

15872

Attachment B

KING COUNTY
AMENDED AND RESTATED
PLANT SITE LEASE

AMENDED AND RESTATED PLANT SITE LEASE

This Amended and Restated Plant Site Lease ("Lease") is made as of May __, 2007 (the "Lease Effective Date"), by and between Bio Energy (Washington), LLC, a Delaware limited liability company ("Bio Energy"), and King County, Washington, a Washington municipal corporation ("County"), (collectively the "Parties" or each individually, a "Party").

RECITALS:

WHEREAS, County owns and operates the Cedar Hills Regional Landfill located in Maple Valley, Washington (as more specifically defined in Schedule 1.1, the "Landfill") and located on the Landfill Site (as legally described in Exhibit A, the "Landfill Site");

WHEREAS, Bio Energy desires to obtain rights to all Landfill Gas produced at the Landfill and collected by the Collection Facilities and Expansion Collection Facilities; to design, finance, own, construct, operate and maintain a facility (as more specifically defined in Schedule 1.1, the "Plant") at the Landfill on the Plant Site (as defined below) to process, convert, or otherwise use such Landfill Gas to generate alternate gas products or energy (including Product Gas and electricity); and to sell such products or energy resulting from such processing, conversion or use of the Landfill Gas at the Plant to one or more third parties

WHEREAS, County desires to (a) sell Landfill Gas to Bio Energy; (b) encourage Bio Energy's design, construction, financing, ownership, operation and maintenance of the Plant, its processing, conversion or use of the Landfill Gas, and its subsequent sale of the resulting products or energy; and (c) lease real property at the Landfill comprising the Plant Site (together with appropriate easements and rights of way) to Bio Energy for those purposes.

WHEREAS, in furtherance of the other agreements respecting the Landfill to which County and Bio Energy are parties, including the Amended and Restated Project Development and Gas Sales Agreement (the "Amended PDA"), County desires to lease a portion of the Landfill Site to Bio Energy upon the terms and conditions set forth below.

WHEREAS, County and Bio Energy entered into the Original Project Development Agreement, the Gas Sales Agreement, and the Original Site Lease (collectively, the "Original Project Agreements") on January 20, 2004. The Original Project Agreements contemplated Bio Energy purchasing Landfill Gas from County and primarily using such Landfill Gas to fuel an electricity generating facility located at the Landfill. Due to market conditions, use of the Landfill Gas for ultimate sale as processed gas is desirable and the Amended PDA provides the flexibility for such a project (or other projects) in addition to the possible future use of the Landfill Gas to fuel an electricity generating facility. This Lease amends and restates the Original Site Lease in connection with the Amended PDA.

WHEREAS, Industrial Power Generating Company, LLC, a Delaware limited liability company ("Ingenco"), has proposed purchasing all of the membership interests of Bio Energy (the "Bio Energy Transfer"), with such Bio Energy Transfer being conditioned, in part, upon the execution of this Lease on terms agreeable to Ingenco and the approval by the King County

Metropolitan Council of this Lease, the Amended PDA, and the transactions and projects contemplated herein and therein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Amended PDA and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Definitions; Rules of Construction; Conditions Precedent.

- 1.1 Definitions. Except as otherwise expressly provided herein, capitalized terms used herein shall have the meanings assigned thereto in Schedule 1.1.
- 1.2 Rules of Construction and Interpretation. Except as otherwise expressly provided herein, the rules of construction and interpretation set forth in Schedule 1.1 shall apply to this Lease.
- 1.3 Conditions Precedent. The respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full or waiver of the conditions precedent set forth in Section 3.1 of the Amended PDA.

2. Plant Site.

- 2.1 Description. County does hereby lease to Bio Energy, and Bio Energy does hereby lease from County, upon the terms and conditions herein set forth, certain real property (as more specifically described in Exhibits B and B-1, as amended from time to time, the "Plant Site") consisting of a portion of the Landfill Site together with all improvements now existing on the Plant Site. A sketch showing the general location of the Plant Site is shown on the map in Exhibit B attached hereto. The Parties acknowledge that (a) other than the Easement Areas, the Plant Site is not expected to exceed 2.5 acres in size; (b) the Plant Site was mutually agreed to by the Parties following discussions and technical consultations between them; (c) as of the PDA Effective Date, the final parameters of the Plant Site (the "Final Parameters") have not been determined; and (d) determination of the Final Parameters is contingent on the future determination by each of Bio Energy and the County of several engineering factors. Following the PDA Effective Date, each of Bio Energy and County will use commercially reasonable efforts to determine such engineering factors and mutually agreeable Final Parameters, or to the extent both parties mutually agree, an alternative location for the Plant Site. Upon determination of the such Final Parameters (the date of such determination, the "Plant Site Determination Date"), Exhibit B shall be amended to reflect such Final Parameters. Within sixty (60) days of the Plant Site Determination Date, the Parties shall (a) conduct, or cause to be conducted, a survey of the area identified on Exhibit B to create a legal description of the Plant Site and (b) following completion of such survey and the mutual agreement of the Parties on the legal description, amend this Lease to incorporate into this Lease as Exhibit B-1 hereto such legal description.

2.2 Easement Areas. The County hereby grants to Bio Energy non-exclusive easements for the Lease Term for ingress; egress; construction staging and lay-down; utilities to serve the Plant; evacuation and transmission of Product Gas from the Plant to the Product Gas Delivery Point (the "Product Gas Pipeline Easement"); evacuation and transmission of electric energy from the Plant to an interconnection point where such electric energy will be delivered to the electric transmission system (the "Transmission Line Easement"); and all other uses reasonably necessary for the design, construction, operation and maintenance of the Plant over and across those portions of the Landfill Site in the locations indicated on the map in Exhibit B, as amended from time to time, or otherwise approved in advance by County (the "Easement Areas"). The Parties acknowledge that (a) as of the Lease Effective Date, the Easement Areas may not have been finalized; and (b) in that event, finalizing the Easement Areas is contingent on the future determination by each of Bio Energy and the County of several engineering factors, including the determination of the Final Parameters and the location of the Product Gas Delivery Point. Each of Bio Energy and County will use commercially reasonable efforts to finalize the Easement Areas, and upon such determination, Exhibit B shall be amended to reflect the Easement Areas and a legal description of the Easement Areas will be attached hereto as Exhibit B-2. If Bio Energy subsequently determines that one or more additional easements is necessary for the construction, operation or maintenance of the Plant, the Parties shall agree to a mutually acceptable Easement Area for such easement and Exhibits B and B-2 shall be amended as appropriate to include such additional Easement Area.

