

**SITE CERTIFICATION AGREEMENT  
BETWEEN**

**THE STATE OF WASHINGTON**

**AND**

**OSTREA SOLAR, LLC**



**For the**

**OSTREA SOLAR PROJECT  
YAKIMA COUNTY, WASHINGTON  
EXECUTED APRIL 6, 2023**

**ENERGY FACILITY SITE EVALUATION COUNCIL  
OLYMPIA, WASHINGTON**

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FOR THE OSTREA SOLAR PROJECT  
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**Attachments**

1. Council report to the Governor Recommending Site Certification entered February 17, 2023

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

**between**

**THE STATE OF WASHINGTON**

**and**

**OSTREA SOLAR, 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 Ostrea Solar, LLC (OS or Certificate Holder).

Cypress Creek Renewables, LLC (CCR) 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 a solar powered generation facility by its subsidiary Ostrea Solar, LLC, to be located in Yakima County, Washington. The Council reviewed Application 220212, conducted public meetings, and by order recommended approval of the application and a Site Certification Agreement by the Governor. On \_\_\_\_\_, 2023, the Governor approved the Site Certification Agreement authorizing Ostrea Solar, LLC to construct and operate the Ostrea 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(2).

## **ARTICLE I: SITE CERTIFICATION**

### **A. Site Description**

The Certificate Holder plans to construct and operate a solar photovoltaic (PV) project with an optional battery storage system on eight parcels of land within the Agricultural Zoning District in unincorporated Yakima County 22 miles east of city of Moxee.

The Project will consist of PV panels, single axis tracking PV modules and inverters, an electrical collection system, a Battery Energy Storage System (BESS), an operation and maintenance building, access roads, interior roads, security fencing, a collector substation, and electrical interconnection infrastructure. The Maximum Extent of the Project will not exceed 811.3 acres. The Project will have a combined maximum generating capacity of 80 megawatts alternating current (AC).

The Project will interconnect through a line tap to Bonneville Power Administration's (BPA's) Moxee to Midway 115 kV transmission line that runs through the southern part of the Project. The Project will be accessed on the west side of the Project from Washington State Route 24.

### **B. Site Certification**

The State of Washington hereby authorizes OS and any and all parent companies, and any and all assignees or successors approved by the Council, to construct and/or operate the Ostrea Solar Project as described herein, subject to the terms and conditions set forth in Council Report to the Governor Recommending Site Certification (Attachment 1 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 Application for Site Certification (ASC) submitted by CCR on April 7, 2022.

This Agreement authorizes the Certificate Holder to construct the Ostrea Solar Project such that Substantial Completion is achieved no later than ten (10) years from the effective date of the SCA.

If the Certificate Holder does not begin construction of the Project within five (5) years of the effective date of the SCA, then at least ninety days prior to the end of the five year period, the Certificate Holder must report to the Council its intention to continue and will certify that the representations in the SCA, 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 effective date of the SCA all rights under this SCA will cease.

## C. Project Description

The Ostrea Solar Project will consist of:

1. *Solar Modules.* The photovoltaic solar modules, commonly known as solar panels, are electrical devices that convert the energy of light directly into electricity by the photovoltaic effect.
2. *Tracking System.* The panels are mounted together into solar arrays on a steel racking system which utilizes a single-axis tracking system.
3. *Posts.* The tracking system is secured to steel posts, also known as piles, which serve as the foundation. The piles are driven or screwed into the ground to a depth of approximately eight to 10 feet depending on site specific soil conditions.
4. *Cabling and Collector Lines.* Throughout the Project, electric cables transmit the electric current produced by the solar arrays to pad-mounted inverters and transformers. Electric cables will be both above and below ground between the arrays and inverters. Final depth of buried cables will generally not be deeper than 48 inches.
5. *Inverters and Transformers.* The electricity produced by the panels is in direct current (DC) form and is converted by inverters into alternating current (AC). The step up transformer will increase the voltage to 115 kV to meet the voltage for the transmission line. The inverters and step-up transformer are mounted on concrete pads located adjacent to the POI.
6. *Facility Substation.* The Facility Substation consists of the main step-up transformer to increase the voltage to 115 kV for interconnection to the grid and the control house which houses protective equipment including communications equipment, circuit breakers, disconnect switches and relays.
7. *Operations and Maintenance Building.* The Project includes an Operations and Maintenance (O&M) trailer with employee parking which consists of a trailer with office space, storage space, a bathroom, onsite septic, and breakroom facilities. The employee parking area will be gravel.
8. *Civil Infrastructure.* Infrastructure will include access gates, internal access roads, and security fencing.
9. *Battery Energy Storage System.* The Project includes a battery energy storage system (BESS). The BESS allows for the storing excess solar-generated electricity and supplying it back to the grid when needed.

