

**SITE CERTIFICATION AGREEMENT  
BETWEEN**

**THE STATE OF WASHINGTON**

**AND**

**TUUSO ENERGY LLC**



**For the**

**PENSTEMON SOLAR PROJECT**

**KITTITAS COUNTY, WASHINGTON**

**ENERGY FACILITY SITE EVALUATION COUNCIL**

**OLYMPIA, WASHINGTON**

*(this page intentionally left blank)*

**SITE CERTIFICATION AGREEMENT  
FOR THE PENSTEMON SOLAR PROJECT  
CONTENTS**

ARTICLE I: SITE CERTIFICATION..... 8

    A. Site Description ..... 8

    B. Site Certification ..... 8

    C. Project Description..... 8

ARTICLE II: DEFINITIONS ..... 9

ARTICLE III: GENERAL CONDITIONS..... 12

    A. Legal Relationship..... 12

    B. Enforcement ..... 12

    C. Notices and Filings..... 13

    D. Rights of Inspection ..... 13

    E. Retention of Records ..... 13

    F. Consolidation of Plans and Submittal to EFSEC..... 13

    G. Site Certification Agreement Compliance Monitoring and Costs..... 14

    H. Site Restoration ..... 14

    I. EFSEC Liaison ..... 14

    J. Changes in Project Management Personnel ..... 14

    K. Amendment of Site Certification Agreement..... 14

    L. Order of Precedence ..... 15

M.	Review and Approval Process; Exceptions.....	16
<b>ARTICLE IV: PLANS, APPROVALS AND ACTIONS REQUIRED PRIOR TO CONSTRUCTION.....</b>		
A.	Notice of Federal Permit Approvals.....	16
B.	Mitigation Measures.....	16
C.	Construction Stormwater Plans.....	17
D.	Initial Site Restoration Plan.....	18
E.	Habitat, Vegetation, and Fish and Wildlife Mitigation.....	19
F.	Construction Traffic Development Standards.....	22
G.	Cultural and Archaeological Resources Plan.....	22
H.	Construction Emergency Plan.....	23
I.	Construction Management Plan.....	24
J.	Construction Schedule.....	24
K.	Construction Plans and Specifications.....	24
<b>ARTICLE V: PROJECT CONSTRUCTION.....</b>		
A.	Environmental Monitoring During Construction.....	25
B.	Quarterly Construction Reports.....	26
C.	Construction Inspection.....	26
D.	As-Built Drawings.....	26
E.	Habitat, Vegetation, Fish and Wildlife.....	26
F.	Construction Noise.....	27
G.	Construction Safety and Security.....	27
H.	Fugitive Dust.....	28

I. Contaminated Soils.....	28
J. Light, Glare, and Aesthetics .....	28
K. Construction Wastes and Clean-Up .....	28
ARTICLE VI: SUBMITTALS REQUIRED PRIOR TO THE BEGINNING OF COMMERCIAL OPERATION.....	29
A. Operations Stormwater Pollution Prevention Plan.....	29
B. Emergency Plans .....	29
ARTICLE VII: PROJECT OPERATION.....	30
A. Technical Advisory Committee (TAC).....	30
B. Water Discharge.....	30
C. Noise Emissions .....	31
D. Fugitive Dust Emissions.....	31
E. Habitat, Vegetation and Wildlife BMPs.....	31
F. Safety and Security .....	31
G. Dangerous or Hazardous Materials.....	32
ARTICLE VIII: PROJECT TERMINATION, DECOMMISSIONING AND SITE RESTORATION.....	32
A. Detailed Site Restoration Plan.....	32
B. Project Termination.....	33
C. Site Restoration Timing and Scope.....	33
D. Site Restoration Financial Assurance.....	34
ARTICLE IX: SITE CERTIFICATION AGREEMENT - SIGNATURES .....	37

## **Attachments**

1. Penstemon Solar Project – Site-Specific Descriptions, Plans and Conditions
2. Council Order No. \_\_\_\_\_, Order Recommending Approval of Site Certification entered \_\_\_\_\_, 2018.

**SITE CERTIFICATION AGREEMENT  
FOR THE PENSTEMON SOLAR PROJECT**

**between**

**THE STATE OF WASHINGTON**

**and**

**TUUSSO ENERGY, LLC**

This Site Certification Agreement (Agreement or SCA) is made pursuant to Revised Code of Washington (RCW) 80.50, by and between the State of Washington, acting by and through the Governor of Washington State, and TUUSSO Energy, LLC (TUUSSO or Certificate Holder).

TUUSSO filed, as permitted by law, an application with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification for the construction and operation of five solar powered generation facilities, to be located in Kittitas County, Washington. The Council reviewed Application 2017-01, conducted public meetings, and by order recommended approval of a modified version of the application and five separate Site Certification Agreements by the Governor. On \_\_\_\_\_, 2018, the Governor approved the Site Certification Agreement authorizing TUUSSO Energy to construct and operate the Penstemon Solar Project (Project).

The parties hereby now desire to set forth all terms, conditions, and covenants in relation to such site certification in this Agreement pursuant to RCW 80.50.100(1).

## **ARTICLE I: SITE CERTIFICATION**

### **A. Site Description**

The Columbia Solar Projects comprise five solar projects to be constructed and operated on five sites located in unincorporated Kittitas County. Certification details applicable to all five sites are discussed in the body of this Site Certification Agreement, while site-specific details relevant only to the Penstemon Solar Project are presented in Attachment 1.

### **B. Site Certification**

The State of Washington hereby authorizes TUUSSO Energy, LLC, any and all parent companies, and any and all assignees or successors approved by the Council to construct and/or operate the Penstemon Solar Project as described herein, subject to the terms and conditions set forth in Council Order No. \_\_\_\_, Council Order Recommending Site Certification (Attachment 2 to this Agreement), and this Agreement.

The construction and operation authorized in this Agreement shall be located within the areas designated herein and in the modifications to the Revised Application for Site Certification submitted by TUUSSO on January 26, 2018 (Revised Application).

This Agreement authorizes the Certificate Holder to construct the Penstemon Solar Project such that Substantial Completion is achieved no later than ten (10) years from the date that all final state and federal permits necessary to construct and operate the Project are obtained and associated appeals have been exhausted.

If the Certificate Holder does not begin construction of the Project within five (5) years of the execution of the SCA, the Certificate Holder will report to the Council their intention to continue and will certify that the representations in the Revised Application, environmental conditions, pertinent technology, and regulatory conditions have remained current and applicable, or identify any changes and propose appropriate revisions to the Agreement to address changes.

Construction may begin only upon prior Council authorization and approval of such certifications. If the Certificate Holder does not begin construction of the Project within ten (10) years of the execution of the SCA as well as upon final conclusion of any and all appeals of all permits and approvals, all rights under this SCA will cease.

The Certificate Holder may begin Commercial Operation of the Penstemon Solar Project prior to completing construction of all of the Project components, provided that all necessary Project elements are in place for safe operation of the Project and its operation will not adversely affect any obligations under this Agreement.

### **C. Project Description**

Each of the Columbia Solar Projects will consist of:



1. A Solar Panel Field. Each project will include north-south-oriented rows of crystalline silicon PV panels, such as (but not limited to) modules between 325 and 345Wp, mounted on single-axis tracking systems, on galvanized steel support structures.
2. An Electrical Collection and Inverter System. These systems aggregate the output from the PV panels and convert the electricity from direct current (DC) to alternating current (AC), including inverters.
3. Interconnection Equipment. This equipment transforms facility electric output to a voltage of 12.47 kV, and will include a padmount-style transformer manufactured by ABB or similar.
4. Remote Supervisory Control and Data Acquisition (SCADA) Equipment. This monitoring equipment will be incorporated into the process control system to allow unmanned operations.
5. Communications and Grid-protection Equipment. This equipment will be selected by Puget Sound Energy and TUUSSO in order to allow the Projects to connect to the electric grid.
6. A Meteorological Data Collection System. This system will be configured to collect meteorological information roughly at the height of the PV panels.
7. Civil Infrastructure. Infrastructure would include access gates, internal access roads, and secure fencing.
8. Screening Vegetation. Where appropriate, native trees, shrubs, and/or plants in selected locations to provide visual screening.
9. Other Related Project Facilities, as described in the Revised Application, as modified within this Agreement.

The location of Project facilities including, but not limited to, the solar panels, electrical collection and distribution system, electrical transformers, electrical generation tie lines, roadways, and other related Project facilities, is generally described in the Revised Application, as modified within the Agreement. The final location of the solar panels and other project facilities within the Project Area may vary from the locations shown on the conceptual drawings provided in the Revised Application, but shall be consistent with the conditions of this Agreement and in accordance with the final construction plans approved by EFSEC pursuant to Article IV.L.