3. Term. This Lease shall be coterminous with the Initial PDA Term (approximately twenty (20) years after the Commercial Operation Date) (the "Initial Lease Term") and shall be: (i) automatically extended by a period equal to the First Extension Term and the Second Extension Term (as each such term is defined in Section 2 of the Amended PDA), to the extent such extension terms become effective under the Amended PDA; and (b) automatically terminated as of the PDA Termination Date (provided, that no such termination shall relieve Bio Energy from its Restoration Obligations as described in Section 10 below). The extension of this Lease pursuant to the first sentence of this Section 3 shall be on the same terms and conditions provided herein (as such terms and conditions may have been amended or modified during the Initial Lease Term or during an extension term in accordance with Section 26.5)(the Initial Lease Term, as so extended, the "Lease Term"). Bio Energy shall be entitled to possession of the Plant Site upon substantial completion by the County of the Plant Site Lease Improvements described in Section 8.2.1, which will occur not later than sixty (60) days prior to the Target Construction Start Date; provided, however, that failure to meet this sixty day requirement will not extend any Milestone Date except to the extent set forth in Section 4.11 of the Project Development Agreement. The date on which the County actually delivers possession of the Plant Site with the Plant Site Lease Improvements substantially completed shall be deemed the "Commencement Date" of this Lease. Within thirty (30) days of the Commencement Date, the County and Bio Energy shall execute an amendment to this Lease in a form suitable for recording confirming the Commencement Date and approximate termination date of the Initial Lease Term.

4. Base Rent. The Parties agree that the consideration for the County's lease of the Plant Site is Bio Energy's payment of monthly rent in the amount of one thousand dollars \$1,000.00("Base Rent") and the payment of sums denominated as "additional rent" under Sections 5, 6 and 25.4. Bio Energy shall not be required to pay any monthly rent for the lease of the Plant Site other than the sums denominated as Base Rent or additional rent. The Parties understand and acknowledge that the Base Rent is a negotiated amount and reflects a fair market value for the Plant Site.

Base Rent shall be remitted to:

King County Solid Waste Division
201 South Jackson, Suite 701
Seattle, WA 98104-3855
Attn: Fiscal Services Manager

5. Taxes. In addition its obligations under Section 19 of the Amended PDA, Bio Energy shall pay all Taxes that may, from and after the Commencement Date, be levied upon, assessed against or otherwise applicable to the Plant, the Plant Site, the Plant Site Lease Improvements, this Lease, or Bio Energy's business operations on the Plant Site, and any other property, including personal property, that it owns or operates in connection with this Lease. Any statutory leasehold excise tax imposed by Chapter 82.29A RCW, shall be paid directly to the County when due as additional rent. In the event an audit conducted by the Washington State Department of Revenue finds due and owing additional leasehold excise taxes, Bio Energy shall pay to the County or other appropriate governmental agency the amounts stated in the audit. Except with respect to leasehold excise taxes, Bio Energy shall be responsible for collecting and remitting any amounts owed pursuant to this section and shall be responsible for any errors or omissions in connection therewith. "Taxes" do not include any state or federal taxes applicable to County as a result of County receiving any income or other compensation under this Lease, the Amended PDA, or any other Project Contract.

6. Utilities.

- 6.1 Bio Energy shall pay all charges for each utility or service provided to the Plant Site (including, but not limited to charges for water, telephone service, data lines, garbage collection, and sewage connection and service) from and after the Commencement Date. Bio Energy shall pay such charges, or cause such charges to be paid when and if due, to the provider of such utility or service or, to the extent Bio Energy connects to County's existing utilities and/or services for any utilities or services, as additional rent directly to County at County's election, and shall indemnify, protect and hold harmless County and the Plant Site from all such charges during the Lease Term beginning with the Commencement Date. If Bio Energy connects to County's existing utilities and/or services for any utilities or services, then Bio Energy shall pay all costs and expenses to establish such connection, including any metering that County may elect to have installed to measure Bio Energy's use of such utility or service. Bio Energy and County will agree to a schedule and method for installing such connections, and such

installation shall be performed by Bio Energy or its contractors, in a manner that will not materially and adversely impact the provision of such utility service to County, except to the extent agreed to between Bio Energy and County.

- 6.2 Prior to the installation of any utility lines and service within the Plant Site, Bio Energy shall submit to the County plans and specifications for the proposed utility or service. County shall confirm that the installation of the utilities will not adversely affect the utility service provided to the County.
- 6.3 After installation, subject to any agreements or understandings with a utility provider, Bio Energy shall be responsible for maintaining all utility services located within the Plant Site in good order and repair. In addition to all other rights and remedies of County herein, after reasonable notice to Bio Energy and an opportunity for Bio Energy, working in conjunction with the applicable utility service provider, to cure the claimed condition, County shall have the right, subject to any agreements or understandings with a utility provider, to enter onto the Plant Site to repair or maintain any utility systems or services if Bio Energy fails to do so and the condition of the utility service on the Plant Site is materially and adversely impacting the provision of utility service to County. Bio Energy shall reimburse County's actual costs as reasonably incurred in connection with any remedial action taken by the County pursuant to this Section 6.3. Any dispute between County and Bio Energy concerning the adequacy of the design of Bio Energy's utility systems or the compliance of Bio Energy with the maintenance requirements of this Section 6.3 shall be resolved in accordance with the procedures set forth in Section 15.

7. Uses.

- 7.1 Plant Site. The Plant Site is leased to Bio Energy for the purposes of (a) constructing, operating and maintaining the Plant and related improvements, (b) processing, converting, or otherwise using Landfill Gas and other fuels to generate Product Gas, other alternate gas products, or other energy (including electricity); (c) making sales of Product Gas, electric energy, or other energy or commodities generated by the Plant, or the gas production or electric capacity of the Plant, to one or more Persons; and (d) for any other use or uses contemplated by the Amended Project Development Agreement (items (a) – (d) collectively, the "Permitted Uses"). Bio Energy shall not commit or allow to be committed any waste upon the Plant Site, or any public or private nuisance or other act which violates Applicable Law.
- 7.2 Easement Areas. The Easement Areas are granted to Bio Energy for the Permitted Uses, subject to the exclusive control and management thereof by County at all times. Bio Energy shall not commit or allow to be committed any waste upon the Easement Areas, or any public or private nuisance or other act which violates Applicable Law, and Bio Energy shall not deposit any solid waste on the Easement Areas or any other portion of the Landfill Site. County shall have the right to (i) establish, modify and enforce reasonable rules and regulations

with respect to the Easement Areas, (ii) enter into, modify and terminate agreements with third parties (other than Bio Energy) permitting their non-exclusive use of the Easement Areas, (iii) except for the Product Gas Pipeline Easement, temporarily restrict Bio Energy's access to all or any portion of the Easement Areas to such extent as may, in the reasonable opinion of County, be necessary to enable County to operate the Landfill, (iv) do and perform such other acts in and to the Easement Areas as County deems advisable; provided that County (A) shall not exercise any of its rights (including the foregoing rights) with respect to the Easement Areas in a manner which will materially and adversely interfere with Bio Energy's use the Plant Site or the Easement Areas or the ownership, operation and maintenance of the Plant; and (B) shall use reasonable efforts to minimize the duration of any acts that otherwise interfere with Bio Energy's use the Plant Site or the Easement Areas or the ownership, operation and maintenance of the Plant.Compliance With Law. Bio Energy shall, at Bio Energy's expense, comply promptly with all Applicable Law regulating the use, occupancy or improvement of the Plant Site or Easement Areas by Bio Energy.

