improvements. Lessee may choose to sell the generated electricity to a regulated utility at Lessee's sole cost and expense. Any such Power Purchase Agreement is not subject to this Lease and King County expressly disavows any participation in or liability or obligation for any such Power Purchase Agreement.
- L. King County acknowledges that Lessee does not warrant or guarantee the amount of electricity to be produced by the Improvements for any hourly, daily, monthly, annual or other period. King County acknowledges that Lessee is not a utility or an electric service provider, and does not assume any obligations of a utility or electric service provider, including any obligation to provide service or be subject to rate review by governmental authorities.
- M. Lessee understands, acknowledges, and agrees that King County's rights under this Lease to review, comment on, disapprove and/or accept designs, plan specifications, work plans, construction, equipment, and or installation (1) exist solely for the benefit and protection of King County and its employees and agents; (2) do not create or impose on King County or its employees and agents any standard or duty of care towards Lessee, all of which are hereby disclaimed; (3) may not be relied on by Lessee in determining whether Lessee has satisfied all applicable standards and requirements; and (4) may not be asserted, nor may the exercise or failure to exercise any such rights by King County and its employees and agents be asserted against King County or its employees and agents by Lessee as a defense, legal or equitable, to Lessee's obligation to fulfill such standards and requirements, notwithstanding any acceptance of work by King County or its employees or agents.
- N. Any dispute arising under or relating to Sections 6A-L shall be resolved using the dispute resolution process set forth in Section 14 of this Lease. Section 6M is not subject to dispute resolution.

7. DISPOSITION OF THE IMPROVEMENTS.

- A. During Term. During the Term of this Lease, Lessee may not sell, gift, convey, remove, relocate, abandon, dismantle, or otherwise dispose of the Improvements, except with King County's prior written approval, such approval not to be unreasonably withheld.

- B. Upon Damage or Destruction. Disposition of the Improvements due to damage or destruction is addressed in Section 18. Force Majeure.
- C. Upon Termination or Expiration of Lease. The Parties acknowledge that the Improvements likely will not have reached the end of their useful life upon the expiration or earlier termination of this Lease. King County acknowledges that Lessee may not have fully amortized its investment in the Improvements upon the expiration or earlier termination of this Lease. Subject to Subsection 7.D. below, the Parties agree to negotiate in good faith regarding disposition of the Improvements, and to utilize the dispute resolution process in Section 14 if necessary. These negotiations shall begin at least six (6) months before the end of the Term and, as to Option (1) below, shall conclude not less than three (3) months before the end of the Term, which will leave three (3) months for the Parties to negotiate regarding other options if necessary. Options for disposing of the Improvements could include, but are not limited to:
- (1) Acquisition by King County. Lessee shall assign any warranties in force at the time to King County. The acquisition price shall take into account the following factors:
 - (a) The present and future values of the Improvements, given their then-remaining useful life, and the estimated cost savings to King County over that remaining useful life;
 - (b) The estimated cost to operate and maintain the Improvements over the remainder of their useful life; and
 - (c) The estimated cost to renew and update any regulatory permits or authorizations needed to operate the Improvements over the remainder of their useful life.
 - (2) Retention by Lessee, subject to an extension or renewal of this Lease, or such other grant of permission (such as an easement, license, special use permit, etc.) as may provide sufficient rights or privileges in the Premises for Lessee to continue to operate the Improvements;
 - (3) Conveyance of title to the Improvements to a third party, with the Improvements to remain on the Premises, and subject to prior approval by King County, which approval shall not be unreasonably withheld; or
 - (4) Conveyance of title to the Improvements to a third party for salvage, such salvage to be undertaken by a licensed and qualified installer during regular business hours and to be completed not later than the end of the Winding Up Period as defined in Section 7.D.
 - (5) Donation of the Improvements to King County. King County is a qualified charitable organization under Internal Revenue Code section 170(c)(1). Donations to King County are tax-deductible to the extent permitted by law. Grantee shall be responsible to evaluate and bear all potential costs or risks associated with donating the Improvements to King County. Lessee shall assign any warranties in force at the time to King County.
- D. Lessee's Duty to Remove the Improvements; Winding Up Period. If the Parties are unable to agree on how to dispose of the Improvements under Subsection 7.C, then Lessee shall, at Lessee's sole cost and expense, remove the solar panels, inverters, and other equipment and non-structural elements of the Improvements (the "Solar Equipment"). Lessee is under no obligation to return or bear the cost to return the Premises to any particular condition, except for any requirements under Section 13. King County agrees that from and after the expiration or earlier termination of the Term, Lessee may take up to six (6) months to remove the Solar

Equipment (the "Winding Up Period"). The Winding Up Period is in addition to, and separate from, the Term. During the Winding Up Period, the Rent and Rent Credit shall be suspended such that Lessee shall have no duty to pay Rent and King County shall have no duty to provide a Rent Credit or other compensation for electricity produced by the Improvements. If Lessee has not completely removed the Solar Equipment by the end of the Winding Up Period, then from the end of the Winding Up Period until the Solar Equipment is completely removed Lessee shall pay Rent and King County shall provide the Rent Credit as required under Section 4.D, Holding Over.