More detail about the Penstemon Solar Project is included in Attachment 1.

## **ARTICLE II: DEFINITIONS**

Where used in this Site Certification Agreement, the following terms shall have the meaning set forth below:

1. “Application” means the *Application for Site Certification: Columbia Solar Projects*, designated No. 2017-01, submitted on October 16, 2017, as supplemented in the Revised Application filed on January 26, 2018.
2. “Approval” (by EFSEC) means an affirmative action by EFSEC or its authorized agents including those actions and consultations delegated to Council staff regarding documents, plans, designs, programs, or other similar requirements submitted pursuant to this Agreement.
3. “Begin Commercial Operation” or “Beginning of Commercial Operation” means the time when the Project begins generating and delivering electricity to the electric power grid, other than electricity that may be delivered as a part of testing and startup of the Project.
4. “BMPs” means Best Management Practices.
5. “Certificate Holder” means TUUSSO Energy, LLC, any and all parent company(s), or an assignee or successor in interest authorized by the Council.
6. “Checklist” means the Columbia Solar Projects SEPA Environmental Checklist, submitted on October 16, 2017, as supplemented in the Revised Checklist filed January 26, 2018, and as supplemented by the Memorandum RE: Environmental Review and Staff Recommendation for SEPA Determination for Columbia Solar Project issued by EFSEC on February 27, 2018, pursuant to the requirements of the State Environmental Policy Act, and adopted by EFSEC.
7. “Penstemon Solar Project” or “Project” means those Penstemon Solar Project facilities described in the Application, including: solar panels and their construction areas; electrical collection/interconnection and communication systems; electrical step-up and interconnection transformers; permanent meteorological towers; access roadways; temporary construction-related facilities; and other related Project facilities. The specific components of the Project are identified in Article I.C, and Attachment 1.
8. “Construction” means any of the following activities: any foundation construction including hole excavation, form work, rebar, excavation and pouring of concrete for the inverter pads and switchyard, or erection of any permanent, above-ground structures including any solar tracking assemblies, the transformer, transmission line poles, substation poles, or meteorological towers.
9. “County” means Kittitas County, Washington.
10. “DAHP” means the Washington State Department of Archaeology and Historic Preservation.
11. “PSE” means Puget Sound Energy.
12. “Ecology” means the Washington State Department of Ecology.

13. “EFSEC” or “Council” means the State of Washington Energy Facility Site Evaluation Council, or such other agency or agencies of the State of Washington as may hereafter succeed to the powers of EFSEC for the purposes of this Agreement.
14. “EFSEC Costs” means any and all reasonable costs, both direct and indirect, associated with EFSEC activities with respect to this Site Certification Agreement (SCA), including but not limited to monitoring, staffing, and SCA maintenance.
15. “End of Construction” means the time when all Project facilities have been substantially constructed and are in operation.
16. “FAA” means the Federal Aviation Administration.
17. “Force Majeure Event” means any event beyond the control of the Party affected that directly prevents or delays the performance by that Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third parties; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and actions of a governmental authority other than EFSEC.
18. “IBC” means the International Building Code.
19. “Micro-siting” means the final technical and engineering process by which the Certificate Holder shall recommend to the Council the final location of solar project facilities on the Project Area.
20. “NPDES Permit” means National Pollutant Discharge Elimination System permit.
21. “Project Area” means the 39.38-acre Penstemon site across which the Penstemon Solar Project is planned, as described in greater detail in Attachment 1.
22. “RCW” means the Revised Code of Washington.
23. “Revised Application” means the Columbia Solar Projects Revised Application for Site Certification submitted on January 26, 2018.
24. “Site,” or “Project Site,” means the land identified in the Application on which the Penstemon Solar Project is to be constructed and operated, namely, the 39.38-acre Penstemon site, as described in greater detail in Attachment 1.
25. “Site Certification Agreement,” “SCA” or “Agreement” means this formal written agreement between the Certificate Holder and the State of Washington, including all attachments hereto and exhibits, modifications, amendments, and documents

incorporated herein.

26. “Site Preparation” means any of the following activities: Project Site clearing, grading, earth moving, cutting or filling, excavation, and preparation of roads and/or laydown areas.
27. “State” or “state” means the State of Washington.
28. “Substantial Completion” means the Project is generating and delivering energy to the electric power grid.
29. “UBC” means the Uniform Building Code of 1997.
30. “WAC” means the Washington Administrative Code.
31. “WDFW” means the Washington Department of Fish and Wildlife.
32. “WSDOT” means the Washington State Department of Transportation.

### **ARTICLE III: GENERAL CONDITIONS**

#### **A. Legal Relationship**

1. This Agreement shall bind the Certificate Holder, and its successors in interest, and the State and any of its departments, agencies, divisions, bureaus, commissions, boards, and its political subdivisions, subject to all the terms and conditions set forth herein, as to the approval of, and all activities undertaken with respect to the Project or the Site. The Certificate Holder shall ensure that any activities undertaken with respect to the Project or the Project Area by its agents (including affiliates), contractors, and subcontractors comply with this Agreement and applicable provisions of Title 463 WAC. The term “affiliates” includes any other person or entity controlling, controlled by, or under common control of or with the Certificate Holder.
2. This Agreement, which includes those commitments made by the Certificate Holder in the Revised Application, constitutes the whole and complete agreement between the State of Washington and the Certificate Holder, and supersedes any other negotiations, representations, or agreements, either written or oral.

#### **B. Enforcement**

1. This Agreement may be enforced by resort to all remedies available at law or in equity.
2. This Agreement may be suspended or revoked by EFSEC pursuant to RCW 34.05 and RCW 80.50, for failure by the Certificate Holder to comply with the terms and conditions of this Agreement, for violations of RCW 80.50 and the rules promulgated thereunder, or for violation of any applicable resolutions or orders of EFSEC.

3. When any action of the Council is required by or authorized in this Site Certification Agreement, the Council may, but shall not be legally obligated to, conduct a hearing pursuant to RCW 34.05.

**C. Notices and Filings**

Filing of any documents or notices required by this Agreement with EFSEC shall be deemed to have been duly made when delivery is made to EFSEC's offices at Energy Facility Site Evaluation Council, 1300 S. Evergreen Park Dr. SW, P.O. Box 47250, Olympia, WA 98504-7250, in Thurston County.

Notices to be served by EFSEC on the Certificate Holder shall be deemed to have been duly made when deposited in first class mail, postage prepaid, addressed to the Certificate Holder at TUUSSO Energy, LLC, 500 Yale Avenue North, Seattle, WA 98109, Attn: Jason Evans, with a copy to Tim McMahan, Stoel Rives LLP, 760 SW Ninth Avenue, Portland, OR 97205.

**D. Rights of Inspection**

Throughout the duration of this Agreement, the Certificate Holder shall provide access to the Site, the Project structures, buildings and facilities, underground and overhead electrical lines, and all records relating to the construction and operation of the Project to designated representatives of EFSEC and EFSEC contractors in the performance of their official duties. Such duties include, but are not limited to, environmental monitoring as provided in this Agreement and monitoring and inspections to verify the Certificate Holder's compliance with this Agreement. EFSEC personnel or any designated representatives of EFSEC shall follow all worker safety requirements observed and enforced on the Project Site by the Certificate Holder and its contractors.

**E. Retention of Records**

The Certificate Holder shall retain such records as are necessary to demonstrate the Certificate Holder's compliance with this Agreement.

**F. Consolidation of Plans and Submittal to EFSEC**

Any plans required by this Agreement may be consolidated with other such plans, if such consolidation is approved in advance by EFSEC. This Site Certification Agreement includes time periods for the Certificate Holder to provide certain plans and other information to EFSEC or its designees. The intent of these time periods is to provide sufficient time for EFSEC or its designees to review submittals without delay to the Project construction schedule, provided submittals made to EFSEC and/or its designees are complete.

### **G. Site Certification Agreement Compliance Monitoring and Costs**

The Certificate Holder shall pay to the Council such reasonable monitoring costs as are actually and necessarily incurred during the construction and operation of the Project to assure compliance with the conditions of this Agreement, as required by RCW 80.50. The amount and manner of payment shall be prescribed by EFSEC pursuant to applicable rules and procedures.

The Certificate Holder shall deposit or otherwise guarantee payment of all EFSEC Costs as defined in Article II.15, for the period commensurate with the activities of this Agreement. EFSEC shall provide the Certificate Holder an annual estimate of such costs. Any instrument guaranteeing payment of EFSEC's costs shall be structured in such a manner as to allow EFSEC to collect from a third party and without approval of the Certificate Holder any such costs which the Certificate Holder fails to pay to EFSEC during any preceding billing period.

### **H. Site Restoration**

The Certificate Holder is responsible for site restoration pursuant to the Council's rules, WAC 463-42, in effect at the time of submittal of the Application.