7.4 Environmental Obligations. Notwithstanding anything in this Section 7 (but subject to Section 7.4.3):

7.4.1 County shall be responsible for undertaking any investigation, assessment, plan development, clean up, remediation, or other action ordered, imposed, or requested by any Governmental Authority with respect to any Environmental Conditions or Environmental Non-Compliance relating to the Plant Site, any Easement Area, or any portion of the Landfill Site;

7.4.2 County agrees to indemnify, defend and hold harmless each of the Bio Energy Indemnified Parties from and against any and all Environmental Claims brought against such Bio Energy Indemnified Party and any and all Environmental Expenses imposed upon or reasonably incurred by such Bio Energy Indemnified Party in connection with any Environmental Conditions that give rise to, or could give rise to, Environmental Claims or other liabilities, or Environmental Noncompliances: (a) located at or otherwise relating to the Landfill Site; or (b) located at or under, or otherwise relating to, the Plant Site or any Easement Area, to the extent arising out of circumstances that (i) exist prior to the Commencement Date or (ii) which come into existence after the Commencement Date other than as a result of the matters described in Section 7.4.3. County's obligations hereunder shall exist regardless of whether any Bio Energy Indemnified Party is alleged or held to be strictly or jointly and severally liable under any action, legal provision, permit, rule, regulation, order or otherwise;

- 7.4.3 Bio Energy agrees to indemnify, defend and hold harmless each of the County Indemnified Parties from and against any and all Environmental Claims brought against such County Indemnified Party and any and all Environmental Expenses imposed upon or reasonably incurred by such Indemnified Party in connection with any Environmental Conditions that give rise to, or could give rise to, Environmental Claims or other liabilities, or Environmental Noncompliances located at or otherwise relating to the Plant Site, to the extent (a) arising out of the occupancy, use, construction and/or operation of the Plant by Bio Energy, its Affiliates or their Representatives or invitees (other than County or its Representatives and Subcontractors) on the Plant Site or (b) which otherwise comes into existence after the Commencement Date as a result of a breach of this Agreement by Bio Energy or its Affiliates or the negligent or reckless acts or omissions or willful misconduct of Bio Energy, its Affiliates or their Representatives or invitees (other than County or its Representatives and Subcontractors) on the Plant Site. Bio Energy's obligations hereunder shall exist regardless of whether any County Indemnified Party is alleged or held to be strictly or jointly and severally liable under any action, legal provision, permit, rule, regulation, order or otherwise.
- 7.4.4 Bio Energy (i) shall have no obligation to operate the Landfill; and (ii) shall not share in any of Owner's responsibilities or obligations as the owner and operator of the Landfill with respect to waste disposal, environmental, or public health objectives.
- 7.5 Upon request from Bio Energy, County shall promptly and at its sole expense collect and dispose of any waste or refuse material that is directly or indirectly deposited or otherwise found at the Plant Site due to the operations of the Landfill, including without limitation any such materials that were blown or directed onto the Plant Site by wind or other weather conditions.

8. Acceptance of Plant Site.

- 8.1 "As Is" Condition. Bio Energy hereby accepts the Plant Site and Easement Areas "as-is" in their condition existing as of the Plant Site Determination Date, except for (a) County's obligations with respect to subdivision, tax parcel segregation, and the Plant Site Lease Improvements described in Sections 8.2.1, 8.2.2 and 8.2.3 below) to be undertaken by County prior to the Commencement Date and (b) County's indemnity obligations set forth in Section 7.4 of this Lease and Section 8.1.2 of the Project Development Agreement. County shall have no obligation of any kind to alter, repair, improve, or rebuild the Plant Site in connection with Bio Energy's occupancy thereof or Easement Areas in connection with Bio Energy's use thereof except as specifically stated in this Lease. Bio Energy acknowledges that neither County nor any County Representative has made any representation or warranty as to the suitability of the Plant Site or the Easement Areas for the conduct of Bio Energy's business or performance of the

Amended PDA, except as expressly set forth herein or in the Amended PDA, and other than with respect to any such express representations or warranties, Bio Energy hereby waives any rights, claims or actions against County under any express or implied warranties of suitability.

8.2 County Actions Prior to Commencement Date. Prior to the Commencement Date, the County shall undertake and complete the following actions with respect to the Plant Site and Easement Areas:

8.2.1 County shall: (a) remove all buildings, sheds and warehouses located on the Plant Site at its own cost; (b) take such additional acts as mutually agreed upon by County and Bio Energy following determination of the Final Parameters (such additional acts, collectively with the matters described in (a) – (b), the "Plant Site Lease Improvements") at its own cost to the extent such costs are included in the agreement entered into by County and Bio Energy as set forth in Section 8.2.1(iii) below (or if no such agreement is entered into, all such costs except as otherwise mutually agreed by the Parties). With respect to any Plant Site Lease Improvements, unless otherwise set forth in the agreement entered into by County and Bio Energy as set forth in Section 8.2.1(iii) below; (i) County shall supply all labor and materials, at its own cost, and shall undertake such Plant Site Lease Improvement in accordance with Bio Energy's instructions and quality specifications, (ii) Bio Energy shall be responsible for developing design standards and quality control specification and shall supervise the work to confirm that such work complies with such instructions, standards and quality specifications and (iii) County and Bio Energy will, to the extent necessary, enter into a separate agreement, on terms mutually acceptable to County and Bio Energy, that will govern such work.

8.2.2 County shall at its sole expense cause the Plant Site to be in compliance with all applicable subdivision laws and ordinances so that the Plant Site constitutes a single, legally subdivided lot. County shall be responsible for, and shall bear all expenses relating to, preparing, undertaking, developing, building, constructing, grading, establishing, creating, or otherwise putting into place any facilities, plans, tests, developments, improvements, or other requirements necessary in order for the Plant Site to so become a single, legally subdivided lot.

8.2.3 County shall cause the tax segregation of the Plant Site by the King County Assessor to be configured so that no other portion of the Landfill, the Landfill Site or any other real property, is included within the tax parcels comprising the Plant Site.

8.2.4 Subject to the provisions of Section 6, County shall provide easement rights to permit all necessary utility services, including water service, sanitary and storm sewer service, waste-water treatment service,

telephone and electrical utility service, to be available at the boundary of the Plant Site at points mutually agreed by Bio Energy and County; provided that County shall have no obligation to contract for or to cause any such services or utilities to be provided to the Plant Site or to the edge of any such easement areas to be made available pursuant to this sentence, or to construct any improvements on any such easement areas or the Plant Site to enable such services or utilities to be provided thereto, all of which shall be at the sole risk, cost and expense of Bio Energy and/or the provider(s) thereof. Notwithstanding the foregoing, County shall accept for delivery and treatment all Condensate delivered by Bio Energy to the Condensate Delivery Point, in accordance with the terms of Section 4.10 of the Amended PDA.