8. CONDITION OF PREMISES.

- A. Lessee acknowledges and agrees that King County has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, contracts or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning, or with respect to the value, nature, quality, or condition of the Premises, including, without limitation:
- (1) The water, soil and geology;
 - (2) The income to be derived from the Premises;
 - (3) The suitability of the Premises for any and all activities and uses that Lessee or anyone else may conduct thereon;
 - (4) The compliance of or by the Premises or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;
 - (5) The habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Premises;
 - (6) The manner or quality of the construction or materials, if any, incorporated into the Premises; or
 - (7) Any other matter with respect to the Premises.
- B. Lessee specifically acknowledges and agrees that King County has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution, zoning or land use laws, rules, regulations, orders, or requirements, including the existence in or on the Premises of hazardous materials or substances.
- C. Lessee further acknowledges and agrees that, having been given the opportunity to inspect the Premises, Lessee is relying solely on its own investigation of the Premises and not on any information provided or to be provided by King County. Lessee further acknowledges and agrees that any information provided or to be provided with respect to the Premises was obtained from a variety of sources and that King County has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Lessee further acknowledges and agrees that King County is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the Premises, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person, and, to the maximum extent permitted by law, the lease of the Premises as provided for herein is made on an "AS-IS" condition and basis with all faults. It is understood and agreed that the rent reflects that the Premises are leased by King County to Lessee subject to the foregoing. All provisions of this Section 8 shall survive the expiration or earlier termination of this Lease.

9. MAINTENANCE; SECURITY.

- A. Lessee shall throughout the Term of this Lease without cost or expense to King County, keep and maintain the Improvements, fixtures, and equipment in a neat, clean, and sanitary condition and shall, except for reasonable wear and tear, at all times preserve the Improvements in good and safe repair. .
- B. If, after thirty (30) days' written notice from King County, Lessee fails to maintain or repair any part of the Improvements, fixtures or equipment, King County may, but shall not be obligated to, enter upon the Premises and perform such maintenance or repair, and Lessee agrees to pay the costs thereof to King County upon receipt of a written demand. Any unpaid sums under this Paragraph 9.B shall be payable as Additional Rent at the next annual reconciliation of Rent and Rent Credit and will bear interest at the maximum rate allowed by Washington State Law.
- C. King County shall provide customary security for its use of the property that includes the Premises. Subject at all times to King County's reserved access rights under Sections 5, 13, and 24, Lessee may provide such additional security or protection for the Improvements as is reasonable and customary in the solar generation industry, at Lessee's sole cost and expense. Lessee acknowledges that safety and security devices, services and programs provided by King County, if any, may not in given instances prevent theft or other criminal acts, or ensure safety of persons or property or limit access. With respect to Lessee's property and interests, and those of its employees, agents, contractors, licensees, and invitees, Lessee assumes the risk that any safety or security device, service or program may not be effective, or may malfunction, or be circumvented by a criminal or other person. Lessee shall obtain insurance coverage to the extent Lessee desires protection against criminal acts and other losses. Lessee shall cooperate in any reasonable safety or security program developed by King County or required by law.

10. INDEMNITY AND HOLD HARMLESS.

- A. Lessee shall protect, defend, indemnify, and hold King County, its agents, employees, officials, and officers harmless from, and shall defend at its own expense any and all claims, demands, suits, penalties, losses, damages, costs (including reasonable attorney's fees) of any kind whatsoever (hereinafter "claims") brought against King County arising out of or incident to the execution of activities pursuant to this Agreement; PROVIDED, however, that if such claims are caused by or result from the concurrent negligence of Lessee, its agents, employees, and/or officers and King County, its agents, employees, and/or officers, then this Section 10.A shall be valid and enforceable only to the extent of the negligence of Lessee, its agents, employees, and/or officers; and, PROVIDED FURTHER, that nothing in this Section 10.A shall require Lessee to indemnify, hold harmless, or defend King County, its agents, employees, and/or officers from any claims caused by or resulting from the sole negligence of King County, its agents, employees, and/or officers.
- B. Lessee's obligation under Section 10.A shall include indemnification for claims made by Lessee's own employees or agents. For this purpose, Lessee, by mutual negotiation,

hereby waives, with respect to King County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 R.C.W.

- C. In the event it is necessary for King County to incur attorney's fees, legal expenses or other costs to enforce the provisions of this Section 10, all such fees, expenses and costs shall be recoverable from Lessee.
- D. In the event it is determined that R.C.W. 4.24.115 applies to this Lease or the improvements contemplated herein, Lessee agrees to defend, hold harmless, and indemnify King County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of King County to the full extent of Lessee's negligence. Lessee agrees to defend, indemnify, and hold harmless King County for claims by Lessee's employees and agrees to waiver of its immunity under Title 51 R.C.W., which waiver has been mutually negotiated by the Parties.
- E. If Lessee is represented by a real estate broker or other agent in this transaction, Lessee shall be fully responsible for any fee or commission due such broker, and shall hold harmless and indemnify King County and its employees and agents from any claim for a fee or commission by such broker or agent.
- F. The provisions of this Section 10 shall survive the expiration, abandonment or termination of this Lease. Nothing contained within this Section 10 shall affect or alter the application of any other provision contained within this Lease.
- G. Lessee's compliance with, and King County enforcement of, the terms and conditions of this Section 10 are not subject to dispute resolution under Section 14.

11. INSURANCE REQUIREMENTS.

- A. By the date of execution of this Lease, Lessee shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with exercise of the rights and privileges granted by this Lease, by Lessee, its agents, representatives, employees, contractors, or subcontractors. The cost of such insurance shall be paid by Lessee.
- B. By requiring such minimum insurance coverage, King County shall not be deemed or construed to have assessed the risks that may be applicable to the Lessee under this Lease. Lessee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.
- C. 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 Section 11 shall affect and/or alter the application of any other provision contained within this Agreement.