The Certificate Holder shall develop an Initial Site Restoration Plan in accordance with the requirements set out in Article IV.D of this Agreement and in consultation with WDFW, and submit it to EFSEC for approval. The Certificate Holder may not begin Site Preparation or Construction until the Council has approved the Initial Site Restoration Plan, including the posting of all necessary guarantees, securities, or funds associated therewith.

The Certificate Holder shall submit a detailed site restoration plan to EFSEC for approval prior to decommissioning in accordance with the requirements of Article VIII.A of this Agreement.

### **I. EFSEC Liaison**

No later than thirty (30) days from the effective date of this Agreement, the Certificate Holder shall designate a person to act as a liaison between EFSEC and the Certificate Holder.

### **J. Changes in Project Management Personnel**

The Certificate Holder shall notify EFSEC of any change in the primary management personnel, or scope of responsibilities of such personnel, for the Project.

### **K. Amendment of Site Certification Agreement**

1. This Agreement may be amended pursuant to EFSEC rules and procedures applicable at the time of the request for amendment. Any requests by the Certificate Holder for amendments to this Agreement shall be made in writing.
2. No change in ownership or control of the Project shall be effective without prior Council approval pursuant to EFSEC rules and procedures.

3. Unless otherwise required by EFSEC, any change in the terms or conditions of the following Sections or Attachments to this Agreement shall not require amendment of this Site Certification Agreement in the manner prescribed in Section K.1, above, provided the change does not result in a material alteration of the size or location of the Project.
4. Repair, maintenance, and replacement of Project facilities:
  - a) The Certificate Holder is permitted, without any further amendment to this agreement, to repair and maintain Project Facilities described in Article I.C and Attachment 1, consistent with the terms of this Agreement.
  - b) The Certificate Holder shall notify EFSEC of the replacement of any significant portion of the Project Facilities no later than thirty (30) days prior to the replacement occurring.
5. In circumstances where the Project causes a significant adverse impact on the environment not previously analyzed or anticipated by this Agreement, including wildlife impacts that significantly exceed projections anticipated in the Revised Application, the Final SEPA Environmental Checklist, or where such impacts are imminent, EFSEC shall take all steps it deems reasonably necessary, including imposition of specific conditions or requirements on the Certificate Holder as a consequence of such a situation in addition to the terms and conditions of this Agreement. Such additional conditions or requirements initially shall be effective for not more than ninety (90) days, and may be extended once for an additional ninety (90) day period if deemed necessary by EFSEC to pursue ongoing, or continuing temporary, arrangements under other authority, including but not limited to RCW 34.05, RCW 80.50 RCW, or Title 463 WAC.

#### **L. Order of Precedence**

In the event of an inconsistency or apparent ambiguity in this Agreement, the inconsistency or ambiguity shall be resolved by giving precedence in the following order:

1. Applicable State of Washington statutes and regulations;
2. Applicable Federal statutes and regulations;
3. The body of this Site Certification Agreement, including any other provision, term, or material incorporated herein by reference or otherwise attached to, or incorporated in, this Agreement;
4. The application of common sense to effect a result consistent with law and the principles effected in this document.

**M. Review and Approval Process; Exceptions**

1. Except for the Initial and Final Site Restoration Plans, prior to any site work, the Council may delegate to the EFSEC Manager authority to approve or deny the construction and operational plans required by this Agreement. The EFSEC Manager shall ensure that the construction and operational plans have been sufficiently reviewed prior to approval.
2. The EFSEC Manager may allow temporary exceptions from plan requirements or provisions of the SCA when such exceptions are not contrary to the purposes of the SCA, provided that a record is kept and Council members are immediately notified. Any Council member may within seven (7) days of the notice put the item on a Council meeting agenda for review.

**ARTICLE IV: PLANS, APPROVALS AND ACTIONS  
REQUIRED PRIOR TO CONSTRUCTION**

**A. Notice of Federal Permit Approvals**

No later than thirty (30) days after the effective date of this Agreement, the Certificate Holder shall notify the Council of all Federal permits, not delegated to EFSEC, that are required for construction and operation of the Project, if any, and the anticipated date of permit issuance to the Certificate Holder. The Certificate Holder shall notify the Council when all required federal permits have been obtained, no later than ten (10) business days after the last permit has been issued.

**B. Mitigation Measures**

During construction, operation, decommissioning, and site restoration of this Project, the Certificate Holder shall implement the mitigation measures set forth in this Agreement, including, but not limited to, those presented in the Revised Application and those identified in the Final SEPA Environmental Checklist as commitments made by the Certificate Holder. Mitigation measures relevant to all five Project Sites are set forth below, while site-specific mitigation measures for the Penstemon Solar Project are presented in Attachment 1.

No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall file with EFSEC a comprehensive list of these mitigation measures. For each of these mitigation measures, the Certificate Holder shall in the same filing further identify the Construction Plan and/or Operation Plan addressing the methodology for its achievement.

The specific plans and submittals listed in the remainder of this Article IV, and Articles V, VI, VII, and VIII, shall incorporate these mitigation measures as applicable.



### C. **Construction Stormwater Plans**

1. Notice of Intent. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall file with EFSEC a Notice of Intent to be covered by a General National Pollutant Discharge Elimination System (NPDES) Permit for Stormwater Discharges Associated with Construction Activities.
  
2. Construction Stormwater Pollution Prevention Plan. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall submit to EFSEC a Construction Stormwater Pollution Prevention Plan (Construction SWPPP), and provide a copy to Ecology for comment. The Construction SWPPP shall meet the requirements of the Ecology stormwater pollution prevention program (WAC 173-230), and the objectives and requirements in Special Condition S.9 of the *National Pollutant Discharge Elimination System and State Waste Discharge General Permit for Stormwater Discharges Associated with Construction Activities* issued by the Department of Ecology on January 1, 2011 or as revised. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Construction SWPPP.

The Construction SWPPP shall identify a regular inspection and maintenance schedule for all erosion control structures. The schedule shall include inspections after significant rainfall events. Any damaged structures shall be addressed immediately. Inspections, and subsequent erosion control structure corrections, shall be documented in writing and available for EFSEC's review on request.

3. Temporary Erosion and Sediment Control Plan. The Certificate Holder shall develop a Temporary Erosion and Sediment Control (TESC) Plan. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall submit the TESC Plan to the Council for approval and provide a copy to Ecology for comment. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the TESC Plan. As an alternative to submitting a separate TESC Plan, the Certificate Holder may include measures for temporary erosion and sedimentation control in the Construction SWPPP required in Article IV, Section C.2, above.
  
4. Construction Spill Prevention, Control and Countermeasures Plan. The Certificate Holder shall develop a Construction Spill Prevention, Control, and Countermeasures Plan (Construction SPCCP), consistent with the requirements of 40 CFR Part 112. The Construction SPCCP shall include the Project Area, and all access roads. The Certificate Holder shall require all contractors working on the facility to have a spill prevention and countermeasure program consistent with 40 CFR Part 112. No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall submit the Construction SPCCP to the Council for approval and provide a copy to WDFW and Ecology for comment. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Construction SPCCP. All applicable elements of the Construction SPCCP shall be implemented prior to the beginning of Site Preparation.

#### **D. Initial Site Restoration Plan**

The Certificate Holder is responsible for Project decommissioning and site restoration pursuant to Council rules. The Certificate Holder shall develop an Initial Site Restoration Plan, pursuant to the requirements of WAC 463-42-655 in effect on the date of Application, in consultation with EFSEC staff and WDFW. The Certificate Holder shall submit the Initial Site Restoration Plan to the Council for review at least sixty (60) days prior to the beginning of Site Preparation. The Certificate Holder shall not begin Site Preparation prior to obtaining approval of the Initial Site Restoration Plan from the Council.

The Initial Site Restoration Plan shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues reasonably anticipated by the Certificate Holder on the date the Plan is submitted to EFSEC. The Initial Site Restoration Plan shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the Project Area or otherwise protect the public against risks or danger resulting from the Project. The Initial Site Restoration Plan shall include a discussion of economic factors regarding the costs and benefits of various restoration options versus the relative public risk, and shall address provisions for funding or bonding arrangements to meet the Project Area restoration or management costs. The Initial Site Restoration Plan shall be prepared in detail commensurate with the time until site restoration is to begin. The scope of proposed monitoring shall be addressed in the Initial Site Restoration Plan.

The objective of the Plan shall be to restore each Project Site to approximate pre-Project condition or better. The Plan shall require removal of the solar panels and rack mounting system, foundations, cables, and other facilities to a depth of four feet below grade, and restoration of any disturbed soil to the pre-construction condition.