9. Bio Energy Improvements and Alterations. Bio Energy shall construct and maintain the Plant and other improvements on the Plant Site and Easement Areas pursuant to the terms and conditions of the Amended PDA. Subject to County's obligation to cooperate set forth in Section 9.2 of the Amended PDA, Bio Energy is solely responsible for obtaining all Permits required for the construction of the Plant on the Plant Site and Easement Areas. Bio Energy shall pay, when due, all claims for labor or materials furnished to or for Bio Energy at or for use in the Plant Site or related to Bio Energy work in the Easement Areas, which claims are or may be secured by any mechanics' or materialmen's liens against the Plant Site or any interest therein. The Plant and other improvements constructed by Bio Energy, including all additions, alterations and improvements thereto or replacements thereof, the pipeline constructed on the Product Gas Pipeline Easement, and any transmission line constructed on the Transmission Line Easement, shall be the property of Bio Energy.
10. Plant Site Restoration. Upon the expiration or earlier termination of this Lease, if County has exercised its Right of First Offer in accordance with Section 8 of the Amended PDA, then, as of the closing date of such purchase transaction, all fixtures, equipment, trade fixtures, improvements, and any additions, alterations, replacements and betterments thereof and thereto, constructed by or for Bio Energy on the Plant Site and the Easement Areas, shall become the property of County. If County does not exercise its Right of First Offer and Bio Energy has not otherwise sold the Plant as contemplated in Section 8.3 of the Amended PDA, then subject to Section 13.5.3 of the Amended PDA, Bio Energy shall restore the Plant Site to the extent of, and in accordance with, the Restoration Obligations set forth in Section 13.5 of the Amended PDA. Unless County exercises its Right of First Offer, improvements to the Plant Site and Easement Areas made by Bio Energy shall not become property of the County.
11. Care of Plant Site. Throughout the Lease Term, Bio Energy shall maintain and repair the Plant Site and the Plant at its expense in good order and condition, subject to normal wear and tear.
12. Access. Bio Energy shall permit County and its Representatives to enter the Plant Site upon not less than three (3) days' prior notice and during normal business hours for the purpose of inspecting same and inspecting Bio Energy's compliance with the terms of this

Lease and the Amended PDA, provided County and its Representatives shall comply at such times while on the Plant Site with Bio Energy's health and safety procedures and policies and such inspection shall not interfere with the construction, operation or maintenance of the Plant. Prior to the Commencement Date, Bio Energy may enter onto the Plant Site and the Easement Areas for the purpose of conducting preliminary studies reasonably necessary in determining the Final Parameters and in preparation for the construction of the Plant, including soils testing and surveys; provided (i) Bio Energy shall not do any invasive testing, sampling or drilling at the Plant Site without first obtaining the County's prior written consent, which consent may be subject to an employee or agent of the County accompanying Bio Energy and/or its consultants in connection with any such access but shall not be unreasonably withheld; and (ii) Bio Energy shall promptly restore the Plant Site to substantially the same condition which existed prior to any such investigations, tests, surveys and other analyses, at Bio Energy's sole cost and expense.

13. Condemnation; Relocation.

13.1 Total Taking — Relocation. If all or such portions of the Plant Site or the Landfill Site as may be required for the reasonable use of the Plant are taken by the exercise of the power of eminent domain by a Governmental Authority (in such capacity, the "Condemning Authority") (which event is referred to as a "Total Taking") the Parties shall identify a suitable relocation site for the Plant Site at or adjacent to the Landfill Site that, following such relocation and the related reconstruction of the Plant, will: (a) enable the Plant to operate in substantially the same manner that the Plant operated before the Total Taking and relocation; and (b) provide Bio Energy with financial and economic benefits that are at least equal to the financial and economic benefits that Bio Energy received prior to such Total Taking and relocation.

13.2 Total Taking — Allocation of Condemnation Award. In the event of a Total Taking, Bio Energy shall have the right to seek a Condemnation Award that includes, without limitation, (a) the value of Bio Energy's remaining leasehold interest under this Lease, (b) the fair market value of the Plant and all fixtures, equipment, trade fixtures, improvements, and any additions, alterations, replacements and betterments thereof and thereto, constructed by or for Bio Energy on the Plant Site or any Easement Area, and (c) the cost to relocate the Plant Site as contemplated in Section 13.1 (items (a) – (c) collectively, the "Bio Energy Condemnation Value"). The Condemnation Award awarded by the Condemning Authority, or by a court determining such issue in the event of a dispute between the Parties and the Condemning Authority, shall be allocated between Bio Energy and the County as follows: (A) first, Bio Energy shall receive an amount equal to the Bio Energy Condemnation Value; (b) next, the County shall receive the fair market value of the Plant Site and Landfill Site; and (c) the remainder of the Condemnation Award, if any, shall be divided between County and Bio Energy in proportion to their respective shares of the Condemnation Award as determined under (a) and (b) above.

13.3 Partial Taking. In the event of a taking or condemnation of less than that portion of the Plant Site that would require the relocation of the Plant pursuant to Section 13.1 (which event is referred to as a "Partial Taking"), the Lease Term shall continue and the Condemnation Award awarded by the Condemning Authority, or by a court determining such issue in the event of a dispute between the Parties and the Condemning Authority, shall be allocated between Bio Energy and the County as follows: (a) first, Bio Energy shall receive an amount necessary to repair, restore, replace any portion of the Plant and all fixtures, equipment, trade fixtures, improvements, and any additions, alterations, replacements and betterments thereof and thereto, constructed by or for Bio Energy on the Plant Site or any Easement Area, to the extent damaged or taken by such Partial Taking; and (b) next, the remainder of such Condemnation Award shall be paid to the County.

13.4 Allocation of Award by Condemning Authority or Court. In the case of either a Total Taking or a Partial Taking, to the extent provided by Applicable Law, either Party may request that the court having jurisdiction over the condemnation proceedings allocate the Condemnation Award between the Parties in accordance with the terms of Sections 13.2 and 13.3, as applicable.

13.5 Temporary Taking; Taking of Leasehold Interest. If the whole or any part of the Plant Site, the Plant, the Easement Areas or of Bio Energy's interest under this Lease (in whole or in part) is taken or condemned by any Condemning Authority for its temporary use or occupancy, and Bio Energy (or the Condemning Authority or another third party) shall continue to pay, in the manner and at the times herein specified, all sums due under this Lease, then this Lease shall continue and, except only to the extent that Bio Energy may be prevented from so doing pursuant to the terms of the order of the Condemning Authority, Bio Energy shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Bio Energy to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking or condemnation, or taking in whole or in part of Bio Energy's leasehold interest, Bio Energy shall be entitled to receive the entire amount of any Condemnation Award made for such taking or condemnation, whether paid by way of damages, rent or otherwise, allocable to the temporary use or occupancy of the Plant, Plant Site and Easement Areas prior to the Lease Termination Date.

13.6 County's Participation in Exercise of Eminent Domain Powers.

13.6.1 County agrees that it shall not act as a Condemning Authority with respect to the Plant, the Plant Site, any Easement Area, or this Lease.

14. Default.

14.1 Default By Bio Energy. Each of the following events shall constitute events of default on the part of Bio Energy (each, a "Bio Energy Lease Default") which, if not cured within the time permitted (if any) to cure such event of default, shall

entitle County to terminate this Lease pursuant to Section 14.3; provided, however, that no such event shall be deemed to be a Bio Energy Lease Default if (a) it is caused by or is otherwise attributable to a breach by County of its obligations under this Lease or any other Project Contract to which County is a party or (b) it occurs as a result of an Event of Force Majeure declared by Bio Energy or County in accordance with Section 19:

14.1.1 the failure by Bio Energy to make any payment required to be made by Bio Energy hereunder, as and when due, where such failure shall have continued for ten (10) days after notice thereof has been given by County to Bio Energy; or

14.1.2 the failure by Bio Energy to comply with any covenant, obligation or agreement of Bio Energy contained in this Lease (other than any such failure which would constitute a Bio Energy Lease Default under Section 14.1.1), where such failure has a material adverse effect on County or its ability to perform its obligations under this Lease and such failure shall not have been cured during the Initial Cure Period; provided that if the Initial Cure Period is not reasonably sufficient to permit a cure of such failure, and Bio Energy shall have diligently commenced to cure such default within the Initial Cure Period and shall thereafter proceed with reasonable diligence to cure such failure, for such longer period as shall be reasonably necessary for Bio Energy to cure the same.