D. For all coverages: Each insurance policy shall be written on an "Occurrence" form.

E. Minimum Scope of Insurance. Coverage shall be at least as broad as:

General Liability: Insurance Services Office Form No. CG 00 01 Ed. 11-88, covering COMMERCIAL GENERAL LIABILITY.

F. Minimum Limits of Insurance

- (1) General Liability: Coverage shall be at least as broad as Insurance Services Office form number (CG 00 01) Commercial General Liability, in the amount of at least \$1,000,000 combined single limit per occurrence by bodily injury, and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. King County, its officers, officials, employees and agents shall be included and endorsed as an additional insured for liability arising out of the performance of activities under this Agreement (CG 2010 11/85 or its equivalent).
- (2) Stop Gap/Employers Liability: Coverage shall be at least as broad as the protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy. Minimum Limit \$1,000,000.
- (3) Builders Risk: When construction begins, Lessee, at its own expense, will obtain or require its contractor to obtain, Builder's Risk and/or Installation Floater Insurance. The coverage shall insure for direct physical loss to property for 100% of the cost of the construction project. The policy shall be endorsed to cover the interests, as they may appear, of King County. In the event of a loss to any or all of the work and/or materials therein and/or provided at any time prior to the final acceptance of the project by King County, the contractor shall promptly reconstruct, repair, replace or restore all work and/or materials so destroyed.
- (4) Fire:
 - (a) Effective not later than the date that Lessee has received all necessary permits and authorizations to place the Improvements into service, and for the duration of the Term thereafter, Lessee shall carry fire and extended coverage insurance with rent interruption endorsement in an amount equal to the full insurable value of the Improvements. The policy shall include King County as an insured for its vested interest in the Premises. A certificate of insurance must be provided to King County.
 - (b) King County will not carry insurance on the Improvements or Lessee's other property. Lessee shall, at its option, insure the Improvements and its equipment, inventory, and other personal property located on the Premises

with such coverages and in such amounts as Lessee may consider appropriate.

- (c) In the event of the total or partial destruction by fire, regardless of origin, or otherwise of the Improvements, Lessee shall have the obligation to reconstruct the Improvements within six (6) months after their destruction. PROVIDED, that so long as Lessee is not otherwise in default under this Lease,, in lieu of restoring the Improvements Lessee may terminate this Lease by giving written notice to King County..

G. Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by King County, such approval not to be unreasonably withheld. The deductible and or self-insured retention of the policies shall not limit or apply to Lessee's liability to King County and shall be the sole responsibility of Lessee.

H. Other Insurance Provisions. The insurance policies required in this Lease are to contain or be endorsed to contain the following provisions:

(1) General Liability Policy:

- (a) King County, its officers, officials, employees, and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Lessee in connection with this Lease.
- (b) Lessee's insurance coverage shall be primary insurance as respects King County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees, or agents shall not contribute with Lessee's insurance or benefit Lessee in any way.
- (c) Lessee's insurance 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.

(2) All Policies: Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, until after thirty (30) days prior notice - return receipt requested, has been given to King County.

I. Acceptability of Insurers

- (1) Insurance 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.
- (2) If at any time, of the foregoing policies fail to meet the above stated requirements. Lessee shall, upon notice to that effect from King County, promptly obtain a new policy, and shall submit the same to King County, with the appropriate certificates and endorsements for approval.

J. Verification of Coverage. Lessee shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Lease. The certificate(s) and endorsement(s) for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by King County and are to be received and approved by King County prior to the commencement of activities associated with the Lease. King County reserves the right to require complete certified copies of all required insurance policies at any time.

12. MUTUAL RELEASE AND WAIVER. To the extent a loss is covered by insurance in force, King County and Lessee hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance policies, including any extended coverage endorsements hereto; provided that this Section 12 shall be inapplicable if it would have the effect of invalidating any insurance coverage of King County or Lessee.

13. HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE.

A. Definition. "Hazardous Materials" as used herein shall mean:

- (1) Any toxic substances or waste, sewage, petroleum products, radioactive substances, medical, heavy metals, corrosive, noxious, acidic, bacteriological or disease-producing substances; or
- (2) Any dangerous waste or hazardous waste as defined in:
 - (a) Washington Hazardous Waste Management Act as now existing or hereafter amended (RCW Ch. 70.105); or
 - (b) Resource Conservation and Recovery Act as now existing or hereafter amended (42 U.S.C. Sec. 6901 et seq.); or
- (3) Any hazardous substance as defined in:
 - (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980 as now existing or hereafter amended (42 U.S.C. Sec. 9601 et seq.); or
 - (b) Washington Model Toxics Control Act as now existing or hereafter amended (RCW Ch. 70.105D); or
- (4) Any pollutants, contaminants, or substances posing a danger or threat to public health, safety or welfare, or the environment, which are regulated or controlled as such by any applicable federal, state or local laws, ordinances or regulations as now existing or hereafter amended.

B. Lessee shall not without first obtaining King County's prior written approval, use, generate, release, handle, spill, store, treat, deposit, transport, or dispose of any

Hazardous Materials in, on, or about the Premises, or transport any Hazardous Material to or from the Premises. In the event, and only in the event that King County approves any of the foregoing, Lessee agrees that such activity shall occur safely and in compliance with all applicable federal, state, and local laws, ordinances and regulations.

