

**APPLICANT'S PRELIMINARY DRAFT PREPARED FOR EFSEC'S**  
**CONSIDERATION**

**SITE CERTIFICATION AGREEMENT**

**BETWEEN**

**THE STATE OF WASHINGTON**

**AND**

**TESORO SAVAGE PETROLEUM TERMINAL LLC**

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DRAFT

# **SITE CERTIFICATION AGREEMENT**

## **ARTICLE I: SITE CERTIFICATION**

This Site Certification Agreement (Agreement) 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 Tesoro Savage Petroleum Terminal LLC, doing business as Vancouver Energy (Certificate Holder).

The Certificate Holder filed, as permitted by law, an application with the Energy Facility Site Evaluation Council (EFSEC) for site certification for the construction and operation of a crude oil terminal to be located in Vancouver, Washington. The Council reviewed Application 2013-01, conducted public meetings and adjudicative hearings, and by order recommended Approval of the Application by the Governor. On \_\_\_\_\_, 20\_\_\_\_, the Governor approved the Site Certification Agreement authorizing the Certificate Holder to construct and operate the Vancouver Energy Terminal (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).

The effective date of this Agreement shall be \_\_\_\_\_, 20\_\_\_\_.

### **A. Site Description**

The Site on which the Project is to be constructed and operated is located on property leased from the Port of Vancouver and in the corporate limits of the City of Vancouver, Washington, and is described more particularly in Attachment 1 of this Agreement.

### **B. Site Certification**

The State of Washington hereby authorizes the Certificate Holder to construct and operate the Project, as described in Article I.C of this Agreement, pursuant to the schedule established within this Agreement and subject to the terms and conditions set forth in this Agreement and in Council Order No.\_\_\_\_\_, Findings of Fact and Conclusion of Law, And Order Recommending Site Certification on Condition (Order Recommending Site Certification). Such construction and operation shall be located within the areas designated herein and in the Application for Site Certification submitted by the Certificate Holder on October 6, 2016, and as described in Attachments 1 to this Agreement.

### **C. Project Description**

The Project will consist of facilities to receive crude oil by rail, store it on site, and load it on marine vessels. The Project will include: administrative and support buildings, rail infrastructure, rail unloading facilities, transfer pipeline systems and associated corridors and rights-of-way, crude oil storage tanks including containment berms, a storage building, a marine terminal including marine vessel loading equipment, and a boiler building. The Project will include various control rooms, E-houses, fire pump and foam buildings, and stormwater quality facilities to support operations throughout the Site. The Project will have a capacity of a maximum average of three hundred sixty thousand (360,000) barrels of crude oil per day.

The general locations of components of the Project are described in the Application. The final locations of the components of the Project within the Site may vary from the conceptual drawings in the

Application, but shall be consistent with this Agreement and in accordance with the final construction plans approved by EFSEC consistent with Article IV.E.

1. Rail Infrastructure: The Project will relocate portions of two existing loop tracks to allow for track tie-ins into the proposed rail unloading facility, and for release of rail cars to the main track from the rail car unloading facility. A spur track will be constructed to separate rail cars in need of repair or further inspection. The Project will construct an additional loop track on the outside of the existing Terminal 5 loop.
2. Unloading Facility: The rail unloading facility is composed of a covered structure spanning three tracks through which the trains will be pulled and safely secured where the unloading will occur. Each track will include 30 unloading stations for a total of 90 stations, each station accommodating one rail car. Each of the 90 unloading stations will connect to a piped collection system connected to pumping stations that transfer the crude oil into a transfer pipeline.
3. Administrative and Support Buildings: The Project will include three approximately three thousand four hundred (3,400)-square-foot office buildings for administrative functions, lockers, restrooms, and other employee support facilities. Parking and landscaping will be provided.
4. Storage: The crude oil will be stored in up to six double-bottom, internal floating-roof aboveground storage tanks (ASTs) approximately fifty (50) feet in height and two hundred forty (240) feet in diameter with a shell capacity of approximately four hundred thousand (400,000) barrels each. Two of the ASTs may be equipped with electric tank heaters. ASTs will be equipped with mixers to prevent crude oil from stratifying during storage. Each AST will have a fixed roof to keep precipitation from reaching the inside of the tank and an internal floating roof with dual seals.

The ASTs will be surrounded by a containment berm approximately six (6) feet in height. The containment area will be designed with a capacity at least equal to one hundred ten (110) percent of the volume of the maximum capacity of the largest tank plus precipitation from a twenty-four (24)-hour, one hundred (100)-year storm event. As additional protection, intermediate berms will be constructed to separate each tank area from the larger containment area. The tank containment area will be lined with a flexible impervious membrane to prevent any inadvertent releases from leaving the containment area via the ground. Crude oil stored in the tanks will be pumped to the dock from a pump station located near the ASTs.