14.2 Default By County. Each of the following events shall constitute events of default on the part of County (each, a "County Lease Default") which, if not cured within the time permitted (if any) to cure such event of default, shall entitle Bio Energy to terminate this Lease pursuant to Section 14.3; provided, however, that no such event shall be deemed to be a County Lease Default if (a) it is caused by or is otherwise attributable to a breach by Bio Energy of its obligations under this Lease or any other Project Contract to which Bio Energy is a party or (b) it occurs as a result of an Event of Force Majeure declared by Bio Energy or County in accordance with Section 19:

14.2.1 the failure by County to comply in any material respect with any covenant, obligation or agreement of County contained in this Lease, where such failure has a material adverse effect on Bio Energy or its ability to perform its obligations under this Lease and such failure shall not have been cured during the Initial Cure Period; provided that if the initial Cure Period is not reasonably sufficient to permit a cure of such failure, and County shall have diligently commenced to cure such default within the Initial Cure Period and shall thereafter proceed with reasonable diligence to cure such failure, for such longer period as shall be reasonably necessary for County to cure the same.

14.3 Termination Procedure.

- 14.3.1 upon the occurrence of a County Lease Default or a Bio Energy Lease Default, as the case may be, that is not cured within the applicable period (if any) for cure, the non-defaulting Party may, at its option, initiate termination of this Lease by delivering a Notice of Intent to Terminate this Lease to the defaulting Party. The Notice of Intent to Terminate shall specify in reasonable detail the applicable Lease Default giving rise to the Notice of Intent to Terminate.
- 14.3.2 Following the giving of a Notice of Intent to Terminate, the Parties shall consult for the applicable Consultation Period as to the appropriate actions that should be taken to mitigate the consequences of the relevant Lease Default, taking into account all prevailing circumstances. During the Consultation Period, the defaulting Party may constitute to undertake efforts to cure the relevant Lease Default, and if such default is cured at any time prior to the delivery of a Termination Notice in accordance with Section 14.3.3, then the non-defaulting Party shall have no right to terminate this Lease in respect of such cured default.
- 14.3.3 Upon expiration of the Consultation Period, and unless the Parties shall have otherwise agreed or unless the Lease Default shall have been remedied during the Consultation Period, the Party that issued the Notice of Intent to Terminate may terminate this Lease by delivering a Termination Notice to the defaulting Party, whereupon this Lease shall terminate on the date set forth in the Terminated Notice (which date shall in no event be earlier than the date such Termination Notice is delivered to the defaulting Party).
- 14.3.4 Notwithstanding anything to the contrary set forth in this Lease, from and after the occurrence of any Financial Closing:
- (a) County shall not seek to terminate this Lease as the result of any default of Bio Energy without first giving a copy of any notices required to be given to Bio Energy under Sections 14.3.1 to the Financing Parties, such notice to be coupled with a request to the Financing Parties to cure any such default within the cure period specified in Section 14.3.2, and such cure period shall commence upon delivery of each such notice to the Financing Parties. If there is more than one Financing Party, the Financing Parties will designate in writing to County an Agent and any notice required hereunder shall be delivered to such Agent, such notice to be effective upon delivery to the Agent as if such notice had been delivered to each of the Financing Parties. Each such notice shall be in writing and shall be delivered and shall become effective in accordance with Section 23. The address and facsimile number for each Financing Party or Agent shall be provided to County by Bio Energy at Financial Closing and thereafter may be changed by the Financing Party or the Agent by subsequent delivery of a notice to

County at the address or facsimile number for County provided in Section 23.

- (b) No rescission or termination of this Lease by County shall be valid or binding upon the Financing Parties without such notice, the expiration of such cure period, and the expiration of the Extended Cure Period (as defined below) provided in this Section 14.3.4. The Financing Parties may make, but shall be under no obligation to make, any payment or perform any act that is required to be made or performed by Bio Energy, with the same effect as if made or performed by Bio Energy. If the Financing Parties fail to cure or are unable or unwilling to cure any Bio Energy Lease Default within the cure period under Section 14.3.2 as provided to Bio Energy in this Lease, County shall have all its rights and remedies with respect to such default as set forth in this Lease; provided, however, that if the Financing Parties notify County that they require further time to consider the cure of the Bio Energy Lease Default, the Financing Parties, upon the termination of such applicable cure period provided to Bio Energy (such cure period commencing on the delivery of such notice to the Financing Parties) shall be allowed a further period (the "Evaluation Period"), during which the Financing Parties shall evaluate such default, the condition of the Plant, and other matters relevant to the actions to be taken by the Financing Parties concerning such default, and which Evaluation Period shall end on the earlier to occur of (a) the Financing Parties' delivery to County of a notice that the Financing Parties have elected to pursue their remedies under the Financing Documents, including taking such action or actions as may be required to assume or transfer the rights and obligations of Bio Energy under this Lease (an "Election Notice"), or (b) thirty (30) days following the end of the applicable cure period provided to Bio Energy. Upon the delivery of the Election Notice, the Financing Parties shall be granted an additional period of one hundred eighty (180) days to cure any Bio Energy Lease Default (the "Extended Cure Period"). All the event that the Financing Parties fail to cure any Bio Energy Lease Default on or before the expiration of the Extended Cure Period, County may exercise its rights and remedies with respect to such default as set forth in this Lease, County may immediately terminate this Lease, and such termination shall be effective on delivery to the Financing Parties or the Agent of notice of such termination.

- 14.4 Other Termination Events. This Lease shall terminate immediately without further action on behalf of either Party in the event the Amended PDA is terminated. For purposes of clarification, Section 14.3 shall not apply to any such termination.

15. Dispute Resolution.

15.1 Venue; Jurisdiction. Venue for any suit, legal action or other legal proceeding arising out of or relating to this Lease shall be brought in the Superior Court of Washington for King County or the United States District Court for the Western District of Washington and located in Seattle. Each Party consents to the jurisdiction of any such court in any such suit, action or proceeding and waives any objection or defense which such Party may have to the laying of venue of any such suit, action or proceeding in any such court, including the defense of an inconvenient forum to the maintenance in such court of such suit, action or proceeding. The Parties agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or by any other manner provided by law. Each Party shall pay its own attorneys' fees and costs in connection with any legal action hereunder.

15.2 Resolution Procedures. Except as otherwise expressly provided in this Lease and before any Party initiates any law suit or legal proceedings pursuant to Section 15.1, the Parties will attempt in good faith to resolve through negotiations any dispute, claim or controversy arising out of or relating to this Lease; provided, however, that either Party may seek interim relief to the extent necessary to preserve its rights hereunder or protect its property during the continuance of the resolution process described herein. Either Party may initiate negotiations by providing notice to the other Party, setting forth the subject of the dispute and the relief requested. The recipient of such notice shall respond within seven (7) days with a written statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each Party with full settlement authority will meet at a mutually agreeable time and place within ten (10) days of the initial notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute. If the Parties do not resolve such dispute within twenty (20) days of the initial notice, then either Party shall at any time thereafter have the right to exercise any of its rights and remedies provided to it hereunder or otherwise available at law or in equity.