The Plan shall include the following elements:

1. Decommissioning Timing and Scope, as required by Article VIII.C of this Agreement.
2. Decommissioning Funding and Surety, as required by Article VIII.D of this Agreement.
3. Mitigation measures described in the Revised Application, Final SEPA Environmental Checklist and SEPA MDNS, and this Agreement.
4. A plan that addresses both the possibility that site restoration will occur prior to, or at the end of, the useful life of the Project and also the possibility of the Project being suspended or terminated during construction.
5. A description of the assumptions underlying the plan. For example, the plan should explain the anticipated useful life of the Project, the anticipated time frame of site restoration, and the anticipated future use of the Project Site.
6. An initial plan for demolishing facilities, salvaging equipment, and disposing of waste materials.

7. Performing an on-site audit, and preparing an initial plan for disposing of hazardous materials (if any) present on the site and remediation of hazardous contamination (if any) at the site.
8. An initial plan for restoring the Project Site, including the removal of structures and foundations to four feet below grade and the restoration of disturbed soils.
9. Provisions for preservation or removal of Project facilities if the Project is suspended or terminated during construction.

**E. Habitat, Vegetation, and Fish and Wildlife Mitigation**

1. Habitat Restoration and Mitigation Plan. Prior to the beginning of Site Preparation, the Certificate Holder shall develop a Habitat Restoration and Mitigation Plan, in consultation with EFSEC staff and WDFW. The Certificate Holder shall submit the Habitat Restoration and Mitigation Plan to EFSEC for approval at least sixty (60) days prior to the beginning of Site Preparation. The Certificate Holder shall not begin Site Preparation prior to obtaining approval of the Habitat Restoration and Mitigation Plan from the Council.
  - a) The Certificate Holder and EFSEC staff, in consultation with WDFW, shall develop a map of habitat types found within the Project Area (“Habitat Map”). This Habitat Map shall be based upon Gap Analysis Project (GAP) spatial data and field investigations of the Project Area.
  - b) The Plan shall specify the Certificate Holder’s Mitigation Obligation. The Certificate Holder’s Mitigation Obligation will be determined through consultation with WDFW. The Mitigation Obligation will include benchmarks and a timeline for revegetation success, and a plan for monitoring revegetation activities in riparian areas to ensure success. Pre-construction Project layout drawings will show expected permanent and temporary land disturbances.
  - c) The Plan shall include a process to determine the actual impacts to habitat following the completion of construction. In the event that actual impacts to habitat exceed the expected impacts determined prior to construction, the Habitat Mitigation Plan will include a mechanism for the Certificate Holder to provide supplemental compensatory mitigation (Supplemental Mitigation). Supplemental Mitigation, if any, may take the form of additional on-site habitat enhancement or the payment of an additional fee equivalent to the value of permanently disturbed project acres to WDFW in lieu of mitigation.

- d) In consultation with WDFW, the Certificate Holder shall develop the plan to require all temporarily disturbed areas to be reseeded with an appropriate mix of plant species that are adapted to local site conditions and will become established quickly, such as, but not limited to, native plant species, in a manner and sequence that will maximize the likelihood of successful restoration of the area and prevent the spread of noxious weeds. The Plan shall include a restoration schedule that identifies timing windows during which restoration should take place, and an overall timeline for when all restoration activities will be completed.

2. Wetlands, Streams and Riparian Areas.

- a) Construction of the Project shall be performed in accordance with Mitigating Conditions 1-5 of the Revised Mitigated Determination of Non-Significance issued on April 17, 2018 by EFSEC.
- b) Prior to construction of the Project, the Certificate Holder shall provide plans to EFSEC for coordination with Ecology to conduct additional wetlands surveys and to identify hydrologic features at each site. The Certificate Holder shall consult with Ecology and comply with any mitigation requirements determined by Ecology to be necessary during that consultation. If any mitigation is required for wetlands or other habitat impacts, the Certificate Holder shall consult with Ecology on appropriate buffer zones and mitigation measures and submit them to EFSEC for approval.
- c) Construction of the Project shall not result in any temporary or permanent disturbances of streams or other surface waters. If unanticipated disturbances of streams or other surface waters occur, the Certificate Holder shall prepare a Waters Restoration Plan in consultation with the Corps and Ecology and submit it to EFSEC for approval. Prior to any construction work affecting the bed or flow in waters of the state (including seasonally dry channels), the Certificate Holder shall consult with and obtain approval from the Corps and Ecology, and provide documentation of such approval to EFSEC. At least sixty (60) days prior to beginning any such channel work, the Certificate Holder shall submit construction drawings to EFSEC for review and approval. The drawings shall specify the exact locations of work to be conducted, buffers that are required, and best management practices and mitigation measures that will be implemented as required by this article. The Certificate Holder shall not begin channel work prior to obtaining approval of the construction drawings from the Council.

3. Wet Season Construction. Construction activities are not restricted to particular seasons. However, the Certificate Holder shall attempt to sequence construction activities in order to minimize temporary earth disturbances during the wet season where practical. In

particular, the Certificate Holder shall avoid earth-disturbing activities that result in distinct areas of temporary habitat disturbance in areas when soils are saturated (which commonly occurs from mid-November through April) when possible. If such activities are to take place during periods of soil saturation, the Certificate Holder shall consult with WDFW to develop a specific plan incorporating strategies and best management practices to minimize the environmental impacts of the activities and additional restoration measures to ensure successful restoration of the disturbed habitat.

4. Avian Protection Plan. No later than thirty (30) days prior to beginning construction, the Certificate Holder shall submit to EFSEC for review and approval an Avian Protection Plan (APP). The APP shall be developed in consultation with the USFWS and WDFW. The purpose of the APP shall be to outline measures to avoid or reduce impacts to avian species and to assess the adequacy of mitigation measures implemented, including any mitigation necessary under the Migratory Bird Treaty Act. The Certificate Holder shall not begin construction prior to obtaining approval of the APP from the Council. The results of these measures shall be reported to EFSEC after construction.

The APP shall provide, at a minimum, that any new electrical poles installed for the Project will be designed to comply with the current Avian Power Line Interaction Committee (APLIC) guidelines. If the APLIC guidelines are not feasible on a pole location, the Certificate Holder will present the reasons to EFSEC and determine appropriate mitigation or monitoring measures.

The Certificate Holder will also take steps to avoid avian attraction to solar panels by planting vegetation around panels, or using other strategies to reduce the risk of avian collisions.

The APP shall further include pre-construction nest survey protocols, active nest avoidance measures, and post-construction habitat mitigation/enhancement measures. The APP shall include nesting surveys for raptors and great blue heron (where appropriate) in the spring of each year of construction.

If nests are found to be active, the following seasonal work avoidance buffers shall be established:

- a) 0.25-mile avoidance buffer during nesting season for raptors. If construction near active raptor nests might occur during the critical use period, the Certificate Holder shall consult with EFSEC and USFWS for appropriate mitigation or monitoring measures.
- b) 0.25-mile avoidance buffer from February through May for great blue heron. If construction near active great blue heron nests might occur between February through May, the Certificate Holder shall consult with EFSEC and WDFW for appropriate mitigation or monitoring measures.

In consultation with WDFW and USFWS, the Certificate Holder shall include actions taken to comply with the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) within the APP.

**F. Construction Traffic Development Standards**

Development Standards: The Certificate Holder shall incorporate the following development standards into the design and construction of the Project:

1. Project Access Roads. Interior all-weather access roads consisting of compacted soils and/or gravel within the Project Site would be designed to provide access to the major equipment pads from the site entrance. The remainder of the access roads throughout the Project Area would be unpaved vegetated roads.
2. Oversize or Overweight Hauls. The Certificate Holder shall notify EFSEC, at the earliest time possible, of any permits or approvals required to conduct oversize or overweight hauls.

**G. Cultural and Archaeological Resources Plan**

Prior to construction, the Certificate Holder shall obtain all necessary Department of Archaeology and Historic Preservation (DAHP) permits and perform all necessary archaeological work in order to comply with RCW 27.53.

With the assistance of an experienced archaeologist, and in consultation with EFSEC, DAHP, and the Yakama Nation, the Certificate Holder shall develop a Cultural Resources Monitoring and Mitigation Plan for monitoring construction activities and responding to the discovery of archaeological resources or buried human remains. The Certificate Holder shall provide copies of the draft Plan for comment to other potentially affected tribes, prior to submitting the plan for EFSEC approval.

The Certificate Holder shall submit the Plan to EFSEC for review and approval no later than sixty (60) days prior to the start of Site Preparation. The Certificate Holder shall not begin Site Preparation prior to obtaining approval of the Plan from the Council. All applicable elements of the Plan shall be implemented prior to the start of Site Preparation. The Plan shall include, but not be limited to, the following:

1. The Plan shall include a copy of the final construction and micro-siting plans for the Project, and shall provide for the avoidance of significant archaeological sites where practical. For sites to be avoided, the boundaries of identified cultural resources and buffer zones shall be staked in the field and flagged as no-disturbance areas to avoid inadvertent disturbance during construction. These site markings will be removed following construction. The Plan shall address alternative mitigation measures developed in

coordination with DAHP to be implemented if it is not practical to avoid archaeological sites or isolates.

