

**CITY OF WALLA WALLA  
WASTEWATER TREATMENT PLANT  
SOLAR PANEL LEASE AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_,

2013, by and between the City of Walla Walla, a municipal corporation of the State of Washington, as Lessor (hereinafter referred to as "City"), and Walla Walla Flat Roof Educational Energy, a Washington non-profit corporation ATTN: Frederic Liebrand 1776 Stateline Road Walla Walla, WA 99362 (hereinafter referred to as "Lessee").

WHEREAS, City desires to promote community efforts to develop solar energy generating systems to contribute to reducing carbon emissions; and

WHEREAS, Lessee was formed as a demonstration of community efforts to develop and install community-based solutions toward increasing options for renewable energy sources; and

WHEREAS, the parties wish to enter into an agreement for the lease of certain portions of ground located at the City of Walla Walla Wastewater Treatment Plant to be used for a solar energy generation system.

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Grant of Lease. Subject to the terms of this Agreement, City hereby grants a lease to Lessee to place certain solar energy generating equipment on certain portions of land at the City of Walla Walla Wastewater Treatment Plant, located at 572 Hatch Street, Walla Walla, WA, located within Walla Walla County, State of Washington, see Exhibit A, and described as follows:

Tax Parcel Number 350724430020

and hereto after described as ("Property").

Lessee's Use. Lessee's use of the Property is limited to that portion of the Property depicted on the attached Exhibit A, hereafter jointly called the "Premises", for the purpose of construction, maintenance, repair, and operation of a 75 kW solar energy generating system

consisting of solar panels and associated equipment together with one separate electrical meter (the solar energy generation equipment, solar panels, meter and associated equipment are hereafter collectively called the "Equipment"). The Lessee will install underground electric to the project encased in red dyed reinforced concrete with 4" cover on all sides. Once inside the foot print of the solar project concrete encasement will not be needed. The Equipment shall be located within the Premises, all in accordance with the terms and conditions outlined in this Agreement and any applicable laws and regulations. The Lessee will work with the Lessor and CH2M HILL (the plant operators) to develop a site and landscaping plan approved by the Lessor and CH2M HILL prior to installation of the equipment. Upon full build-out Lessee shall provide the City an as-built drawing listing of all Equipment installed within the Premises.

Lessee shall, at Lessee's sole expense, install the separate electrical meter, in order to determine the renewable energy for cost recovery. City grants Lessee reasonable access to the Premises nine (9) hours a Day (8 AM – 5 PM), seven (7) days a week, as necessary to construct, maintain, repair, operate the Equipment, and maintain the project landscaping. A person entering the wastewater plant shall sign in and out at the office building and review plant safety procedures on their first site visit. In the event of emergency, Lessee shall first notify the City or its representative CH2M HILL and receive its permission to access the property. Lessee agrees that it will begin construction no later than six (6) months after approval of this Agreement and that construction will be completed with the solar panels operational no later than two years after approval of this Agreement. These deadlines may be extended by mutual written agreement of the parties.

3. No Representation. City makes no representation about whether or not the project

meets any requirements for a community solar project. Lessee is solely responsible for performing any research, meeting any requirements, and obtaining any required approvals to determine eligibility and/or to qualify as a community solar project.

4. Alteration.

(a) Lessee shall not make any alterations, additions, or improvements to the Premises that are not within the usual and customary method of installation for this type of Equipment, without first obtaining the prior written consent of the City. All alterations, additions, and improvements shall be at the sole expense of Lessee.

(b) Lessee understands certain alterations and improvements to the Premises may require development authorizations and permits. Lessee shall be responsible for contacting the City of Walla Walla's permitting agency, the Walla Walla Joint Community Development Agency, to determine what development authorizations and permits are needed. If development authorizations and permits are needed, Lessee shall obtain them at its sole cost and post them on the Premises. Lessee shall provide a copy of the development authorization and permit to the City within two (2) business days of its issuance. Once the improvements are completed and the required agencies have signed off, Lessee shall forward all written approvals to the City for its records. In the event said alterations and improvements require other portions of the Premises to be upgraded to meet code, Lessee shall assume said expense, unless Lessee had previously made arrangements in writing with the City for it to participate in said alterations and improvements.