16. Surrender of Possession. Upon the Lease Termination Date and following any period of time permitted under Sections 8 and 13 of the Amended PDA for Bio Energy to (a) consummate a sale of the Plant to County (pursuant to County's Right of First Offer) or to a third party purchaser, or (b) if no such sale occurs, to enable Bio Energy to restore the Plant Site (to the extent of its obligation, if any to do so), Bio Energy shall, in the absence of any sale, peacefully surrender the Plant Site and Easement Areas to County in good condition, reasonable use, wear and tear and damage as the result of casualty loss excepted. Such surrender shall occur (A) where Bio Energy is required to restore the Plant Site, promptly following Bio Energy's completion of such restoration; and (B) where Bio Energy has no obligation to restore the Plant Site, within 180 days of the Lease Termination Date. Except to the extent covered by the purchase of the Plant, Bio Energy shall, to the extent of its Restoration Obligations under Section 10 of this Lease and Section 13.5 of the Amended PDA, remove all fixtures, equipment, trade fixtures,

improvements, and any additions, alterations, replacements and betterments thereof and thereto, constructed by or for Bio Energy on the Plant Site and the Easement Areas. Any property not so removed shall be deemed abandoned and may be sold or otherwise disposed of as County deems advisable. Bio Energy may, at its election, opt (at its own expense) to secure and abandon in place any or all Improvements located underground or below grade.

17. Indemnity; Limitation of Liability.

17.1 Indemnity. The provisions of Sections 11.1.1, 11.2.1, 11.3, 11.4, 11.6, 11.7 and 11.8 of the Amended PDA are incorporated into this Lease by reference, *mutatis mutandis*. Each Party's indemnity obligations shall apply from and after the first date on which Bio Energy or any of its employees, agents, or contractors enters onto any portion of the Landfill or the Landfill Site for any purpose hereunder.

17.2 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS LEASE: (A) COUNTY AND BIO ENERGY SHALL ONLY BE LIABLE FOR DIRECT DAMAGES SUFFERED BY THE OTHER PARTY AS A RESULT OF A BREACH OR DEFAULT OF THIS LEASE BY THE DEFAULTING PARTY; AND (B) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING COST OF MONEY, LOST PROFITS, LOSS OF USE OF CAPITAL OR REVENUE) OR FOR CLAIMS OF NON-PARTY CUSTOMERS OR PUNITIVE OR EXEMPLARY DAMAGES WHATSOEVER WITH RESPECT TO THE SUBJECT MATTER OF THIS LEASE, WHETHER ANY CLAIM FOR SUCH DAMAGES SHALL ARISE UNDER THIS LEASE, FROM STATUTORY OR REGULATORY NONCOMPLIANCE, IN TORT (WHETHER NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), OR ANY OTHER CAUSE OR FORM OF ACTION WHATSOEVER. The provisions of Sections 8.5.2 through 8.5.4 of the Project Development Agreement are incorporated into this Lease by reference, *mutatis mutandis*.

18. Representations And Warranties.

18.1 Representations and Warranties of County. The County makes the following representations and warranties to Bio Energy, all of which are made as of the Lease Effective Date, but which shall survive the Lease Effective Date: Authority.

The County has the full power and authority to enter into the transactions contemplated hereunder, and to execute, deliver and perform its respective obligations under, this Lease.

18.1.2 Authorization. The execution and delivery of, and the consummation of the transactions contemplated by, this Lease have been duly authorized by all necessary action of the County. This Lease constitutes a legal, valid and binding obligation of the County.

- 18.1.3 Title. The County owns and has good and marketable title to the Plant Site and the Easement Areas free and clear of all mortgages, liens, pledges, easements, servitudes, claims and encumbrances of any kind, except: (a) all matters that are disclosed in the title policies and related surveys issued to Bio Energy in connection with such the Plant Site; and (b) imperfections or irregularities of title and other liens, easements, servitudes or encumbrances that would not, individually or in the aggregate, have a material adverse effect on Bio Energy's ability to occupy the Plant Site and use the Easement Areas and perform its obligations under the Project Documents.
- 18.2 Representations and Warranties of Bio Energy. Bio Energy makes the following representations and warranties to County, all of which are made as of the Lease Effective Date, but which shall survive the Lease Effective Date:
- 18.2.1 Authority. Bio Energy has the full power and authority to enter into the transactions contemplated hereunder, and to execute, deliver and perform its respective obligations under, this Lease.
- 18.2.2 Authorization. The execution and delivery of, and the consummation of the transactions contemplated by, this Lease have been duly authorized by all necessary action of Bio Energy. This Lease constitutes a legal, valid and binding obligation of Bio Energy.
19. Force Majeure.
- 19.1 Effect of Event of Force Majeure. If a Party (the "Affected Party") is prevented, hindered or delayed from performing any of its obligations under this Lease by an Event of Force Majeure, then so long as that situation continues and such Party otherwise complies with its obligations under this Lease, the Affected Party shall be excused from performance of such obligations to the extent it is so prevented, hindered or delayed, and the time for the performance of such obligations shall be extended accordingly. The provisions of this Section 19 shall not relieve Bio Energy from its obligation to make any payments required under this Lease as and when due hereunder.
- 19.2 Notice of Events of Force Majeure. The Affected Party shall notify the other Party within three (3) days of the occurrence of the Event of Force Majeure, its effect or likely effect on the Affected Party's ability to perform its obligations hereunder and the likely duration of the Event of Force Majeure. The Affected Party shall keep the non-Affected Party informed of any changes in such circumstances, including when such Event of Force Majeure ends. Following the receipt of a notice given pursuant to this Section 19.2, the Parties shall consult in good faith to assess the Event of Force Majeure, the effects thereof and any ways in which it may be mitigated or avoided. Each Party shall attempt in good faith to notify the other Party of any events of which the notifying party is aware which

may be reasonably expected, with the lapse of time or otherwise, to become an Event of Force Majeure.

19.3 Obligations Following Occurrence of Event of Force Majeure.

19.3.1 The Affected Party, subject to Section 19.3.3, shall use all reasonable efforts to remedy the circumstances constituting the Event of Force Majeure (if practicable), mitigate the adverse effects of the Event of Force Majeure and remedy the Event of Force Majeure expeditiously. The Affected Party shall notify the non-Affected Party of the remedy or other termination of the Event of Force Majeure and the date on which the Affected Party will resume its performance hereunder.

19.3.2 Suspension of any obligation as a result of an Event of Force Majeure shall not affect any rights or obligations which may have accrued prior to such suspension or, if the Event of Force Majeure affects only some rights and obligations, any other rights or obligations of the Parties. To the extent that the non-Affected Party is prevented, hindered or delayed from performing its obligations under this Lease as a result of the Affected Party's failure to perform its obligations as the result of the Event of Force Majeure, such non-Affected Party shall be relieved of its obligations to the extent such non-Affected Party has been prevented, hindered or delayed by the Affected Party's failure in performance. So long as the Affected Party has at all times since the occurrence of the Event of Force Majeure complied with the obligations of Sections 19.2 and 19.3.1 and continues to so comply, then any performance deadline that the Affected Party is obligated to satisfy or achieve under this Lease shall be extended on a day-for-day basis equal to the period commencing on the date the Event of Force Majeure occurs and ending on the date that such event is cured.