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 infrastructure, is generally described in the ASC, as modified within the Agreement. The final location of the solar panels and other project facilities within the



Project Footprint may vary from the locations shown on the conceptual drawings provided in the ASC 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.S.

## ARTICLE II: DEFINITIONS

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

1. “Application” or “ASC” means the *Application for Site Certification*, designated No. 220212, submitted on April 7, 2022ASC.
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 Ostrea Solar, LLC, any and all parent company(s), or an assignee or successor in interest authorized by the Council.
6. “Ostrea Solar Project” or “Project” means those Ostrea Solar Project facilities described in the ASC, including: solar panels and their construction areas; electrical collection/interconnection and communication systems; electrical step-up and interconnection transformers; optional Battery Energy Storage System; access roadways; temporary construction-related facilities; and other related Project facilities. The specific components of the Project are identified in Article I.C.
7. “Construction” means any of the following activities: Project Site clearing, grading, earth moving, cutting or filling, excavation, preparation of roads and/or laydown areas, 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.
8. “County” means Yakima County, Washington.
9. “DAHP” means the Washington State Department of Archaeology and Historic Preservation.
10. “Ecology” means the Washington State Department of Ecology.
11. “Effective date” means the date on which the Governor executes this Agreement, although the Agreement must also be signed by the Applicant to become binding.
12. “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.
13. “EFSEC Costs” means any and all reasonable costs, both direct and indirect, actually incurred by EFSEC with respect to this Site Certification Agreement (SCA), including but not limited to monitoring, staffing, and SCA maintenance.

14. “End of Construction” means the time when all Project facilities have been substantially constructed and are in operation.
15. “Project Footprint” means the actual footprint of the Project within the 811.3 acre Maximum Project Extent where the facility is planned to be located, as described in greater detail in Section 2.A.2 of the ASC.
16. “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 Footprint.
17. “NPDES Permit” means National Pollutant Discharge Elimination System permit.
18. “RCW” means the Revised Code of Washington.
19. “Revised MDNS” means the Revised Mitigated Determination of Non-Significance issued on October 28, 2022 by EFSEC.
20. “Site,” or “Project Site,” means the land identified in the Application on which the Ostrea Solar Project is to be constructed and operated, namely, the up to 811.3-acre Ostrea site as described in greater detail in Section 1.A and 2.A of the ASC.
21. “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.
22. “State” or “state” means the State of Washington.
23. “Substantial Completion” means the Project is generating and delivering energy to the electric power grid.
24. “WAC” means the Washington Administrative Code.
25. “WDFW” means the Washington Department of Fish and Wildlife.
26. “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 Footprint 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 ASC and mitigation requirements included in the October 28, 2022 Revised MDNS, 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 enforcement 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, 621 Woodland Square Loop SE, PO Box 43172, Olympia, WA 98504-3172, 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 Ostrea Solar, LLC, 3402 Pico Blvd, Santa Monica, CA 90405 c/o General Counsel, legal@ccrenew.com.

**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 Submittals 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 all EFSEC costs incurred during the construction and operation of the Project to assure compliance with the conditions of this Agreement, as required by RCW 80.50.071(2). The amount and manner of payment shall be prescribed by EFSEC pursuant to applicable procedures.

The Certificate Holder shall deposit with EFSEC a sum to guarantee payment of all EFSEC Costs as defined in Article II.12, consistent with RCW 80.50.071(2)(a), for the period commensurate with the activities of this Agreement.