2. The Plan shall address the possibility of the unanticipated discovery of archaeological artifacts during construction. If any archaeological artifacts, including but not limited to human remains, are observed during construction, then disturbance and/or excavation in that area will cease, and the Certificate Holder shall notify DAHP, EFSEC, the Yakama Nation and any affected tribes and, in the case of human remains, the County Coroner or Medical Examiner. At that time, appropriate treatment and mitigation measures shall be developed in coordination with the agencies and tribes cited above, and implemented following approval by EFSEC. If Project facilities cannot be moved or re-routed to avoid the resources, the Certificate Holder shall contact EFSEC and DAHP for further guidance, which may require the implementation of a treatment plan. If a treatment plan is required, it shall be developed in consultation with DAHP and any affected tribes.
3. Potentially affected tribes shall be notified of earth-disturbing construction activities and if a tribe requests to have its representatives present during earth-disturbing construction activities, the Certificate Holder shall accommodate reasonable requests. In all cases the Certificate Holder shall inform EFSEC of each such tribal request.

#### **H. Construction Emergency Plan**

1. Construction Emergency Plan. The Certificate Holder shall retain qualified contractors familiar with the general construction techniques and practices to be used for the Project and its related support facilities. The construction specifications shall require contractors to implement a safety program that includes an Emergency Plan. The Certificate Holder shall prepare and submit a Construction Emergency Plan to EFSEC for review at least sixty (60) days prior to the beginning of Site Preparation. The Certificate Holder shall coordinate development and implementation of the Plan with applicable local and state emergency services providers. The Certificate Holder shall not begin Site Preparation or Construction prior to obtaining EFSEC approval of the Construction Emergency Plan. The Construction Emergency Plan shall include consideration of the following, in such level of detail as reasonable, given the nature and probability of risk:
  - a) Medical emergencies;
  - b) Construction emergencies;
  - c) Project Area evacuation;
  - d) Fire protection and prevention;
  - e) Flooding;
  - f) Extreme weather abnormalities;
  - g) Earthquake;
  - h) Volcanic eruption;
  - i) Facility blackout;
  - j) Hazardous materials spills;

- k) Terrorism, sabotage, or vandalism; and
  - l) Bomb threat.
2. Fire Control Plan. The Certificate Holder shall develop and implement a Fire Control Plan in coordination with state and local agencies to minimize the risk of accidental fire during construction and to ensure effective response to any fire that does occur on the Project Area at any time. The Certificate Holder shall submit the Fire Control Plan to EFSEC for review and approval at least sixty (60) days prior to Site Preparation and provide a copy to WDFW, and other local and state service providers for comment. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Fire Control Plan.

**I. Construction Management Plan**

The Certificate Holder shall, with the assistance of Council staff, develop a detailed Construction Management Plan in consultation with WDFW and other affected state and local agencies. The Plan shall address the primary Site Preparation and Construction phases for the Project, and shall be generally based on the mitigation measures contained in this Agreement and the Revised Application. At least sixty (60) days prior to the start of Site Preparation, the Certificate Holder shall submit the Construction Management Plan to the Council for review and approval. The Certificate Holder shall not begin Site Preparation prior to obtaining Council approval of the Construction Management Plan.

**J. Construction Schedule**

No later than thirty (30) days prior to the beginning of Site Preparation, the Certificate Holder shall submit to EFSEC an overall construction schedule. Thereafter, the Certificate Holder shall notify EFSEC of any significant changes in the construction schedule.

**K. Construction Plans and Specifications**

- 1. At least sixty (60) days prior to the beginning of Construction, the Certificate Holder shall submit to EFSEC or its designated representative for approval of those construction plans, specifications, drawings, and design documents that demonstrate the Project design will be in compliance with the conditions of this Agreement. The Certificate Holder shall also provide copies to WDFW, Ecology, DAHP and other agencies as EFSEC may direct, for comment. The plans shall include the overall Project site plans, equipment and material specifications. The Certificate Holder shall not begin Construction prior to obtaining Council approval of the construction plans and specifications.
- 2. The construction plans and specifications shall be in compliance with updated (draft) Kittitas County Critical Areas Ordinances for the protection of riparian areas.
- 3. The construction plans and specifications shall show fencing at a minimum of eight feet in height, with a single line of barbed wire installed at the top of the fence. Razor wire



will not be used.

4. The Certificate Holder shall consult with emergency services suppliers prior to preparing final road construction plans, to ensure that interior all-weather access roads are sufficient to provide reliable access by emergency vehicles. In its final design for construction, the Certificate Holder shall maximize the use of existing roads and pathways, and minimize the construction of new roads as much as reasonable and practical, and without disrupting wetlands or other sensitive habitat. The final design shall be subject to approval by EFSEC as part of the overall construction plans and specifications.
3. The construction plans and specifications shall show that structures placed within floodplains are designed so as not to restrict or redirect flows from their natural flow path. If impervious surfaces, such as roads, are placed in the floodplain, the Certificate Holder shall propose measures to mitigate for the lack of floodplain storage.

## **ARTICLE V: PROJECT CONSTRUCTION**

### **A. Environmental Monitoring During Construction**

1. Environmental Monitor (EM). EFSEC shall provide on-site environmental monitoring for the construction phase of the Project, at the Certificate Holder's cost. The EM shall be an independent, qualified engineering firm (or a person) selected by EFSEC, and shall report directly to EFSEC.
2. Environmental Compliance Program for Construction Activities. The Certificate Holder shall identify and develop environmental monitoring and "stop-work" criteria in consultation with the EM and other EFSEC designees. At least sixty (60) days prior to the beginning of Construction, the Certificate Holder shall submit these environmental monitoring and stop-work criteria to EFSEC or its designated representative for review and approval. The Certificate Holder shall not begin Construction prior to obtaining Council approval. The Environmental Compliance Program shall cover avoidance of sensitive areas during construction, waste handling and storage, stormwater management, spill prevention and control, habitat restoration efforts begun during the construction phase of the Project, and other mitigation measures required by this Agreement. The Certificate Holder shall implement the program to ensure that construction activities meet the conditions, limits, and specifications set out in the Site Certification Agreement, all Attachments thereto, and all other applicable state and federal environmental regulations.
3. Copies of Plans and Permits Kept On Site. A copy of the Site Certification Agreement, Plans approved by the Council or its designees, and all applicable construction permits shall be kept at the Project Site. The lead Project construction personnel and construction project managers will be required to read, follow, and be responsible for all required compliance activities.

4. Environmental Monitor Monthly Reports. The EM will provide monthly reports to EFSEC regarding adherence to the BMPs, the implementation of environmental mitigation plans, and environmental problems reported or discovered as well as corrective actions taken by the Certificate Holder to resolve these problems. The EM will provide copies to the Certificate Holder of reports submitted to EFSEC.
5. Environmental Violations and Stop-Work Orders. Upon identification of an environmental noncompliance issue, the EM will work with the responsible subcontractor or direct-hire workers to correct the violation. If non-compliance is not corrected in a reasonable period of time, the EM shall request that EFSEC issue a “stop-work” order for that portion of the work not in compliance with Project environmental requirements. EFSEC will promptly notify the EM of any “stop work” orders that have been issued.

#### **B. Quarterly Construction Reports**

The Certificate Holder shall submit quarterly construction progress reports to EFSEC no later than thirty (30) days after the end of each calendar quarter. Such reports shall describe the status of construction and identify any changes in the construction schedule.

#### **C. Construction Inspection**

EFSEC shall provide plan review and inspection of construction for all Project structures, underground and overhead electrical lines, and other Project facilities to ensure compliance with this Agreement. Construction shall be in accordance with the approved design and construction plans, and other relevant regulations. EFSEC may contract with Kittitas County, another appropriate agency, or an independent firm to provide these services.

#### **D. As-Built Drawings**

The Certificate Holder shall maintain a complete set of as-built drawings on file for the life of the Project, and shall allow the Council or its designated representative access to the drawings on request following reasonable notice.

#### **E. Habitat, Vegetation, Fish and Wildlife**

1. The Certificate Holder shall use construction techniques and Best Management Practices (BMPs) to minimize potential impacts to habitat and wildlife. In particular, construction of the Project shall be performed in accordance with Mitigating Conditions 2, 7 and 9 of the Revised Mitigated Determination of Non-Significance issued on April 17, 2018 by EFSEC.
2. The Certificate Holder shall ensure that the construction team includes a qualified staff person or persons with experience in construction in environments similar to those found in the Project Area.