19.3.3 Notwithstanding anything to the contrary set forth in this Lease, an Affected Party shall not be excused from the performance of its obligations hereunder as a result of an Event of Force Majeure to the extent that a failure or delay in performance would have nevertheless been experienced by the Affected Party had the Event of Force Majeure not occurred.

19.3.4 Neither Party shall be obliged to settle any strike or other labor actions, labor disputes or labor disturbances of any kind, except on terms wholly satisfactory to it.

20. Assignment.

20.1 General. Except as provided in this Section 20, neither Party may assign or transfer its rights or obligations under this Lease without the prior consent of the other Party, such consent not to be unreasonably withheld or delayed. Bio Energy

shall not transfer, assign or hypothecate its rights or interests herein, or sublease or license any portion of the Plant Site or permit any third party to occupy or operate from any portion thereof, except in connection with (i) Bio Energy's grant of a mortgage, deed of trust, or other security interest to a Financing Party as provided in Section 20.2, or (ii) Bio Energy's sale of all or substantially all of its interest in the Plant, this Lease, and the Amended PDA. Any purported assignment that fails to comply with the requirements of this Section 20 shall be, at the option of the Party not making such assignment, null and void and shall have no force or effect (provided such option must be exercised within thirty (30) days of such Party becoming aware of such assignment).

20.2 Financing Parties. Bio Energy shall have the right, without County's prior consent, to:

20.2.1 assign to, mortgage, or grant a security interest or liens in favor of the Financing Parties in Bio Energy's rights and interests under or pursuant to (a) this Lease, (b) the Plant, or (c) the Plant Site. Bio Energy shall provide reasonable prior notice of any such financing.

20.2.2 assign this Lease to an Affiliate of Bio Energy, provided that prompt notice of such assignment is provided to County, and that any such assignee (i) has a net worth that is sufficient to enable it to satisfy and perform all of Bio Energy's obligations under the Lease; and (ii) agrees in writing to be bound by the terms of this Lease as a condition precedent to the effectiveness of such assignment.

20.3 Successors and Assigns. The terms and provisions of this Lease shall be binding upon, and shall inure to the benefit of, the successors and permitted assigns of the respective Parties hereto.

21. Further Assurances; Bio Energy Financing. Each Party agrees to cooperate in all reasonable respects necessary to consummate the transactions contemplated by, and to carry out the intent of, this Lease, including the execution and delivery of additional documents. County acknowledges that Bio Energy will enter into Financing Documents with the Financing Parties in connection with the construction and long-term financing of the Plant and, in order to facilitate such financing, Bio Energy, and its successors and assigns, shall have the right to mortgage its interests under this Lease to provide security for such financing. Without limiting the generality of the foregoing, County shall cooperate with Bio Energy and its Financing Parties in connection with Bio Energy's construction and long-term financing for the Plant, at no cost or risk to the County, including the furnishing of such information, the giving of such certificates and the furnishing of a consent to the leasehold mortgage and collateral assignment of this Lease to the Financing Parties (substantially in the form set forth in Exhibit C with such changes required by the Financing Parties and are reasonably acceptable to the County), provided that the foregoing undertaking shall not obligate the County to materially change any rights or benefits to which it is entitled hereunder, materially reduce the

duties or obligations of Bio Energy under this Lease, or materially increase any burdens, liabilities or obligations of the County under this Lease.

22. Insurance. During the Lease Term, Bio Energy shall obtain and maintain the insurance coverages as and when required pursuant to Section 17 of the Amended PDA.

23. Notices.

23.1 Address for and Method of Notice. Except as otherwise expressly provided in this Lease, whenever this Lease requires that a notice be given by one Party to the other Party or to any third party, or a Party's action requires the approval or consent of the other Party, then: (a) each such notice shall be given in writing and each such consent or approval shall be provided in writing; (b) no notice shall be effective unless it is provided in writing and otherwise satisfies any particular requirements as specified herein for such notice; and (c) the Party from whom approval or consent is sought shall not be bound by any consent or approval except to the extent such consent or approval is in writing. Any such notice, consent or approval that fails to conform to the foregoing requirements shall be null and void and have no force and effect. All notices shall be addressed to such Party at the address of such Party set out below (or at such other address as such Party may have substituted therefor by notice to the other Party in accordance with this Section 23.1) and shall be either (i) delivered personally, (ii) sent by facsimile communication, (iii) sent by nationally-recognized overnight courier or delivery service or (iv) sent by registered mail, return receipt requested; provided that (x) any notice, demand, request or other communication made or delivered in connection with an alleged breach or default hereunder shall only be delivered personally or by a nationally-recognized overnight courier or delivery service and (y) electronic mail shall not be an effective or acceptable means for providing any notice hereunder.

If to County, to:

Department of Natural Resources
King St. Center
201 South Jackson, Suite 701
Seattle, WA 98104-3855
Attn: Solid Waste Division Director
Fax: (206) 205-0197

With a copy to:

King County Prosecuting Attorney
Kathryn A. Killinger
Senior Deputy Prosecuting Attorney
500 Fourth Avenue, 9th Floor
Seattle, WA 98104-5039
Fax: (206) 296-0415
Tel: (206) 296-0430

If to Bio Energy, to:

Bio Energy (Washington), LLC
c/o Industrial Generating Company LLC.
Attn: President
2250 Dabney Road
Richmond, Virginia 23230
Fax: (804) 521-3583

With a copy to:

First Reserve Corporation
One Lafayette Place
Greenwich, Connecticut 06830
Attention: General Counsel
Fax: (203) 661-6729

and a copy to

Gibson, Dunn & Crutcher LLP
1801 California Street, Suite 4200
Denver, Colorado 80202
Attention: Beau Stark
Fax: (303) 296-5310

- 23.2 Receipt and Effectiveness of Notices. All notices, requests, demands, approvals and other communications to be given, or may be given, from one Party to which are required the other Party under this Lease shall be deemed to have been duly given, received and effective: (a) if personally delivered, on the date of delivery; (b) in the case of a notice sent by facsimile communication, on the day of actual receipt if a Business Day and received prior to 4:30 p.m. at the place of receipt, or if not so received, on the next following Business Day in the place of receipt, provided that sender's facsimile machine has received the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by telephone to sender that he has received the facsimile message; (c) in the case of a notice sent by mail, when actually received by the addressee; and (d) the Business Day immediately following the day it is sent, if sent for next day delivery to a domestic address by a nationally-recognized

overnight courier or delivery service. The addressee, when requested by the sender, shall promptly provide the sender with facsimile acknowledgment of receipt but the delay or failure to give or receive any such acknowledgment will not affect the validity or effectiveness of the notice, communication, consent or approval in respect of which such acknowledgment of receipt is sought. Survival.