**H. Site Restoration**

The Certificate Holder is responsible for site restoration pursuant to the Council’s rules, WAC 463-72, 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.F of this Agreement 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. 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, 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.

4. In circumstances where the Project causes a significant adverse impact on the environment not previously analyzed or anticipated by this Agreement, 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 Federal statutes and regulations;
2. Applicable State of Washington 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 affect 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 Director authority to approve or deny the construction and operational plans required by this Agreement. The EFSEC Director shall ensure that the construction and operational plans have been sufficiently reviewed prior to approval.
2. The EFSEC Director 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. Plan Submission Requirements**

All identified plans and submissions must adhere to the requirements and obligations set forth in relevant regulation, this Agreement, the Revised MDNS, and the ASC.

Unless otherwise noted, all plans and submissions required prior to beginning site construction activities are required to be filed with EFSEC ninety (90) days prior the start of Construction. The Certificate Holder shall not begin Construction activities prior to all applicable elements of the required plans or commitments outlined in this Agreement, the Revised MDNS, and the ASC being in place, and Council approval of required plans and authorization to begin construction has been obtained.

### **B. Notice of Federal, State, and Local 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, State, and Local 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 permits have been obtained, no later than ten (10) business days after the permit has been issued.

### **C. 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 Attachment O of the ASC, those identified in the SEPA Staff Memo and Supplemental Memo, and those presented in the Revised MDNS. 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.

### **D. Construction Stormwater Pollution Prevention Plan**

1. Notice of Intent. 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. 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, 2021 or as revised. The Certificate Holder shall include

measures for temporary erosion and sedimentation control in the Construction SWPPP

**E. Construction Spill Prevention, Control and Countermeasures Plan**

The Certificate Holder shall develop a Construction Spill Prevention, Control, and Countermeasures Plan (Construction SPCCP) in the event that quantities of materials maintained on site are of sufficient quantity to qualify, consistent with the requirements of 40 CFR Part 112 and shall adhere to requirements identified in this agreement and the ASC. The Construction SPCCP shall include the Project Footprint, 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 the above requirements. The Certificate Holder shall provide a copy to Ecology for comment.

**F. 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 in consultation with EFSEC staff pursuant to the requirements of WAC 463-72-040 in effect on the date of Application. The objective of the Plan shall be to restore the Project Site to approximate pre-Project condition or better.

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 Plan shall include the following elements:

1. A detailed engineering estimate of 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.
2. Decommissioning Timing and Scope, as required by Article VIII.C of this Agreement.
3. Decommissioning Funding and Surety, as required by Article VIII.D of this Agreement.
4. Mitigation measures described in the Revised MDNS, the ASC, and this Agreement.
5. 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.
6. 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.
7. An initial plan for demolishing facilities, salvaging equipment, and disposing of waste materials.

8. 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. In particular, if the Certificate Holder constructs the Project with solar panels incorporating hazardous materials, such as Cadmium Telluride, then the Certificate Holder shall use appropriate precautions during decommissioning and removal of the solar panels to safely dispose of and to avoid, and, if necessary, remediate any soil contamination resulting from the panels' hazardous materials.

9. 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.

10. Provisions for preservation or removal of Project facilities if the Project is suspended or terminated during construction.

**G. Habitat Restoration and Mitigation Plan.**

The Certificate Holder shall develop a Habitat Restoration and Mitigation Plan, in consultation with EFSEC staff and WDFW.

1. The Plan shall specify the Certificate Holder's plan for meeting Compensatory Mitigation Obligations. The Certificate Holder's Compensatory Mitigation Obligations will be met through the mechanisms identified in the Revised MDNS and associated staff memos.

2. Pre-construction Project layout drawings will show expected permanent and temporary land disturbances.

3. 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). In the event of such determination, WDFW shall provide evidence of such exceedance of impacts. Supplemental Mitigation, if any, would be proportional to impacts and 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. Any supplemental mitigation would be established in coordination with WDFW and reviewed and approved by the Council prior to implementation.