5. Maintenance and Security/Notice.

(a) City reserves the right to maintain the Property in any way it deems fit. City has

no responsibility for maintenance or for security of Lessee's Equipment or Lessee's other improvements of the Premises.

(b) Lessee is solely responsible for proper maintenance of its Equipment and shall keep its Equipment in clean, good, working order, so as not to detract from the appearance and character of the Premises. If Lessee is responsible for any damage or degradation of the Premises during the term of this Agreement, Lessee shall be responsible for immediate restoration of the Premises to as good condition as before this Agreement took effect, normal wear and tear excepted. Lessee is solely responsible for coordinating work with City so as not to disrupt any other activities.

6. Compensation. Lessee shall pay to City the sum of One Dollar (\$1.00) per year commencing with the effective date of this Lease, the first payment due upon execution of this Agreement, and future payments due no later than the end of the first month of each subsequent year of the term. Lessee shall be solely responsible for any and all fees and taxes of any kind or character associated with the installation, operation and use of the Equipment, including any applicable State of Washington Leasehold Tax.

Lessee further agrees to provide to the City, as compensation, the energy generated from the solar energy generation system. Neither the CH2MHILL (the plant operators) nor the City will be charged for the use of the energy generated by the Equipment for kilowatt hours generated through December 31, 2023. The financial benefit to the City in terms of providing the lease is the savings in the electrical costs provided by the solar panels. It is estimated that the solar panels at full build-out will provide approximately 90,000 kilowatt hours per year for the plant, saving an estimated \$8,000 per year in electrical costs.

7. Term and Renewal. The term of this Agreement shall commence on the date of the last authorizing signature affixed hereto and shall remain in effect until December 31, 2023. This lease may be renewed for an additional term of up to ten (10) years. If the Lessee wishes to renew this Agreement, the Lessee shall give notice of intent to renew to the City at least one hundred eighty (180) days before expiration of this Agreement. The terms and length of any renewal period must be mutually acceptable.

8. Termination. In the event that the City determines that Lessee has violated any term or condition of this Agreement, the City will provide notice in writing to Lessee to cease the violation and immediately comply or correct the violation. In the event Lessee fails to do so within thirty (30) days of such written notice, the City may immediately terminate this Agreement for cause without further liability or obligation on the part of the City.

Upon termination, by expiration of the term or otherwise, the City may require that Lessee remove all Equipment from the Premises and restore the Premises to as good condition as when the Agreement began, normal wear and tear excepted unless the City exercises its right to acquire said Equipment as set out in Section 14 below. Such removal shall be accomplished at the sole expense of Lessee and must be completed within ninety (90) days after notice and at a time that does not interfere with the use of the Premises as determined by the City.

Apart from the above termination provisions, in the event that the City determines that the Premises is needed for wastewater treatment operations, the City may unilaterally terminate this Agreement upon giving the Lessee six (6) months notice if such in writing, and the Lessee shall remove all Equipment from the Premises and restore the Premises to as good

condition as when the Agreement began, normal wear and tear excepted. Such removal shall be accomplished at the sole expense of the Lessee and must be completed prior to expiration of the six (6) months from the date of termination notice or by a date which is mutually agreeable to both the City and the Lessee.

The obligations of this Section shall survive the expiration or other termination of this Agreement.

9. Inspection by the City; Right of Entry. The City reserves the right of ingress and egress to and from the Property and Premises to assure the City that Lessee is abiding to the terms and conditions of this agreement, to inspect the Premises, to make necessary or agreed repairs, or to supply necessary or agreed services. Such visits shall be conducted during the City's normal working hours and the City agrees that such visits will be conducted so as to minimize any interference to the Lessee and to the employees of the Lessee. City or its agent may enter the Premises without consent of the Lessee.

The obligations of this Section shall survive the expiration or other termination of this Agreement.