C. Environmental Compliance.

- (1) Lessee shall, at Lessee's own expense, comply with all federal, state and local laws, ordinances and regulations now or hereafter affecting the Premises, Lessee's business, or any activity or condition on or about the Premises, including, without limitation, all laws, ordinances and regulations related to Hazardous Materials and all other environmental laws, ordinances and regulations, and any other laws relating to the improvements on the premises, soil and groundwater, storm water discharges, or the air in and around the Premises, as well as such rules as may be formulated by King County ("the Laws"). Lessee warrants that its business and all activities to be conducted or performed in, on, or about the Premises shall comply with all of the Laws. Lessee agrees to change, reduce, or stop any non-complying activity, or install necessary equipment, safety devices, pollution control systems, or other installations may be necessary at any time during the Lease to comply with the Laws.
- (2) Lessee shall not cause or permit to occur any violation of the Laws on, under, or about the Premises, or arising from Lessee's use or occupancy of the Premises, including, but not limited to, soil and ground water conditions.
- (3) Lessee shall promptly provide all information regarding any activity of Lessee related to Hazardous Materials on or about the Premises that is requested by King County. If Lessee fails to fulfill any duty imposed under this Section 13 within a reasonable time, then King County may do so; and in such case, Lessee shall cooperate with King County in order to prepare all documents King County deems necessary or appropriate to determine the applicability of the Laws to the Premises and Lessee's use thereof, and for compliance therewith, and Lessee shall execute all documents promptly upon King County's request. No such action by King County and no attempt made by King County to mitigate damages shall constitute a waiver of any of Lessee's obligations under this Paragraph 13.C(3).
- (4) Lessee shall, at Lessee's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities ("the Authorities") under the Laws.
- (5) Should any Authority demand that a cleanup plan be prepared and that a cleanup be undertaken because of any deposit, spill, discharge or other release of Hazardous Materials that occurs during the term of this Lease at or from the Premises, or which arises at any time from or in connection with Lessee's use or occupancy of the Premises, then Lessee shall, at Lessee's own expense, prepare and submit the required plans and all related bonds and other financial

assurances; and Lessee shall carry out all such cleanup plans. Any such plans and cleanup are subject to King County's prior written approval.

D. Indemnification.

- (1) Lessee shall be fully and completely liable to King County for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any Authority with respect to Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials in or about the Premises, common area, or buildings. Lessee shall indemnify, defend, and save King County harmless from any and all of the costs, fees, penalties, and charges assessed against or imposed upon King County (as well as King County's attorney's fees and costs) by any governmental authority as a result of Lessee's use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials, or from Lessee's failure to provide all information, make all submissions, and take all steps required by all Authorities under the Laws.
- (2) Lessee shall indemnify and hold King County harmless from any and all claims, liabilities, lawsuits, damages, and expenses, including reasonable attorney's fees, for bodily injury or death, property damage, loss, or costs caused by or arising from the use, disposal, transportation, generation, release, handling, spillage, storage, treatment, deposit and/or sale of Hazardous Materials by Lessee or any of its agents, representatives or employees in, on, or about the Premises occurring during the Term of this Lease.

E. Reporting Requirements. Lessee shall comply with the Laws requiring the submission, reporting, or filing of information concerning Hazardous Materials with the Authorities, and shall provide to King County a full copy of any such filing or report as submitted within fifteen (15) days of such submission.

F. Inspection. King County expressly reserves the right, and Lessee shall fully cooperate in allowing, from time to time, such examinations, tests, inspections, and reviews of the Premises as King County, in its sole and absolute discretion, shall determine to be advisable in order to evaluate any potential environmental contamination.

G. Remedies. Upon Lessee's default under this Section 13, King County shall be entitled to the following rights and remedies in addition to any other rights and remedies that may be available to King County:

- (1) At King County's option, to terminate this Lease immediately; and/or,
- (2) At King County's option, to perform such response, remediation and/or cleanup as is required to bring the Premises and any other areas affected by Lessee's default into compliance with the Laws and to recover from Lessee all of King County's costs in connection therewith; and/or

- (3) To recover from Lessee any and all damages associated with the default, including but not limited to, response, remediation and cleanup costs and charges, civil and criminal penalties and fees, adverse impacts on marketing the Premises, loss of business and sales by King County and other King County lessees, diminution of value of the Premises, the loss of or restriction of useful space in the Premises, any and all damages and claims asserted by third parties, and King County's attorney's fees and costs.

H. Remediation on Termination of Lease. Upon the expiration or earlier termination of this Lease, Lessee shall remove, remediate or clean up any Hazardous Materials released by Lessee on the Premises or released by others in connection with Lessee's use of the Premises, or emanating from the Premises in connection with Lessee's use of the Premises, and Lessee shall undertake whatever other action may be necessary to bring the Premises into full compliance with the Laws as to such releases ("Termination Cleanup"). The process for such Termination Cleanup is subject to King County's prior written approval. If Lessee fails or refuses to commence the Termination Cleanup process, or fails to reasonably proceed toward completion of such process, King County may elect to perform such Termination Cleanup after providing Lessee with written notice of the County's intent to commence Termination Cleanup, and after providing Lessee a reasonable opportunity, which shall be not less than ninety (90) days after such notice (unless King County is given notice by a government agency with jurisdiction over such matter that Termination Cleanup must commence within a shorter time, in which case King County shall give Lessee notice of such shorter time), to commence or resume the Termination Cleanup process. If King County performs such Termination Cleanup after said notice and Lessee's failure to perform same, Lessee shall pay all of King County's costs.