**H. Vegetation and Weed Management Plan**

The Certificate Holder shall develop a Vegetation and Weed Management Plan, in consultation with EFSEC staff, WDFW, and Ecology.

1. The Plan must address vegetation management activities related to Project construction and operation.

2. The Certificate Holder shall develop the Plan to require all temporarily disturbed areas



to be reseeded with an appropriate native seed mix selected in coordination with WDFW.

3. In consultation with WDFW, 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.

4. The Plan shall also include benchmarks and a timeline for revegetation success, and a plan for monitoring revegetation to ensure success.

5. This plan must address the requirements set forth in YCC 16C.11.070 and WAC 463-60-332(3).

6. The Plan must specify methods that will be implemented for effective noxious weed control and revegetation.

7. The plan must identify mowing schedule for vegetation maintenance and must be restricted March 15 to May 15 and limited to the extent practicable from February 1 to March 15 and May 15 to September 30.

**I. Surface Waters**

1. Field verification of seasonal wetlands will be verified by Ecology prior to the start of construction and impacts identified to wetlands or buffer areas shall be mitigated in accordance with this Agreement, the Revised MDNS, and the ASC.

**J. Construction Traffic Control Plan**

The Certificate Holder shall develop a Construction Traffic Control Plan, in consultation with EFSEC and WSDOT.

1. The Traffic Control Plan must address traffic management during improvement of highway access.

2. The plan must contain measures to facilitate safe movement of vehicles in the vicinity of the construction zone and be in accordance with 23 CFR Part 655, Subpart F.

**K. Cultural and Archaeological Resources Unanticipated Discovery Plan**

With the assistance of an experienced archaeologist, and in consultation with EFSEC, Department of Archaeology and Historic Preservation (DAHP), and any concerned Tribes, the Certificate Holder shall develop a Cultural and Archaeological Resources Unanticipated Discovery Plan for monitoring construction activities and responding to the discovery of archaeological resources or buried human remains.

1. Prior to construction, the Certificate Holder shall obtain any necessary DAHP permits and perform any additional necessary archaeological work in order to comply with RCW 27.53.

2. The Certificate Holder shall adhere to the proposed 100-foot buffers around identified

sites 45YA1587 and 45YA1920. Should work need to occur within these boundaries, or any sites newly discovered during construction activities, the Certificate Holder shall obtain all necessary DAHP permits and perform all necessary archaeological work in order to comply with RCW 27.53 prior to disturbing the site.

- a. If ground disturbing activities are to occur in the vicinity of the above identified sites a Cultural and Archaeological Resources Monitoring and Mitigation Plan is required to be developed in accordance with item 4 below.

3. The Certificate Holder shall provide copies of the draft Plan for comment to the Yakama Nation and other potentially affected tribes prior to submitting the plan for EFSEC approval.

4. The Plan shall include, but not be limited to, the following:

- a. A copy of the final construction and micro-siting plans for the Project and shall provide for the avoidance of archaeological sites where practical.
- b. For sites to be avoided, the boundaries of identified cultural resources and buffer zones located within project boundaries 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.
- c. The Plan shall address alternative mitigation measures developed in coordination with DAHP and affected tribes to be implemented if it is not practical to avoid archaeological sites or isolates.
- d. The Plan shall address the possibility of the unanticipated discovery of archaeological artifacts during construction.
- e. 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, and any affected Tribes and, in the case of human remains, the County Coroner or Medical Examiner.
  - i. 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.
  - ii. The Certificate Holder Shall develop a Cultural and Archaeological Resources Monitoring and Mitigation Plan in coordination with the Yakama Nation, other effected Tribes and DAHP and submit the plan for EFSEC for final approval.
  - iii. 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.

**L. Construction Emergency Plan**

The Certificate Holder shall prepare and submit a Construction Emergency Plan

1. The Certificate Holder shall coordinate development and implementation of the Plan with applicable local and state emergency services providers.
2. 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.
3. The construction specifications shall require contractors to implement a safety program that includes an Emergency Pan.
4. The Construction Emergency Plan shall include consideration of the items identified in Table 2-4 of the ASC.