Upon the expiration or termination of this Lease, this Lease shall have no further force and effect, except that any rights and remedies that have arisen or accrued to either Party prior to such expiration or termination, or any obligations or liabilities that have arisen or accrued before such expiration or termination and that expressly survive such expiration or termination pursuant to this Lease, shall in each case survive expiration or termination. The rights, remedies and obligations set out in (a) Sections 13 (Condemnation; Relocation), 15 (Dispute Resolution) and 23 (Notices), shall survive in full force and effect the expiration or termination of this Lease to the extent necessary to enable a Party to exercise any of such accrued rights and remedies, (b) Section 17 (Limitation of Liability) shall survive in full force and effect the expiration or termination of this Lease and (c) Section 10 (Plant Site Restoration) shall survive in full force and effect the expiration or termination of this Lease in accordance with Section 10.1.

25. Miscellaneous.

25.1 No Brokers. Bio Energy represents and warrants to County, and County represents and warrants to Bio Energy, that such Party has not engaged any broker, finder or other person who would be entitled to any commission or fees in respect of the negotiation, execution/or delivery of this Lease and shall indemnify and hold harmless the other Party against any loss, cost, liability or expense incurred by such other Party as a result of any claim asserted by any such broker, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of such Party.

25.2 Recording. Bio Energy shall not record this Lease; provided that, at the request of Bio Energy or a Financing Party, County agrees to execute a short form or "memorandum" of this Lease which Bio Energy or such Financing Party may record at its expense.

25.3 Quiet Enjoyment. During the Lease Term, County represents and warrants to Bio Energy that, subject to compliance with the terms and conditions of this Lease, Bio Energy shall have the peaceful and quiet enjoyment of the Plant Site and Easement Areas.

25.4 Interest; Late Charge. Any sums payable by Bio Energy to County that are not paid by the due date thereof shall bear interest at a rate equal to the Approved Rate per annum calculated from the date of delinquency to the date of payment. Such interest and late charges shall be deemed additional rent due upon demand, and County shall have rights with respect to such non-payment as it has with respect to any other non-payment of rent hereunder.

- 25.5 Modification. This Lease shall not be amended, changed or modified except by a subsequent agreement in writing which indicates that such writing is intended to amend the terms of this Lease and is signed by duly authorized officers of both Parties. The Parties agree that this Lease shall not be amended in any manner by any course of dealing between the Parties.
- 25.6 Waiver. No delay or forbearance by a Party in exercising any right, power or remedy accruing to such Party upon the occurrence of any breach or default by any other Party hereto under this Lease shall impair any such right, power or remedy of such Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any Party hereto of any such breach or default under this Lease, or any waiver on the part of any Party hereto of any provision or condition of this Lease, must be in writing signed by the Party to be bound by such waiver and shall be effective only to the extent specifically set forth in such writing.
- 25.7 Entire Agreement. This Lease (including those portions of the Amended PDA specifically incorporated by reference into this Lease) contains and integrates the complete agreement between the Parties with respect to the subject matter hereof and supersedes all other agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof, including without limitation the Original Site Lease.
- 25.8 Decision-Making by Parties. Except where this Lease expressly provides for a different standard, whenever this Lease provides for a determination, decision, permission, consent or approval of a Party, the Party shall make such determination, decision, grant or withholding of permission, consent or approval in a commercially reasonable manner and without unreasonable delay. Any denial of an approval, permission, decision, determination or consent required to be made in a commercially reasonable manner shall include in reasonable detail the reason for denial or aspect of the request that was not acceptable.
- 25.9 Relationship of Parties. The relationship of County to Bio Energy shall be that of landlord to tenant. Neither this Lease nor the performance by the Parties of their respective obligations under this Lease, shall create or constitute, or be construed to create or constitute, a partnership, joint venture or association, or establish a fiduciary relationship, a principal and agent relationship or any other relationship of a similar nature, between County and Bio Energy.
- 25.10 No Third Party Beneficiary. Except as set forth below in this Section 26.10, this Lease is for the sole and exclusive benefit of the Parties hereto and shall not create a contractual relationship with, or cause of action in favor of, any third party. Notwithstanding the foregoing, prior to the Transfer Condition Precedent Satisfaction Date, (i) Ingenco is intended to be a third party beneficiary of this

Lease and may specifically enforce its terms on behalf of Bio Energy; and (ii) any action under this Lease taken by Bio Energy shall be conditioned upon County receiving the prior written approval of Ingenco with respect to such action.

- 25.11 Governing Law. This Lease and any provisions contained herein shall be governed by, and construed and interpreted in accordance with, the laws of the State of Washington without regard to its conflicts of law principles; provided, that with respect to matters of law concerning the internal corporate affairs of any corporate entity which is a party to this Lease, the law of the jurisdiction under which the respective entity derives its powers shall govern.
- 25.12 Severability. Any provision of this Lease that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In the event any such provision of this Lease is so held invalid, the Parties shall, within seven (7) days of such holding, commence to renegotiate in good faith new provisions to restore this Lease as nearly as possible to its original intent and effect. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.
- 25.13 No Recourse to Affiliates. This Lease is solely and exclusively between County and Bio Energy, and any obligations created herein on the part of any Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, partner, joint venturer, Affiliate (other than subsidiaries controlled by such Party), director or officer of any other Party for performance of such obligations unless such obligations were assumed in writing by the Person against whom recourse is sought.
- 25.14 Costs. Each of the Parties shall pay its own costs and expenses of and incidental to the negotiation, preparation and completion of this Lease and shall not have any right to claim or seek reimbursement of such costs and expenses from the other Party.
- 25.15 Specific Performance. Except as provided in the dispute resolution procedures set forth in Section 15, and except as the context specifically otherwise requires, if a Party breaches or threatens to breach any provision of this Lease, the other Party shall have the right to have such provision (including the provisions of Section 15) specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the other Party and that money damages will not provide adequate remedy. All rights under this Section 25.15 shall be in addition to, and not in lieu of, any other rights and remedies available to either Party at law or in equity, all of which shall be independent of the other and severally enforceable.

- 25.16 Time is of the Essence. Except as the context specifically otherwise requires, time is of the essence with respect to all dates and time periods set forth in this Lease.
- 25.17 Schedules; Exhibits. The Schedules and Exhibits to this Lease are incorporated by reference into, and shall form part of this Lease, and shall have full force and effect as though they were expressly set out in the body of this Lease; provided, however, that in the event of any conflict between the terms, conditions and provisions of this Lease (excluding the Exhibits and Schedules thereto) and the Schedules or Exhibits hereto, the terms of this Lease (excluding the Exhibits and Schedules thereto) shall prevail.
- 25.18 Counterparts. This Lease may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Lease.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date and year first herein above set forth.

KING COUNTY, a municipal corporation of Washington

By: _____
Title: _____

BIO ENERGY (WASHINGTON) LLC

By: Industrial Power Generating Company, LLC, as Member

By: _____
Name:
Title:

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 said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of KING COUNTY, a Washington municipal corporation, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this ____ day of May, 2007.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____

My appointment expires _____

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 said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the President of EDL Holdings (US), Inc., to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this ____ day of May, 2007.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at _____

My appointment expires _____

LIST OF SCHEDULES AND EXHIBITS

Schedules

1.1 Definitions and Rules of Construction

Exhibits

- A Legal Description of Landfill Site
- B Plant Site Map
- B-1 Legal Description of Plant Site
- B-2 Legal Description of Easement Areas
- C Form of Consent to Collateral Assignment to Financing Parties