3. Construction teams shall stake work and clearing limits prior to construction and ground clearing.
4. Any new electrical poles installed for the Project will be designed to comply with the current Avian Power Line Interaction Committee (APLIC) guidelines. If the APLIC guidelines are not feasible on a pole location, the Certificate Holder shall present the reasons to EFSEC and determine appropriate mitigation or monitoring measures.
5. The Certificate Holder shall post, maintain, and enforce reasonable driving speed limits within the Project Area to minimize potential collisions with wildlife during construction.

#### **F. Construction Noise**

The Certificate Holder and its contractors and subcontractors shall use industry standard noise attenuation controls during construction to mitigate noise impacts and shall comply with applicable state and local noise emission regulations. The Certificate Holder shall limit loud construction activities to daytime hours (7 a.m. to 10 p.m.), and shall comply with the applicable requirements of WAC 173-60-040 (2) (b) during the hours of 10:00 p.m. and 7:00 a.m.

#### **G. Construction Safety and Security**

1. Federal and State Safety Regulations. The Certificate Holder shall comply with applicable federal and state safety regulations (including regulations promulgated under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act), as well as local and state industrial codes and standards (such as the Uniform Fire Code). The Certificate Holder, its general contractor, and all subcontractors shall make every reasonable effort to maximize safety for individuals working at the Project.
2. Construction Phase Health and Safety Plan. The Certificate Holder shall develop and implement a Construction Phase Health and Safety Plan prior to the beginning of Site Preparation. The Certificate Holder shall consult with local and state organizations providing emergency response services during the development of the plan to ensure timely response in the event of an emergency. The Certificate Holder shall submit the plan to EFSEC for review and approval no later than sixty (60) days prior to Site Preparation. The Certificate Holder shall not begin Construction prior to obtaining Council approval.
3. Construction Phase Site Security Plan. The Certificate Holder shall develop and implement a construction phase site security plan to effectively monitor the Project Site. The Certificate Holder shall consult with local and state organizations providing emergency response services during the development of the plan to ensure timely response in the event of an emergency. The Certificate Holder shall submit the plan to EFSEC for review and approval no later than sixty (60) days prior to Site Preparation. The Certificate Holder shall not begin Construction prior to obtaining Council approval.

4. Visitors Safety. Visitors shall be provided with safety equipment where and when appropriate.

#### **H. Fugitive Dust**

The Certificate Holder shall implement appropriate mitigation measures to control fugitive dust from roads and construction activities. The Certificate Holder shall use water or a water-based environmentally safe dust palliative such as lignin, for dust control on unpaved roads during Project construction.

#### **I. Contaminated Soils**

In the event that contaminated soils are encountered during construction, the Certificate Holder shall notify EFSEC and Ecology as soon as possible. The Certificate Holder shall manage, handle, and dispose of contaminated soils in accordance with applicable local, state, and federal requirements.

#### **J. Light, Glare, and Aesthetics**

The Certificate Holder shall implement mitigation measures to minimize light and glare impacts. Landscaping with appropriate vegetation shall be planted, and perimeter fencing shall be erected as described in the Revised Application.

The Certificate Holder shall minimize outdoor lighting to safety and security requirements. Motion sensors shall be used to keep lighting turned off when not required, and lighting shall be equipped with hoods and directed downward. If compliance with any of these requirements is not feasible, the Certificate Holder may seek a waiver from the Council.

#### **K. Construction Wastes and Clean-Up**

The Certificate Holder's waste disposal plans and schedule shall be included in the site construction plans and specifications for review and approval by EFSEC. The Certificate Holder shall dispose of sanitary and other wastes generated during construction at facilities authorized to accept such wastes.

The Certificate Holder shall properly dispose of all temporary structures not intended for future use upon completion of construction. The Certificate Holder also shall dispose of used timber, brush, refuse, or flammable materials resulting from the clearing of lands or from construction of the Project.

**ARTICLE VI: SUBMITTALS REQUIRED PRIOR TO THE  
BEGINNING OF COMMERCIAL OPERATION**

**A. Operations Stormwater Pollution Prevention Plan**

1. Operations Stormwater Pollution Prevention Plan. The Certificate Holder shall prepare an Operations Stormwater Pollution Prevention Plan (Operations SWPPP) in consultation with Ecology and submit it to EFSEC for approval at least sixty (60) days prior to the beginning of Commercial Operation. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval. The Operations SWPPP shall include an operations manual for permanent BMPs. The Operations SWPPP shall be prepared in accordance with the guidance provided in the Ecology *Stormwater Management Manual for Eastern Washington, September 2004* or as revised. The Certificate Holder shall periodically review the Operations SWPPP against the guidance provided in the applicable *Ecology Stormwater Management Manual*, and make modifications as necessary to the Operations SWPPP to comply with current requirements for BMPs.
2. Operations Spill Prevention, Control and Countermeasure Plan. The Certificate Holder shall prepare an Operations Spill Prevention, Control and Countermeasures Plan (Operations SPCCP) in consultation with Ecology and submit it to EFSEC for review and approval at least thirty (30) days prior to the beginning of commercial operation. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval. The Operations SPCCP shall be prepared pursuant to the requirements of 40 CFR Part 112, Sections 311 and 402 of the Clean Water Act, Section 402 (a)(1) of the Federal Water Pollution Control Act (FWPCA), and RCW 90.48.080. The Operations SPCCP shall include the Project Area, all Project structures and facilities on the Project Area, and all access roads. The Operations SPCCP shall be implemented within three (3) months of the beginning of Commercial Operation. The Operations SPCCP must be updated and submitted to the Council every two (2) years.

**B. Emergency Plans**

1. Operations Emergency Plan. No later than sixty (60) days prior to the beginning of Commercial Operation, the Certificate Holder shall submit for the Council's approval an Operations Emergency Plan for the Project to provide for employee safety in the event of emergencies. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval. The Certificate Holder shall coordinate development of the plan with local and state agencies that provide emergency response services in the Project Area. Periodically, the Certificate Holder shall provide the Council with updated lists of emergency personnel, communication channels, and procedures. The Operations Emergency Plan shall address in detail the procedures to be followed in the event of emergencies listed in Article IV.I.1.
2. Operations Fire Control Plan. The Certificate Holder shall develop an Operations Fire Control Plan in consultation with WDFW, and in coordination with other state and local

agencies to minimize the risk of accidental fire during operation and ensure effective response to any fire that does occur. No later than sixty (60) days prior to the beginning of Commercial Operation, the Certificate Holder shall submit the Plan to EFSEC for review and approval. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval.

## **ARTICLE VII: PROJECT OPERATION**

### **A. Technical Advisory Committee (TAC)**

The purpose of the Technical Advisory Committee (TAC) is to advise EFSEC on the effectiveness of mitigation measures as they have been implemented. TAC will also make recommendations to EFSEC if it deems additional studies or mitigation are warranted to address impacts that were either not foreseen in the Revised Application, or significantly exceed impacts that were projected. In order to make advisory recommendations to EFSEC, the TAC will review and consider results of the Project monitoring studies. The TAC will assess whether the post-construction restoration and mitigation and monitoring programs merit further studies or additional mitigation, taking into consideration factors such as the species involved, the nature of the impact, monitoring trends, and new scientific findings.

The TAC may include, but need not be limited to, representatives from WDFW, U.S. Fish and Wildlife Service, Ecology, EFSEC, Kittitas County and the Certificate Holder. EFSEC, at its discretion, may add additional representatives to the TAC from state, local, federal and tribal governments. All TAC members must be approved by EFSEC.

No later than sixty (60) days prior to the beginning of Site Preparation, the Certificate Holder shall contact the agencies and organizations listed above requesting that they designate a representative to the TAC, and that the agencies or organizations notify EFSEC in writing of their TAC representative and of their member's term of representation. No later than sixty (60) days prior to the beginning of Commercial Operation, the Certificate Holder shall convene the first meeting of the TAC.

The TAC will be convened as determined by EFSEC, except that EFSEC may terminate the TAC if: the TAC has ceased to meet due to member attrition; or, the TAC determines that all of the pre-permitting, operational and post-operational monitoring has been completed and further monitoring is not necessary; or the TAC members recommend that it be terminated; or, upon request by Certificate Holder, after the first year of operation of the Project.

The ultimate authority to require implementation of additional mitigation measures, including any recommended by the TAC, shall reside with EFSEC.

### **B. Water Discharge**

The Certificate Holder shall ensure that all stormwater control measures and discharges are consistent with the Operations SWPPP, required by Article VI.A.1 and the Ecology *Stormwater Management Manual for Eastern Washington, September 2004* or as revised.