5. Marine Terminal: Crude oil will be transferred to a vessel at existing Port berths 13 and 14. Mooring and seismic improvements will be completed to the existing steel pile-supported docks consisting of two concrete decked access trestles and T-docks, four breasting dolphins connected to the trestles by catwalks, and three mooring dolphins. Improvements will include removing a breasting dolphin, reinforcing the existing steel pipe piles, replacing trusses and walkways at berth 13, adding retractable/movable-rotatable grated walkways between two existing mooring dolphins and the shoreline, and adding two shore-based mooring points. Additional facilities constructed will include various elements to load and manage crude oil such as piping and jib cranes, control buildings, a marine vapor combustion unit and spill response equipment including a floating fence boom.
6. Transfer Pipelines: A combination of above- and belowground steel transfer pipelines will convey crude oil between the rail unloading building, storage tanks, and the marine vessel loading system. Raceways for telemetry and facility controls will be installed along the pipeline corridor.

7. Boiler Building: An approximately six thousand (6,000) square foot building will house boilers to provide steam for the heating of tank cars during unloading.

## **ARTICLE II: DEFINITIONS**

1. "Application" means the Application for Site Certification: Vancouver Energy Project, designated No. 2013-01, as originally submitted in August 2013, and subsequent amendments, including amendments submitted on: January 24, 2014; February 25, 2014; May 27, 2016; and October 6, 2016.
2. "Approval" (by EFSEC) means an affirmative action by EFSEC, the EFSEC Manager or its authorized agents regarding documents, plans, designs, programs, or other similar requirements submitted pursuant to this Agreement.
3. "Begin Construction" or "Beginning Construction" means the initiation or beginning of actual construction activities as defined in WAC 463-68-040 but does not include site investigation work, surveys, installation of erosion control measures, vegetation clearing and other similar pre-construction activities.
4. "Begin Commercial Operation" or "Beginning of Commercial Operations" means the time the Project first accepts receipt of crude oil for storage or shipment.
5. "BMPs" means Best Management Practices.
6. "Certificate Holder" means Tesoro Savage Petroleum Terminal LLC (dba Vancouver Energy), or its successor in interest.
7. "City" means the City of Vancouver, WA.
8. "Commercial Operation" means the operation of the Project to receive crude oil for storage or shipment.
9. "Construction" means the erection of any permanent, above-ground structures and the activities identified in WAC 463-68-040, but does not include site investigation work, surveys, installation of erosion control measures, vegetation clearing and other similar pre-construction activities.
10. "Day" means a calendar day.
11. "Ecology" or "WDOE" means the Washington State Department of Ecology.
12. "EFSEC" 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 Manager" means the individual officially appointed to the position of EFSEC Manager, or designee of said manager.
14. "Final EIS" means the Tesoro Savage Vancouver Energy Distribution Terminal Facility Final Environmental Impact Statement published on \_\_\_\_\_.

15. “Force Majeure Event” means any event that directly prevents or delays the performance by the Party affected of any obligation arising under this Agreement, including, but not limited to, an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; volcanic event, 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 disturbance or commotion; other acts of God; acts of public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, action of a governmental authority other than EFSEC.
16. “Material Public Safety or Environmental Incident” as used in Article VII.B means:
  - a. An incident involving Commercial Operations at the Site, rail transportation of crude oil to the Site, or marine tank vessel transportation of crude oil from the Site that results in a release of crude oil that requires response by the incident response team with implementation of a Unified Command that includes state, local or federal on-scene coordinators; or
  - b. An incident involving Commercial Operations at the Site resulting in any of the following:
    - i. General public injury requiring admittance to a hospital;
    - ii. Evacuation or shelter-in-place of the general public for one (1) hour or more; or
    - iii. Fire that poses immediate threat to the general public or property and requires an organized offensive or defensive response requiring implementation of Incident Command System.
17. “NOC” means Notice of Construction.
18. “NPDES permit” means National Pollutant Discharge Elimination System permit.
19. “Order Recommending Site Certification” means Council Order No.\_\_\_\_\_, Findings of Fact and Conclusion of Law, And Order Recommending Site Certification on Condition.
20. “Port” means the Port of Vancouver, USA.
21. “Project” or “Vancouver Energy Project” means the necessary infrastructure and improvements to receive, store and deliver crude oil specified in Article I.C.
22. “RCW” means the Revised Code of Washington.
23. “Site” means the property identified in Article I.A and Attachment 1, located in the City of Vancouver, Washington, on which the Project will be constructed and operated.
24. “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.
25. “State” or “state” means the State of Washington.