I. Prior Conditions. Nothing in this Section 13 shall make Lessee responsible to perform or pay for any removal, remediation, or cleanup of any Hazardous Material or any other conditions that existed on the Premises prior to the Commencement Date, except to the extent that Lessee's acts or omissions exacerbate existing conditions or create new conditions requiring new or different removal, remediation, or cleanup obligations, or cause King County to incur new or different costs arising out of or relating to Lessee's acts or omissions.

J. Survival. Lessee's duties, obligations and liabilities under this Section 13 shall survive the expiration or earlier termination of this Lease.

14. DISPUTE RESOLUTION PROCESS. The Parties will work collaboratively in accordance with the following steps to resolve disagreements arising from or relating to this Lease. Disagreements will be resolved promptly and at the lowest level of authority feasible. The Parties shall use their best efforts to resolve disputes and issues arising out of or related to this Lease following this four-step process:

A. Notice. Each Party shall notify the other in writing of any problem or dispute the Party believes needs formal resolution. Notice shall be provided as required under Section 15. This written notice shall include: (1) a description of the issue to be resolved; (2) a

description of the difference between the Parties on the issue; and (3) a summary of steps taken by the Parties to resolve the issue.

- B. Meet. The Parties shall meet within seven (7) business days of receiving the written notice and attempt to resolve the dispute.
- C. Elevate. In the event the Parties cannot resolve the dispute within fourteen (14) business days of first meeting to resolve the dispute, they shall notify Bill Moyer and the Director of the Solid Waste Division in the King County Department of Natural Resources (or designees) of their inability to resolve the dispute and these officials shall meet within seven (7) business days of receiving such notice and attempt to resolve the dispute.
- D. Negotiation. In the event Bill Moyer and the Director of the Solid Waste Division of the Department of Natural Resources and Parks cannot resolve the dispute, then Stan Sorscher and the Director of the Department of Natural Resources and Parks (or his/her designee) shall meet within fourteen (14) business days of receiving such notice and engage in good faith negotiations to resolve the dispute.

15. NOTICES.

- A. Required notices shall be given in writing to the following respective addresses, or to such other respective addresses as either Party hereto may hereafter from time to time designate in writing.

If to COUNTY, to: Director's Office King County DNRP 201 S Jackson Street #701 Seattle, WA 98104	If to LESSEE, to: Bill Moyer Executive Director Vashon Community Solar WG c/o Backbone Campaign PO Box 278 Vashon, WA 98070
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- B. All formal notices under this Lease shall be delivered in person or sent by registered or certified mail, postage prepaid, or by private overnight courier. Notices mailed as provided in this Section 15 shall be deemed given and received on the date that is three (3) business days following the date of post mark, in the case of mailing, or the date of transmission confirmation by the sender's facsimile machine, in the case of facsimile transmission, or one (1) day after deposit with a private overnight courier.

16. LATE PAYMENT, TAXES, LICENSES, FEES AND ASSESSMENTS.

- A. LATE PAYMENTS. There will be a late collection charge of FIFTY DOLLARS (\$50.00) or the maximum rate permitted by law, plus one and a half percent (1 1/2%) per month interest for any delinquent Rent not delivered to King County within thirty (30) days of the date that King County provides Lessee written notice of such delinquency.

- B. LEASEHOLD TAX. A Leasehold Excise Tax, if applicable, is levied pursuant to the Revised Code of Washington (R.C.W.) Chapter 82.29A. The Lessee agrees to pay this tax to King County. If the State of Washington changes the Leasehold Excise Tax or if King County receives authorization to levy this tax, the tax payable shall be correspondingly changed.
- C. LICENSE, TAXES AND FEES. Lessee shall pay throughout the term of this Lease all applicable taxes and all license and excise and other applicable fees or charges relating to the Improvements as defined in Section 6. King County shall be responsible for all taxes levied against the Premises, except for ad valorem personal property or real property taxes levied against the Improvements. Each Party has the right to contest taxes in accordance with applicable laws and regulations, and neither Party shall be in violation of this Section 16.C so long as it is contesting, in good faith, any such tax, assessment, fee or charge.
- D. OTHER CONSIDERATION. Except as otherwise set forth in this Lease, no offset, reduction, or credit toward rent shall be allowed unless it is specifically provided in writing and signed by the Manager of the Real Estate Services Section of King County Facilities Management Division.
17. LEGAL RELATIONS. Nothing in this Lease shall make, or be deemed to make, King County and Lessee a partner of one another and this Lease shall not be construed as creating a partnership or joint venture. This Lease shall create no right, duty, or cause of action in any person or entity not a party to it. Neither Party shall assert that Lessee is an electric utility or public service corporation or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Lessee's duties, obligations, or performance under this Lease.
18. FORCE MAJEURE.
- A. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations under this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party is unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing definition, Force Majeure Event may include natural phenomena, such as storms, hurricanes, floods, lightning or earthquakes; explosions or fires arising from causes unrelated to the acts or omissions of the Party seeking to be excused from performance; acts of war, civil unrest, public disorder, sabotage, epidemic, rebellion, riot, or terrorism or war. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers, contractors or subcontractors, except to the extent that such acts or omissions arise from a Force Majeure Event as defined in this subsection 17.A.
- B. Except as provided in Subsection 18.C, or otherwise specifically provided in this Lease, neither Party shall be considered in breach of this Lease or liable for any delay or failure to comply with this Lease, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event. Provided, that the Party claiming relief based on a Force Majeure Event shall: (1) promptly notify the other Party in writing of the

existence and nature of the Force Majeure Event; (2) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (3) notify the other Party in writing of the cessation of such Force Majeure Event; and (4) resume performance of its obligations under this Lease as soon as practicable thereafter.