### **C. Noise Emissions**

The Certificate Holder shall operate the Project in compliance with applicable Washington State Environmental Noise Levels, WAC 173-60.

### **D. Fugitive Dust Emissions**

The Certificate Holder shall continue to implement dust abatement measures as necessary.

### **E. Habitat, Vegetation and Wildlife BMPs**

During Project operations, the Certificate Holder shall implement appropriate operational BMPs to minimize impacts to plants and animals, especially impacts to special status species such as giant Palouse earthworm, sharp-tailed snake, Columbia spotted frog, sandhill crane, greater sage-grouse, and Bald and Golden Eagles.

In addition to those BMPs, the Certificate Holder shall also take the following steps to minimize impacts:

1. Implementation of the Operations Fire Control Plan developed pursuant to Article VI.B.3, in coordination with local fire districts, to avoid accidental wildfires and respond effectively to any fire that might occur.
2. Operational BMPs to minimize storm water runoff and soil erosion.
3. The Certificate Holder shall not use rodenticides to control rodent burrowing around inverter pads. In the event that the Certificate Holder believes the use of rodenticides is necessary, the Certificate Holder shall consult with WDFW and Ecology to develop a plan for appropriate application and use, and submit the plan to EFSEC for approval prior to implementation.
4. The Certificate Holder shall cooperate with WDFW in an effort to exclude deer and elk from the Project sites through the use of fencing with a minimum height of eight feet, with a single strand of barbed wire on top.
5. The Certificate Holder shall monitor the project for the first year of operation to determine whether there is any evidence of potential "lake effect." If such an effect is confirmed, mitigation shall be instituted by planting vegetation around panels, or using other strategies to reduce the risk of avian collisions.

### **F. Safety and Security**

1. Personnel Safety. The safety of operating personnel is governed by regulations promulgated under the Federal Occupational Safety and Health Act and the Washington

Industrial Safety and Health Act. The Certificate Holder shall comply with applicable federal and state safety laws and regulations (including regulations under the Federal Occupational Safety and Health Act and the Washington Industrial Safety and Health Act) as well as local and industrial codes and standards (such as the Uniform Fire Code).

2. Operations Phase Health and Safety Plan. No later than sixty (60) days before the beginning of Commercial Operation, the Certificate Holder shall develop and, after EFSEC approval, implement an Operations Phase Health and Safety Plan. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval. The Certificate Holder shall consult with local and state organizations providing emergency response services during the development of the plan to ensure timely response in the event of an emergency.
3. Operations Phase Site Security Plan. The Certificate Holder shall develop and implement an Operations Phase Site Security Plan. The Certificate Holder shall submit the Plan to EFSEC for review and approval no later than sixty (60) days before the beginning of Commercial Operation. The Certificate Holder shall not begin Commercial Operation prior to obtaining Council approval. The Plan shall include, but shall not be limited to, the following elements: controlling access to the site by any visitors, contractors, vendors, or suppliers; installing security lighting and fencing; and securing access to solar panels, pad transformers, pad-mounted switch panels and other outdoor facilities. A copy of the final Security Plan shall be provided to EFSEC and other agencies involved in emergency response.
4. Visitors Safety. The Certificate Holder shall require visitors to observe the safety plans and shall provide them with safety equipment where and when appropriate.

#### **G. Dangerous or Hazardous Materials**

The Certificate Holder shall handle, treat, store, and dispose of all dangerous or hazardous materials in accordance with Washington state standards for hazardous and dangerous wastes, WAC 463-40 and WAC 173-303. Following any abnormal seismic activity, volcanic eruption, severe weather activity, flooding, vandalism, or terrorist attacks the Certificate Holder shall inspect areas where hazardous materials are stored to verify that containment systems are operating as designed.

### **ARTICLE VIII: PROJECT TERMINATION, DECOMMISSIONING AND SITE RESTORATION**

#### **A. Detailed Site Restoration Plan**

The Certificate Holder shall submit a Detailed Site Restoration Plan to EFSEC for approval within ninety (90) days from the time the Council is notified of the termination of the Project. The Detailed Site Restoration Plan shall provide for restoration of the Project Site within the



timeframe specified in Article VIII.C, taking into account the Initial Site Restoration Plan and the anticipated future use of the Project Site. The Detailed Site Restoration Plan shall address the elements required to be addressed by WAC 463-42-665 (in effect at the date of submittal of the Application), and the requirements of the Council approved Initial Site Restoration Plan pursuant to Article IV.D of this Agreement. The Certificate Holder shall not begin Site Restoration activities without prior approval from the Council. The Certificate Holder shall consult with WDFW, and Ecology in preparation of the Detailed Site Restoration Plan.

## **B. Project Termination**

1. Termination of this Site Certification Agreement, except pursuant to its own terms, is an amendment of this Agreement.
2. The Certificate Holder shall notify EFSEC of its intent to terminate the Project, including by concluding the plant's operations, or by suspending construction and abandoning the Project.
3. The Council may terminate the SCA through the process described in WAC 463-66-090, and the Council may initiate that process where it has objective evidence that a certificate may be abandoned or when it deems such action to be necessary, including at the conclusion of the plant's operating life, or in the event the Project is suspended or abandoned during construction or before it has completed its useful operating life.

## **C. Site Restoration Timing and Scope**

Site Restoration shall be conducted in accordance with the commitments made in the draft Site Restoration Plan attached as Appendix F to the Application, and the Detailed Site Restoration Plan required by Article VIII.A (unless the Certificate Holder fails to submit such a plan), and in accordance with the following measures:

1. Timing. The Certificate Holder shall commence Site Restoration of the Project within twelve (12) months following the termination described in Article VIII.B above.

The period to perform the Site Restoration may be extended if there is a delay caused by conditions beyond the control of the Certificate Holder including, but not limited to, inclement weather conditions, equipment failure, wildlife considerations, or the availability of cranes or equipment to support decommissioning.

2. Scope. Site Restoration shall involve removal of the solar panels and mounting structures; removal of foundations or other Project facilities to a depth of four (4) feet below grade; restoration of any disturbed soil to pre-construction condition; and removal of Project access roads and overhead poles and transmission lines (except for any roads and/or overhead infrastructure that Project Area landowner wishes to retain) (all of which shall comprise "Site Restoration"). Site Restoration shall occur in the order of removing

the solar panels as the first priority and performing the remaining elements immediately thereafter.

3. Monthly Reports. If requested by EFSEC, the Certificate Holder shall provide monthly status reports until this Site Restoration work is completed.

**D. Site Restoration Financial Assurance**

1. Except as provided in Article VIII.D.3 below, the Certificate Holder or any Transferee, as the case may be, shall provide financial assurance sufficient, based on detailed engineering estimates, for required Site Restoration costs in the form of a surety bond, irrevocable letter of credit, or guaranty. The Certificate Holder shall include a detailed engineering estimate of the cost of Site Restoration in its Initial Site Restoration Plan submitted to EFSEC. The estimate must be based on the costs of the Certificate Holder or Transferee hiring a third party to carry out Site Restoration. The estimate may not be reduced for “net present value” or other adjustments. During the active life of the facility, the Certificate Holder or Transferee must adjust the Site Restoration cost estimate for inflation within sixty days prior to the anniversary date of the establishment of the financial instrument used to provide financial assurance and must increase the financial assurance amount accordingly to ensure sufficient funds for Site Restoration.
2. The duty to provide such financial assurance shall commence thirty (30) days prior to the beginning of Construction of the Project, and shall be continuously maintained through to the completion of Site Restoration. Construction of the Project shall not commence until adequate financial assurance is provided. On or before the date on which financial assurance must be established, the Certificate Holder shall provide EFSEC with one of the following financial assurance mechanisms that is reasonably acceptable to EFSEC:
  - a) *Surety Bond*. The Certificate Holder or any Transferee, as the case may be, shall provide financial security for the performance of its Site Restoration obligations through a Surety Bond issued by a surety listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The Performance Bond shall be in an amount equal to the Site Restoration costs. A standby trust fund for Site Restoration shall also be established by the Certificate Holder or Transferee to receive any funds that may be paid by the surety to be used to complete Site Restoration. The surety shall become liable for the bond obligation if the Certificate Holder or Transferee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least one hundred twenty days after the Certificate Holder or Transferee and EFSEC have received notice of cancellation. If the Certificate Holder or Transferee has not provided alternate financial assurance acceptable under this SCA within ninety days of the cancellation notice, the surety shall pay the amount of the bond into the standby Site Restoration trust; or

- b) *Irrevocable Letter of Credit.* The Certificate Holder or any Transferee, as the case may be, shall provide financial security for the performance of its Site Restoration obligations through an irrevocable letter of credit payable to or at the direction of EFSEC, that is issued by an institution that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency. The letter of credit shall be in an amount equal to the Site Restoration costs. A standby trust fund for Site Restoration shall also be established by Certificate Holder or Transferee to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit shall be irrevocable and issued for a period of at least one year, and renewed annually, unless the issuing institution notifies the Certificate Holder or Transferee and EFSEC at least one hundred twenty days before the current expiration date. If the Certificate Holder or Transferee fails to perform Site Restoration, or if the Certificate Holder or Transferee fails to provide alternate financial assurance acceptable to EFSEC within ninety days after notification that the letter of credit will not be extended, EFSEC may require that the financial institution provide the funds from the letter of credit to be used to complete Site Restoration; or
- c) *Guaranty.* Certificate Holder or any Transferee, as the case may be, shall provide financial assurance for the performance of its Site Restoration obligations by delivering a guaranty to fund the Certificate Holder or Transferee's Site Restoration obligations hereunder from an entity that meets the following financial criteria:
- i. A current rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;
  - ii. Tangible net worth at least six times the sum of the current Site Restoration cost estimates;
  - iii. Tangible net worth of at least ten million dollars; and
  - iv. Assets in the United States amounting to at least ninety percent of its total assets or at least six times the sum of the current Site Restoration cost estimates.