**M. Construction Fire Control Plan**

The Certificate Holder shall develop and implement a Construction 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 Footprint at any time. The Certificate Holder shall submit the Fire Control Plan to EFSEC for review and approval at least ninety (90) days prior to Construction and provide a copy to Yakima County Fire District #4. The Certificate Holder shall not begin Construction prior to obtaining EFSEC approval of the Fire Control Plan.

**N. Construction Health and Safety Plan**

The Certificate Holder shall develop and implement a Construction Health and Safety Plan in consultation with local and state organizations providing emergency response services to ensure timely response in the event of an emergency.

**O. Construction Site Security Plan**

The Certificate Holder shall develop and implement a Construction Site Security Plan in consultation with local and state organizations providing emergency response services.

**P. Utilities**

1. The Certificate Holder Shall identify the source of potable water for use during project operations and provide to EFSEC confirmation of availability of water via a drinking well permit or some other agreed upon mechanism for supply of potable water.
2. The Certificate Holder Shall provide certification of water availability for process waters used for site construction to include vegetation management and solar panel

washing.

**Q. Construction Management Plan**

The Certificate Holder shall, with the assistance of Council staff, develop a detailed Construction Management Plan in consultation with affected state and local agencies.

1. The Plan shall address the Construction phases for the Project and shall be generally based on the mitigation measures contained in this Agreement and the ASC.
2. The plan shall identify the construction management protocols used to address the mitigation measures contained in this Agreement and the ASC.

**R. Construction Schedule**

No later than thirty (30) days prior to the beginning of Construction, 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.

**S. Construction Plans and Specifications**

The Certificate Holder shall submit to EFSEC those construction plans, specifications, drawings, and design documents that demonstrate the Project design will be in compliance with the conditions of this Agreement.

1. The Certificate Holder shall also provide copies to WDFW, Ecology, DAHP and other agencies as EFSEC may direct, for comment.
2. The plans shall include the overall Project site plans, equipment and material specifications.
3. The construction plans and specifications shall be in compliance with Yakima County construction and building codes.
4. The plans shall identify any items relevant to the mitigation measures contained in this Agreement, the Revised MDNS, and the ASC.
5. 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.
6. 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 to minimize disturbance of existing habitat. The final design shall be subject to approval by EFSEC as part of the overall construction plans and specifications.

## **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 an Environmental Compliance Program in consultation with the EM and other EFSEC designees.

a. 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 Revised MDNS, and the ASC.

b. The Environmental Compliance program shall develop inspection criteria used to ensure relevant mitigation commitments, approved plans, and program avoidance activities are adhered to. Inspection criteria shall include inspection checklist items, "stop work" criteria, and procedures for responding to stop work notices and program deficiencies. 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 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. Failure to correct a violation at the request of the EM may be considered by EFSEC in exercising its authority under RCW 80.50.155 to issue penalties to persons who violate the SCA or an EFSEC issued permit.

### **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 following the start of construction.

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 Yakima 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**

The Certificate Holder shall use construction techniques and BMPs to minimize potential impacts to habitat and wildlife. In particular, construction of the Project shall be performed in accordance with mitigation items identified in the Revised MDNS and Section 4.9.D of the ASC.

**F. Construction Noise**

The Certificate Holder shall use construction techniques and BMPs to minimize potential impacts of construction related noise. In particular, construction of the Project shall be performed in accordance with mitigation items identified in the Revised MDNS and Attachment O of the ASC.

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

**H. 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.

**I. Light, Glare, and Aesthetics**

Lighting

1. The Certificate Holder shall implement mitigation measures to minimize light and

glare impacts as described in Attachment O of the ASC and the Revised MDNS.

2. The Certificate Holder shall minimize outdoor lighting to safety and security requirements. The Certificate Holder shall avoid the use of steady-burning, high intensity lights and utilize downward-directed lighting.

#### Glare

1. Solar panels with an anti-reflective coating shall be utilized.

#### Aesthetics

1. The Certificate Holder must institute the measures identified in the Revised MDNS regarding potential visual and aesthetic impacts once a final project design has been completed.