- C. Obligations to pay for services already provided shall not be excused by a Force Majeure Event.
 - D. In the event of a casualty that destroys all or a substantial portion of the Premises, King County shall decide, within sixty (60) days of such event, whether to restore such Premises, which restoration shall be at the sole expense of King County. If King County elects not to restore the Premises, then Lessee shall not restore the Improvements, and this Lease shall terminate as to the Premises. If King County does elect to restore the Premises, then King County shall provide notice to Lessee, and Lessee shall determine, within sixty (60) days of receiving King County's notice, whether to restore the Improvements, subject to the Parties agreeing on a schedule for such restoration and, if necessary, an equitable extension of the Term. If the Parties are not able to agree or if Lessee elects not to restore the Improvements, then Lessee shall promptly remove the Solar Equipment consistent with Section 7.D. If Lessee elects to restore the Improvements then it shall promptly do so at its sole cost and expense. If this Lease is terminated pursuant to this Subsection 18.D, the Parties shall not be released from any payment or other obligations arising under this Lease prior to the casualty event, and all terms and conditions that expressly survive the expiration or termination of this Lease, or by their nature should survive the expiration or termination of this Lease, shall continue to apply.
 - E. Notwithstanding anything to the contrary in this Section 18, if nonperformance due to a Force Majeure Event (or multiple Force Majeure Events) continues beyond two (2) consecutive calendar years, then either Party may terminate this Agreement upon thirty (30) days notice to the other Party. Upon such termination Lessee shall decommission and remove the Improvements from the Premises as required under Subsection 18.D. If this Lease is terminated pursuant to this Subsection 18.E, the Parties shall not be released from any payment or other obligations arising under this Lease prior to the Force Majeure Event or Events, and all terms and conditions that expressly survive the expiration or termination of this Lease, or by their nature should survive the expiration or termination of this Lease, shall continue to apply.
19. POLICE POWER RESERVED. Nothing contained in this Lease shall be construed to diminish the governmental or police powers of the County.
20. COMPLIANCE WITH ALL LAWS AND REGULATIONS. In using the Premises, Lessee shall comply with all applicable laws, ordinances, and regulations from any and all authorities having jurisdiction, including without limitation any lot line adjustment, short subdivision, binding site plan, or equivalent action that may be required by the land-use permitting entity in which the Premises are located. The Lessee specifically agrees to comply and pay all costs associated with achieving such compliance without any notice from King County, and further agrees that King County does not waive this Section 20 by giving notice of demand for compliance in any instance.

21. SURRENDER OF PREMISES. At the expiration or earlier termination of this Lease, other than due to a Force Majeure Event under Section 18, and subject to Disposition of the Improvements pursuant to Section 7 of this Lease, Lessee shall promptly surrender possession of the Premises to King County, and shall deliver to King County all keys that it may have to any and all parts of the Premises.
22. DEFAULT AND RE-ENTRY. In addition to any other right of early termination of this Lease in favor of King County, if any Rent, Additional Rent or other obligations provided herein, or any part thereof shall be and remain unpaid when the same shall become due, or if Lessee shall violate or default on any of the covenants and agreements herein contained or referenced, King County may terminate this Lease upon giving the notice required by law and re-enter said Premises using such force as may be required. Notwithstanding such re-entry by King County, and excepting Lessee's right to any refund of excess Rent or Additional Rent (if paid in cash) as provided elsewhere in this Lease, the liability of the Lessee for the Rent provided for herein shall not be extinguished for the balance of the term of this Lease, and Lessee covenants and agrees to make good to King County any deficiency arising from a re-entry and reletting of the Premises at a lesser rental than agreed to herein. The Lessee shall pay such deficiency each month as the amount thereof is ascertained by King County. In the event it becomes reasonably necessary to make any changes, alterations, or additions to the Premises or any part thereof for the purpose of reletting said Premises or any part thereof, Lessee shall also be responsible for such cost.
23. ASSURANCE OF PERFORMANCE. If Lessee defaults in the performance of any obligation under this Lease and such default which remains uncured for more than ten (10) days after demand (or, if more than 10 days are reasonably required to cure the default, it remains uncured after a reasonable amount of time for Lessee to perform), King County may request and the Lessee shall provide adequate assurance of the future performance of all obligations under this Lease. The adequacy of any assurance shall be determined according to commercially reasonable standards for lessors of real property in the County of King, State of Washington. Adequate assurance shall include, but not be limited to, a deposit in escrow, a guarantee by a third party acceptable to King County, a surety bond, or a letter of credit from a reputable lender in the Seattle metropolitan area. Lessee's failure to promptly provide adequate assurance in response King County's request shall constitute a material breach and King County may in its discretion terminate this Lease.
24. ADVANCES BY KING COUNTY FOR LESSEE. If Lessee fails to pay any fees or perform any of its obligations under this Lease other than payment of Rent, King County will mail notice to Lessee of its failure to pay or perform. Twenty (20) days after mailing notice, if Lessee's obligation remains unpaid or unperformed, except for Lessee's obligation to construct the Improvements, King County may pay or perform these obligations at Lessee's expense but is under no obligation to do so. Upon written notification to Lessee of any costs incurred by King County under this Section 24, Lessee will reimburse King County within twenty (20) days.
25. NON-WAIVER. It is hereby agreed that no waiver of any condition or covenant in this Lease or any breach thereof, shall be taken to constitute waiver of any subsequent breach.
26. SIGNS. No sign, advertisement, notice, or other lettering will be exhibited, inscribed, painted, or affixed by Lessee on any part of the outside of the Premises without the prior written consent of

King County, provided that such consent shall not be unreasonably withheld. If Lessee violates this provision, King County may remove the sign without any liability and may charge the expense incurred by such removal to the Lessee; provided, however, King County shall give Lessee written notice of Lessee's violation of this provision and Lessee shall have forty-eight (48) hours after receiving said notice to comply with the terms of this provision. All signs erected or installed by Lessee shall be subject to any federal, state or local statutes, ordinances or regulations applicable to signs.