The guarantor entity's chief financial officer shall provide a corporate guaranty that the corporation passes the financial test at the time the Initial Site Restoration Plan is filed. This corporate guaranty shall be reconfirmed annually ninety days after the end of the corporation's fiscal year by submitting to EFSEC a letter signed by the guaranteeing entity's chief financial officer that:

- i. Provides the information necessary to document that the entity passes the financial test;

- ii. Guarantees that the funds to finance required Site Restoration activities are available;
- iii. Guarantees that required Site Restoration activities will be completed;
- iv. Guarantees that within thirty days if written notification is received from EFSEC that the entity no longer meets the above financial criteria, the entity shall provide an alternative form of financial assurance consistent with the requirements of this section;
- v. Guarantees that the entity's chief financial officer will notify in writing the Certificate Holder or Transferee and EFSEC within fifteen days any time that the entity no longer meets the above financial criteria or is named as debtor in a voluntary or involuntary proceeding under Title 11 U.S.C., Bankruptcy;
- vi. Acknowledges that the corporate guaranty is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guaranty;
- vii. Attaches a copy of the independent certified public accountant's report on examination of the entity's financial statements for the latest completed fiscal year; and
- viii. Attaches a special report from the entity's independent certified public accountant (CPA) stating that the CPA has reviewed the information in the letter from the entity's chief financial officer and has determined that the information is true and accurate.

If the Certificate Holder or any Transferee fails to perform Site Restoration covered by the guaranty in accordance with the approved Initial or Final Site Restoration plan, the guarantor will be required to complete the appropriate activities. The guaranty will remain in force unless the guarantor sends notice of cancellation by certified mail to the Certificate Holder or Transferee and EFSEC. Cancellation may not occur, however, during the one hundred twenty days beginning on the date of receipt of the notice of cancellation by the Certificate Holder or Transferee and EFSEC. If the Certificate Holder or Transferee fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from EFSEC within ninety days after receipt of a notice of cancellation of the guaranty from the guarantor, the guarantor will provide such alternative financial assurance in the name of the Certificate Holder or Transferee.

3. If the SCA is transferred after its effective date pursuant to applicable EFSEC laws and regulations, EFSEC has the right to require, consider, and approve other financial security that would provide for the Certificate Holder's performance of its Site Restoration obligations pursuant to Articles VIII.C and VIII.D of this Site Certification Agreement.

**ARTICLE IX: SITE CERTIFICATION AGREEMENT - SIGNATURES**

Dated and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

FOR THE STATE OF WASHINGTON

\_\_\_\_\_  
Jay Inslee, Governor

FOR TUUSSO ENERGY, LLC

\_\_\_\_\_  
Jason Evans  
General Counsel and Vice President of Business Development  
TUUSSO Energy, LLC

**ATTACHMENT 1**  
Penstemon Solar Project  
Site-Specific Descriptions, Plans and Conditions

**Site Description**

The Certificate Holder plans to construct a new photovoltaic (PV) solar facility on approximately 39.38 acres of private agricultural land, which would connect into the existing Puget Sound Energy (PSE) distribution transmission line along Tjossem Road, located southeast of Ellensburg, in unincorporated Kittitas County, Washington. The Penstemon Solar Project is intended to provide up to 5 MW of solar energy to PSE for use within their service area.

The Penstemon Solar Project site is active agricultural land, for growing export hay products (such as timothy and alfalfa), located immediately southwest of the intersection of Tjossem Road and Moe Road. The project would be located approximately 4 miles southeast of the Ellensburg city center, in Section 17, T17N, R19E, Willamette Meridian (Figure 2.1-4). Topography of the site slopes to the south, with surface elevations ranging from 1,498 to 1,509 feet amsl.

The Penstemon Solar Project site would be located on land zoned as Commercial Agriculture, and would be a permitted conditional use under KCC 17.15.050.01.

**Legal Description**

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 17 NORTH, RANGE 19 EAST, W.M., IN THE COUNTY OF KITTITAS, STATE OF WASHINGTON;

EXCEPT:

RIGHT OF WAY OF TJOSSEM AND MOE COUNTY ROADS.

CONTAINS 39.38 ACRES.

**Site-Specific Conditions**

The conditions set forth above apply to this Project Site. In addition, for the sake of clarity, the following conditions apply particularly to the Penstemon Project Site.

## **PLANS, APPROVALS AND ACTIONS REQUIRED PRIOR TO CONSTRUCTION**

### **A. Actions Prior to Construction**

1. Cultural and Archaeological Resources Plan. Prior to construction, the Certificate Holder shall obtain a Department of Archaeology and Historic Preservation (DAHP) excavation permit for site 45KT4012 identified on the Penstemon Project Site and perform all necessary archaeological work in order to comply with RCW 27.53.

### **B. Habitat, Vegetation, and Fish and Wildlife Mitigation**

1. Habitat Restoration and Mitigation Plan. Prior to the beginning of Site Preparation, the Certificate Holder shall develop a Habitat Restoration and Mitigation Plan, including the general plans set forth above, as well as the following site-specific plans, in consultation with WDFW.
- a) In consultation with WDFW, the Certificate Holder shall develop the plan to require all temporarily disturbed areas to be reseeded with an appropriate mix of plant species that are adapted to local site conditions and will become established quickly, such as, but not limited to, native plant species, in a manner and sequence that will maximize the likelihood of successful restoration of the area and prevent the spread of noxious weeds. Based on the local conditions at the Penstemon Project Site and surrounding area, the plant species may comprise grasses like those currently in production on the Project Site and in surrounding agricultural fields. The Plan shall include a restoration schedule that identifies timing windows during which restoration should take place, and an overall timeline for when all restoration activities will be completed.
  - b) The Certificate Holder will also compensate for habitat impacts of the Penstemon Project by submitting a plan for EFSEC approval detailing riparian habitat enhancement within a 100-foot buffer of Coleman Creek. The plan will include the following:
    - Planting native riparian plants within the riparian area buffer where current vegetation has been reduced or eliminated from agricultural practices.
    - Establishing benchmarks and a timeline for revegetation success, and monitoring revegetation activities in the riparian areas to ensure success.

**C. Construction Mitigation**

1. Construction Stormwater Pollution Prevention Plan

In addition to the requirements set forth above, the Construction SWPPP prepared for the Penstemon Solar Project shall provide special attention to control of any and all runoff from the project and its roads into Coleman Creek.

2. Construction Plans / Specifications

At least sixty (60) days prior to the beginning of Construction, the Certificate Holder shall submit to EFSEC or its designated representative for approval those construction plans, specifications, drawings, and design documents that demonstrate the Project design will be in compliance with the conditions of this Agreement. The plans will satisfy the general criteria set forth above, as well as the following site-specific criteria.

- a) The construction plans and specifications will apply a 100-foot minimum setback from Coleman Creek to any electrical generation equipment, as well as compliance with updated (draft) Kittitas County Critical Areas Ordinances for the protection of riparian areas.

**D. Water Rights**

At least sixty (60) days prior to the beginning of Construction, the Certificate Holder shall submit to EFSEC or its designated representative for approval evidence that the landowner of the Penstemon Project site intends to maintain its shares with the Ellensburg Water Company such that those shares will be available at the end of the Penstemon Solar Project and the land could be returned to its current state, if the landowner so chooses.

**PROJECT CONSTRUCTION MITIGATION MEASURES**

**A. Light, Glare, and Aesthetics**

The Certificate Holder shall implement mitigation measures to minimize light and glare impacts. In particular, landscaping with appropriate vegetation will be planted as shown in the site plans submitted with the Application, and perimeter fencing will be erected around the Project Site.



## **Attachment 2**