10. Indemnification/ Hold Harmless. Lessee shall defend, indemnify and hold harmless the City, its officers, agents, including CH2M HILL, employees and volunteers from and against any and all claims, costs (including but not limited to attorney's fees), lawsuits, damages, actions or liability for injury or death of any person, or for loss or damage to property, which may arise from Lessee's use of the Premises and/or Property, except for any claims resulting from the sole negligence of the City, its officers, agents or employees. The foregoing promise shall include, but not be limited to, liability due to falling objects such as solar panels,

or any other attachments to Equipment. The obligations of this Section shall survive the expiration or other termination of this Agreement.

11. Insurance. While this Agreement is in effect and while any of Lessee's Equipment is located on the Property, Lessee shall maintain in effect and pay for a policy of comprehensive general liability insurance covering bodily injury and property damage with insurance limits of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) general aggregate. The City and CH2M HILL and its officers, agents, and employees shall be named as additional insured's on such policy. Lessee shall deliver to the City a certificate evidencing, to the satisfaction of the City, such insurance coverage prior to final execution of this Agreement. Said policies may not be canceled without twenty (20) days prior written notice to the City. The obligations of this Section shall survive the expiration or other termination of this Agreement. Failure on the part of the Lessee to maintain insurance as required shall constitute a material breach of lease, upon which the City may, after giving five business days notice to the Lessee to correct the breach, terminate the Lease or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, which any sums so expended to be repaid to the City on demand.

Notwithstanding the above, upon agreement by both parties the City, as required by the Lessee, will secure insurance coverage through its own insurance pool, Washington Cities Insurance Authority (WCIA), which covers Lessee's property on the Premises on the City's existing insurance policy for property damage. The Lessee shall be responsible for the City's \$25,000 dollar deductible for any property loss for which it may seek insurance coverage.

The obligations of this Section shall survive the expiration or other termination of this Agreement.

12. Security. Lessee shall provide to the City a letter of credit, bond or cash reserve ("Security"), in favor of the City, held at a bank or insurer chosen by Lessee with the City's approval, for a term extending nine (9) months past the termination of this Agreement in the amount of Ten Thousand Dollars (\$25,000), in order to insure Lessee's obligations under this Agreement. The City will be authorized to draw upon such Security in the event Lessee fails to perform necessary maintenance of its Equipment or removal of Equipment or restoration of Property or as may be needed to satisfy any insurance deductible. Lessee may not subject the Security to any encumbrance that would in any way prevent the City from drawing upon such Security in the full amount of such Security.

The obligations of this section shall survive for nine (9) months past the expiration or other termination of this Agreement.

13. Notice. Any notice required to be given under this Agreement shall be deemed given three (3) days after deposit of such notice(s), properly addressed, in the United States mail postage prepaid, sent by registered or certified mail, return receipt requested.

TO LESSOR: City of Walla Walla  
ATTN: Frank Nicholson, P.E.  
City of Walla Walla  
15 N. 3<sup>rd</sup> Avenue  
Walla Walla, WA 99362

TO LESSEE: Walla Walla Flat Roof Educational Energy  
ATTN: Frederic Liebrand  
1776 Stateline Road  
Walla Walla, WA 99362



Or such address as may be provided to the other party in writing specifically referring this Lease provision.

14. Ownership and Removal of Equipment. Upon mutual agreement, Equipment may become the property of the City at fair market value, upon expiration of this Agreement (including expiration after a renewal) or upon termination due to Lessee's breach of this Agreement. If the City takes ownership of the Equipment, Lessee is no longer responsible for the Equipment or for restoration of any portions of the Premises or Property that have been modified or affected by this solar project unless the City reasonably determines that such restoration is necessary, in which case, Lessee shall perform the restoration to the Premises and/or Property within ninety (180) days of the date the City takes ownership of the Equipment. In the event that the City determines it does not want ownership of the Equipment (regardless of the reason for termination/expiration) and would prefer to have the Equipment removed, Lessee shall be solely responsible for removal of such Equipment, along with any improvements, together with restoration of the Property. Such removal and restoration shall be accomplished at the sole expense of Lessee and must be completed within ninety (180) days after notice from the City and at a time that does not interfere with the City's use of the property. The obligations of this Section shall survive the expiration or other termination of this Agreement.