27. INSPECTION. King County reserves the right to inspect the Premises at any and all times throughout the Term of this Lease. The right of inspection reserved to King County hereunder shall impose no obligation on King County to make inspections to ascertain the condition of the Premises, and shall impose no liability upon King County for failure to make such inspections

28. LIENS.

A. It is understood and agreed that this Lease is executed and delivered upon the express condition that the Lessee will not and cannot contract any debt or debts for labor, materials, services, or otherwise which will or may become a lien or encumbrance against the interest of King County in the Premises, and King County hereby denies to Lessee any right, power, or authority to do any act, or contract any obligation or liability which would in any way subject the interest of King County in the Premises to any lien, encumbrance, claim, or demand whatsoever.

B. Lessee will promptly, and in all events within forty-five (45) days following the attachment of any lien, remove and discharge any and all liens, which attach to, upon or against the Premises (other than liens arising from the actions of King County). Lessee reserves the right to contest the validity or amount of any such lien in good faith provided that, within forty-five (45) days after the filing of such lien, Lessee discharges said lien of record or records a bond which complies with the requirements of RCW 60.04.161 eliminating said lien as an encumbrance against the Premises. In the event Lessee shall fail to so remove any such lien, King County may take such action as it shall reasonably determine to remove such lien and all costs and expenses incurred by King County including, without limitation, amounts paid in good faith settlement of such lien and attorneys' fees and costs shall be paid by Lessee to King County together with interest thereon at the rate of twelve percent (12%) interest per annum from the date advanced until paid. Lessee's obligations pursuant to this Section 28 shall survive the expiration or earlier termination of this Lease.

29. NO ASSIGNMENT OR SUBLEASE. Lessee shall not assign or transfer this Lease or any interest therein, nor sublet the whole or any part of the Premises, nor grant an option for assignment, transfer or sublease for the whole or any part of the Premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law, or by any process or proceeding of any court or otherwise, except with the prior written permission of King County, which permission shall not be unreasonably withheld.

30. CONDEMNATION.

- A. King County and Lessee will immediately notify the other in writing of the receipt of notice of any proceedings with respect to a condemnation or intent of any authority to exercise the power of eminent domain.
 - B. If all or substantially all of the Premises are taken by any lawful authority under the power of eminent domain, then this Lease shall automatically terminate as of the date condemner has the right to possession of the Premises, without further action of either Party and without further liability or obligation of either Party hereto.
 - C. If part of the Premises or the Improvements is taken by any lawful authority under the power of eminent domain, and the remainder of the Improvements not so taken can be made usable, in the reasonable judgment of King County, using condemnation proceeds available to Lessee, then this Lease shall continue in full force and effect as to the remainder of the Premises and all of the terms and conditions of this Lease shall continue in full force, and Lessee shall make all necessary repairs and alterations to the Improvements required by such taking to the extent practicable.
 - D. As between King County and Lessee, King County shall receive and keep all damages, awards, or payments resulting from or paid on account of King County's fee simple interest in the Premises, and Lessee shall receive and keep all damages, awards or payments resulting from any loss or damage to the Improvements or Lessee's rights under this Lease. King County and Lessee may file separate claims with the condemning authority. If the condemning authority does not enter separate awards for the taking of Lessee's interests on the one hand, and King County's fee simple interest in the Premises on the other hand, then either Party may request an allocation of award from the court.
 - E. It is understood and agreed that Lessee shall not be party to any negotiation or proceedings at law wherein King County claims compensation other than that which is defined statutorily as constituting "just compensation."
31. ANTI-DISCRIMINATION. In all services or activities and all hiring or employment made possible by or resulting from this Lease, there shall be no discrimination against any employee or applicant for employment because of sex, age (except minimum age and retirement provisions), race, color, creed, national origin, marital status, sexual orientation, gender identity or expression, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. This requirement shall apply to but not be limited to the following: Employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Lessee shall not violate any of the terms of R.C.W. 49.60, Title VII of the Civil Rights Act of 1964, King County Code 12.16.020, or any other applicable federal, state, or local law or regulations regarding non-discrimination. Any violation of this Section 28 shall be considered a violation of a material provision of this Lease and shall be grounds for cancellation, termination, or suspension, in whole or in part of the Lease by the County, and may result in ineligibility for further County leases or contracts. The Lessee will also comply with other anti-discrimination laws or requirements of any and all jurisdictions having authority.