2. No later than sixty (60) days prior to the beginning of Construction, the Certificate Holder shall submit to EFSEC for their review and approval any additional proposed mitigation measures resulting from the analysis conducted in accordance with mitigation measure 15 of the Revised MDNS.

#### **J. 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.

1. The Certificate Holder shall dispose of sanitary and other wastes generated during construction at facilities authorized to accept such wastes.

2. The Certificate Holder shall properly dispose of all temporary structures not intended for future use upon completion of construction.

3. 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. Plan Submission Requirements**

All identified plans and submissions must adhere to the requirements and obligations set forth in relevant regulation, this Agreement the Revised MDNS, and the ASC.

Unless otherwise noted all plans and submissions required prior to beginning site operation are required to be filed with EFSEC ninety (90) days prior to the Beginning of Commercial Operation. The Certificate Holder shall not begin operation prior to all applicable elements of the required plans or commitments outlined in this Agreement, the Revised MDNS, and the ASC are in place and Council approval of required plans and authorization to begin operation has been obtained.

**B. Operations Stormwater Pollution Prevention Plan**

The Certificate Holder shall prepare an Operations Stormwater Pollution Prevention Plan (Operations SWPPP) in consultation with Ecology.

1. The Operations SWPPP shall include an operations manual for permanent BMPs.
2. The Operations SWPPP shall be prepared in accordance with the guidance provided in the Ecology *Stormwater Management Manual for Eastern Washington, September 2019* or as revised.
3. The Certificate Holder shall annually 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.
4. The Operations SWPPP shall specify that water used for washing of the solar panels is to not contain any solvents or other additives.

**C. 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, in the event that quantities of materials maintained on site are of sufficient quantity to qualify.

1. 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.
2. The Operations SPCCP shall include the Project Footprint and all access roads as appropriate.
3. The Operations SPCCP shall be implemented within three (3) months of the beginning of Commercial Operation.
4. The Operations SPCCP must be updated and submitted to the Council every two (2) years.

**D. Vegetation and Weed Management Plan**

The Certificate Holder shall develop an updated Vegetation and Weed Management Plan, in consultation with EFSEC staff, WDFW, and Ecology.

1. The updated plan must address any relevant changes to the vegetation or weed management requirements and protocols identified prior to beginning site operation.

**E. Operations Emergency Plan**

The Certificate Holder shall submit for the Council's approval an Operations Emergency Plan for the Project to provide for employee and public safety in the event of emergencies.



1. The Certificate Holder shall coordinate development of the plan with local and state agencies that provide emergency response services in the Project Footprint.
2. Periodically, the Certificate Holder shall provide the Council with updated lists of emergency personnel, communication channels, and procedures.
3. The Operations Emergency Plan shall address in detail the procedures to be followed in the event of emergencies listed in Table 2-4 of the ASC

**F. Operations Fire Control Plan**

The Certificate Holder shall develop an Operations Fire Control Plan in coordination with state and local agencies to minimize the risk of accidental fire during operation and ensure effective response to any fire that does occur.

1. The Fire Control Plan must consider and address potential wildfire risk minimization and response.

**G. Operations Health and Safety Plan.**

The Certificate Holder shall develop and, after EFSEC approval, implement an Operations Health and Safety Plan.

1. 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.

**H. Operations Site Security Plan.**

The Certificate Holder shall develop and implement an Operations Phase Site Security Plan.

1. The Plan shall include, but shall not be limited to, the following elements:
  - a. Controlling access to the site by any visitors, contractors, vendors, or suppliers;
  - b. Installing security lighting and fencing; and securing access to solar panels, pad transformers, pad-mounted switch panels and other outdoor facilities.
2. A copy of the final Security Plan shall be provided to EFSEC and other agencies involved in emergency response.

**ARTICLE VII: PROJECT OPERATION**

**A. Plan Implementation and Adherence**

The Certificate Holder shall adhere to and implement the provisions of the required plans, submittals, permits, the Revised MDNS, the ASC, and any relevant regulation during project operation.

**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.B and the Ecology *Stormwater Management Manual for Eastern Washington, September 2019* or as revised.