15. Hazardous Substances. Lessee shall not introduce any hazardous substance on the Property in violation of any applicable law. Lessee will be solely responsible for and shall defend, indemnify, and hold the City, its officers, agents and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorney's fees and

costs arising out of or in connection with the cleanup or restoration of the Property associated with the introduction by Lessee onto the Property of any hazardous substance(s), as defined by state or federal law. Lessee further agrees that in the event of an occurrence in violation of the law, Lessee shall take all steps required by law and the appropriate authorities to properly clean and restore the Property, and any other contaminated or affected area, to the satisfaction of said authorities and to provide a letter from said authorities to the City that the Property and affected areas have in fact been cleaned and/or restored and are presently in compliance with all federal, state, and local laws.

The City will be solely responsible for and shall defend, indemnify, and hold harmless Lessee, its agents, employees, harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorney's fees and costs for any state or federally mandated cleanup or restoration of the Property resulting from hazardous substances(s) (as such term is defined by state and federal law) on the Property that are determined to have been present on the property prior to execution of the initial term of this Agreement, provided Lessee has not contributed to the introduction onto the Property of any such hazardous substance(s).

The obligations of this Section shall survive the expiration or other termination of this Agreement.

16. Lessee shall not Sell Equipment or Assign or Sublease the Premises or Property.

Lessee shall not sell the Equipment or assign or transfer this Agreement or sublet all or any portion of the Premises or Property without the prior written consent of the City, which consent shall not be unreasonably withheld. As a condition of the City's consent under this section, Lessee shall be required to demonstrate to the City's satisfaction that any new owner

or sub-lessee meets all of the same requirements as Lessee and qualifies for the same or better cost recovery incentives as Lessee, and is willing and able to meet all requirements of this Agreement.

17. Governmental Regulations; Recapture. Each party takes notice of and agrees to be bound by and to strictly carry out all applicable county, state and federal laws, and all rules and regulations promulgated from time to time by the City

18. Lessee's Compliance with all Laws. Lessee agrees to comply in all respects with all county, City, state, and federal laws and regulations. This includes but is not limited to Lessee constructing, maintaining, repairing, and operating the Equipment, and obtaining credits in connection with a community solar project. Further, Lessee shall comply with all public works bid laws (as applicable), building review and permitting, applications for credits, certifications, and tax codes. This Agreement does not grant to Lessee any regulatory, zoning, or land use approvals. Lessee shall obtain any and all regulatory, land use, and/or zoning approvals as are necessary for its operations, including but not limited to permits for installation and use of Equipment.

19. Nondiscrimination/ Services.

(a) Lessee agrees that it will not discriminate against any person or persons because of Race, sex, age, creed, color or national origin in furnishing, or by refusing to furnish to such person or persons, the use of the facility herein provided, including any and all services, privileges, accommodations and activities provided thereby.

(b) It is agreed that Lessee's continued noncompliance with the provisions of this clause after written notice and passage of a reasonable time to comply shall constitute a

material breach of this Lease. In the event of such noncompliance, Lessor may take appropriate action to enforce compliance, may terminate this Lease, or may pursue such other remedies as may be provided by law.

(c) The Lessee hereby assures that no person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract, including leases on the grounds of race, color, creed, national origin or sex.

20. Binding on Successors. This Agreement applies to and binds the heirs, successors, executors, administrators, and assigns of the parties to this Agreement.

21. Liens. Lessee shall not cause or allow any lien to attach to the Property or the Equipment and/or work and, if any such liens do attach, Lessee shall be solely responsible for resolving any such liens to City's satisfaction. The obligations of this Section shall survive the expiration or other termination of this Lease Agreement.

22. Dispute Resolution. Should any dispute arise under this Agreement, the parties agree to submit the issue first to mediation prior to filing any action in court.

23. Venue/ Costs and Attorney Fees. In the event a lawsuit becomes necessary to enforce the terms and conditions of this Agreement, venue shall be in the Superior Court in Walla Walla County, Washington. The prevailing party shall be awarded costs and reasonable attorney fees.

24. Entire Agreement. This Agreement contains the entire agreement between the parties. Both parties have read this Agreement, understand its contents, and have an





Print Name: \_\_\_\_\_

NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_

My commission expires: \_\_\_\_\_

DRAFT