32. HEIRS, AGENTS, AND ASSIGNS. Without limiting any provisions of this Lease pertaining to assignment and subletting, the provisions of this Lease bind the heirs, successors, agents and assigns of the Parties to this Lease.
33. CAPTIONS. The captions and other formatting in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.
34. TIME IS OF THE ESSENCE. Time is of the essence of this Lease, and in the event of the failure of Lessee to pay any charges at the time in the manner herein specified, or to keep any of the covenants or agreements herein set forth, the Lessee shall be in default.
35. CUMULATIVE REMEDIES. No provision of this Lease precludes King County from pursuing any other remedies for Lessee's failure to perform his obligations.
36. ATTORNEY'S FEES/COLLECTION CHARGES. In the event legal action is brought by either Party to enforce any of the terms, conditions, or provisions of this Lease, the prevailing Party shall recover against the other Party in addition to the costs allowed by law, such sum as the court may adjudge to be a reasonable attorney's fee. In addition to all other charges, Lessee shall pay a charge of \$500.00 to King County for preparation of a demand for delinquent rent or a notice of default; provided that such charge shall be refunded if a court or other impartial decision-maker determines that the charge was unwarranted.
37. ENTIRE AGREEMENT - AMENDMENTS RECORDING - EXHIBITS. This Lease together with any and all exhibits expressly incorporated herein by reference or attached hereto shall constitute the whole agreement between the Parties. No modification or amendment of this Lease shall be valid or effective unless evidenced by an agreement in writing signed by both Parties. This Lease shall not be recorded and instead Lessee shall record a Memorandum of Lease substantially in the form of **Exhibit C** attached hereto. This Lease includes and incorporates the following Exhibits:
- | | |
|-----------|-----------------------------|
| Exhibit A | Illustration of Premises |
| Exhibit B | The Improvements |
| Exhibit C | Form of Memorandum of Lease |
38. SEVERABILITY. If any term or provision of this Lease or the application of any term or provision to any person or circumstance is invalid or unenforceable, then the remainder of this Lease, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and will continue in full force.

IN WITNESS WHEREOF, King County and Lessee have executed this Lease on the dates specified below.

LESSEE:
Backbone Campaign

LESSOR:
King County, a Political Subdivision of the
State of Washington

By: _____
Bill Moyer
Executive Director

By: _____
Steve Salyer, Manager
Real Estate Services Section

Date: _____

Date: _____

APPROVED BY CUSTODIAL AGENCY:

By: _____

Date: _____

APPROVED AS TO FORM ONLY:

By: _____
Senior Deputy Prosecuting Attorney

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STATE OF WASHINGTON)
)ss
COUNTY OF KING)

On this day personally appeared before me Bill Moyer, to me known to be Executive Director of the Backbone Campaign that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned and that he was authorized to execute the said instrument.

GIVEN under my hand and official seal this _____ day of _____, 20 ____.

NOTARY PUBLIC in and for the State of
Washington residing at _____
My appointment expires

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I certify that Steve Salyer signed this instrument, on oath stated that he was authorized by the King County Executive to execute the instrument, and acknowledged it as the Manager, Property Services Division of King County, Washington to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument.

Date:

NOTARY PUBLIC in and for the State of
Washington residing at _____
My appointment expires _____

Exhibit A



Vashon Transfer Station Property-Approximate location of Backbone Community Solar Project

Exhibit B The Improvements

Exhibit C

Memorandum of Lease

1. On _____, 2012, King County and _____ ("Lessee") executed a lease ("Lease") relating to that certain King County-owned real property located at _____ in King County, Washington and legally described as follows:

LEGAL DESCRIPTION.

Also known as a portion of King County Assessor's Tax Parcel No. _____ [PARCEL #].

2. The Lease term shall be for ____ (__) months ("Term"), and shall begin on the ____ day of _____, 20__ ("Commencement Date"), and end at 11:59 PM on the 30th day of June, 2020 ("Expiration Date"), unless the Lease is renewed or extended. If the Washington State solar incentive program codified at RCW 82.16.110-.120 ("State Solar Incentive") is extended beyond June 30, 2020, then the Term shall be automatically extended and shall expire (a) upon the expiration of the extended State Solar Incentive, or (b) twenty (20) years after the Commencement Date, whichever occurs first.
3. Copies of the executed Lease are on file with King County and _____ at the following addresses:

King County:

Lessee:

Director's Office Solid Waste Division King County Department of Natural Resources and Parks 201 S. Jackson St. #700 Seattle, WA 98104	
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TEXT OF MEMORANDUM CONTINUES ON NEXT PAGE

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5. This memorandum is solely for the purpose of giving constructive notice of the Lease. In the event of a conflict between the terms of the Lease and this memorandum, the terms of the Lease shall control.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

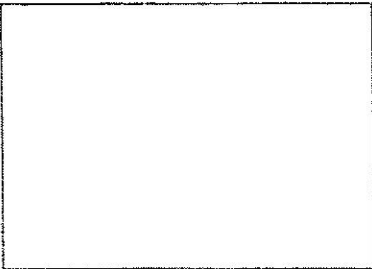
<p>KING COUNTY, a political subdivision of the State of Washington</p> <p>By _____</p> <p>Name _____</p> <p>Its _____</p>	<p>_____, a Washington _____</p> <p>By _____</p> <p>Name _____</p> <p>Its _____</p>
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NOTARY BLOCKS APPEAR ON NEXT PAGE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that STEVE SALYER is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the MANAGER of the REAL ESTATE SERVICES SECTION of KING COUNTY, a home rule charter county and political subdivision of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



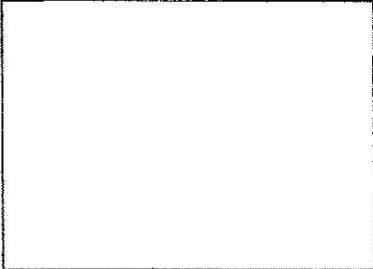
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)