**C. Noise Emissions**

The Certificate Holder shall operate the Project in compliance with applicable Washington State environmental noise regulations WAC 173-60, WAC 463-62-030, WAC 173-58, and RCW 70A.20.

**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. 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.F, 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. Implementation of compensatory mitigation measures identified in the Revised MDNS must be finalized within 6 months of start of Beginning of Commercial Operation.
4. Implementation of a plan to monitor revegetation and noxious weed control success and erosion caused by wind events. If deficiencies are confirmed, mitigation measures shall be instituted which shall be developed in coordination with WDFW and approved by EFSEC.

**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. 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 including but not limited to those related to any battery backup power sources or the optional battery energy storage system in accordance with Washington state standards for

hazardous and dangerous wastes, WAC 463-74 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.

#### **H. Utilities**

1. The Certificate Holder shall provide certification of water availability for process waters used for site operation and maintenance to include potable water for site operations staff, vegetation management, and solar panel washing on an annual basis.

#### **I. Neighboring Land Uses**

Yakima County is a “Right to Farm” County, codified in Yakima County Code 6.22. This project is located within an agricultural area, and will be subject to impacts from nearby pre-existing agricultural practices including, but not limited to: marketed produce at roadside stands or farm markets, noise, odors, dust, fumes, operation of machinery and irrigation pumps, ground and aerial seeding and spraying, the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides and associated drift of such materials; and the employment and use of labor. Impacts resulting from these activities shall not be found to be a public or private nuisance if the farm operation was in existence before the date of this agreement.

### **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 463-72-020, and the requirements of the Council approved Initial Site Restoration Plan pursuant to Article IV.F 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 Detailed Site Restoration Plan required by Article VIII.A 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 other equipment to support decommissioning.

1. 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 Footprint landowner wishes to retain) (all of which shall comprise "Site Restoration"). Site Restoration shall also include the use of appropriate precautions during decommissioning and removal of any hazardous material to safely dispose of and to avoid, and, if necessary, remediate any soil contamination resulting from the hazardous materials.

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

3. Restoration Oversight. At the time of Site Restoration, the Project Site will be evaluated by a qualified biologist to determine the extent of and type of vegetation existing on the site. Success criteria for Site Restoration will be established prior to commencement of decommissioning activities, based on the documented pre-construction conditions, experience gained with re-vegetation during operation and the condition of the Project Site at the time of Site Restoration. The restoration success criteria will be established in the Detailed Site Restoration Plan approved by EFSEC in consultation with the designated biologist. Once restoration of the Project Site is determined to be complete, a final report of restoration activities and results will be submitted to EFSEC in consultation with the designated biologist, for review and approval.

**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 must also provide pollution liability insurance coverage in an amount justified for the project. 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 EFSEC 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 sixty (60) 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.
- d. 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.

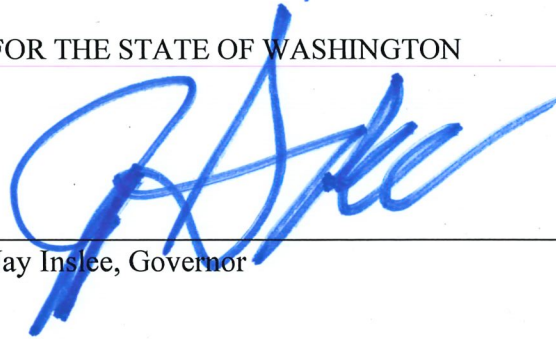
e. If the Certificate Holder or any Transferee fails to perform Site Restoration covered by the guaranty in accordance with the approved Initial or Final Site Restoration plan, the guarantor will be required to complete the appropriate activities. The guaranty will remain in force unless the guarantor 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 6 day of April, 2023.

FOR THE STATE OF WASHINGTON



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Jay Inslee, Governor

FOR OSTREA SOLAR, LLC

DocuSigned by:  
*Tai Wallace* 4/17/2023  
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Tai Wallace  
Senior Director, Development  
Ostrea Solar, LLC



## **ATTACHMENT 1**

1. Report to the Governor Recommending Approval of Site Certification entered February 17, 2023.