26. "Termination" means ending Commercial Operation at the Project or modifying Commercial Operation such that the activity is no longer subject to the jurisdiction of EFSEC.
27. "Throughput" means the movement of crude oil inputs and outputs through the Project. Throughput will be measured based on the volume of incoming crude oil through the unloading process.
28. "WAC" means the Washington Administrative Code.
29. "WDFW" means the Washington Department of Fish and Wildlife.
30. "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 Site by its agents (including affiliates), contractors, and subcontractors comply with this Agreement. 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 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.
3. The Certificate Holder shall comply with all federal laws and regulations applicable to the construction and operation of the Project and shall comply with all terms and conditions of any licenses or permits that may be issued to the Certificate Holder for the Project by federal agencies.

#### **B. Enforcement**

1. This Agreement may be enforced by administrative or judicial action pursuant to RCW 80.50.155 and WAC 463-70-070.
2. EFSEC may suspend or revoke this Agreement pursuant to RCW 80.50.130 and chapter 34.05 RCW, for failure by the Certificate Holder to comply with the terms and conditions of this Agreement, for violations of chapter 80.50 RCW and the rules promulgated thereunder, or for violation of any applicable resolutions or orders of EFSEC.

#### **C. Schedule for Beginning Construction and Beginning Commercial Operations**

1. The Certificate Holder shall Begin Commercial Operations within ten (10) years from the Effective Date of this Agreement. Notwithstanding the foregoing, if the Certificate Holder does not Begin Construction within five (5) years of the Effective Date of this Agreement or does not

continue Construction thereafter in a reasonably uninterrupted fashion to be able to Begin Commercial Operations within ten (10) years of this Agreement, the Certificate Holder shall comply with the additional review and reporting requirements established in WAC 463-68-060.

2. The timeframes established in Article III.C.1., above, do not include the time during which the Certificate Holder did not pursue Construction or Commercial Operations due to: Force Majeure Events; the pendency of any appeals of, or legal actions related to this Agreement or Order Recommending Site Certification; or the need to obtain any other government permits and approvals for the Project that authorize the Certificate Holder to Begin Construction or Begin Commercial Operations, including all reasonably related administrative or legal actions on any such permits or approvals.
3. Certificate Holder's Application identified several Project elements the construction of which is dependent upon market conditions or may be delayed for compliance with the Throughput Performance Measure in Article VII.B. These Project elements are not required to Begin Commercial Operations within the timeframes identified in this section. The Certificate Holder may Begin Commercial Operation prior to completion of such Project elements. For any such Project elements that the Certificate Holder has not constructed prior to Beginning Commercial Operations, Certificate Holder shall not initiate Construction unless Certificate Holder submits to EFSEC any applicable plans, drawings and submittals necessary to proceed with those Project elements at least ninety (90) days prior to their construction.

#### **D. 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 in Thurston County, WA. In the case of documents or notices delivered by mail, filing shall be deemed to have been duly made upon the third day following the day upon which they are placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday or legal holiday, following the third day.

Notices served by EFSEC on the Certificate Holder using a nationwide commercial delivery service such as FedEx or UPS, that provides confirmation of delivery shall be deemed to have been duly made when delivery is actually received at the address of the Certificate Holder. Notices served by EFSEC using U.S. Mail, shall be deemed to have been duly made upon the third day following the day upon which notice is placed in the mail, unless the third day falls on a Saturday, Sunday or legal holiday, in which event notice shall be deemed to have been duly made on the first day other than a Saturday, Sunday or legal holiday, following the third day. Notices shall be addressed to the Certificate Holder at 110 Columbia Boulevard, Suites 202, Vancouver, Washington 98660, with copies sent to the following addresses:

Savage Services  
General Counsel  
901 West Legacy Center Way  
Midvale, UT 84047

Tesoro Companies, Inc.  
Managing Attorney, Commercial  
19100 Ridgewood Parkway  
San Antonio, TX 78259

#### **E. Rights of Inspection**

Throughout the duration of this Agreement, the Certificate Holder shall provide access to the Site, the Facility, Project structures, buildings, facilities and pipelines and their respective rights of way on Port property, and all records relating to the construction and operation of the Project to designated

representatives of EFSEC in the performance of their official duties. Such duties include, but are not limited to, monitoring and inspections to verify the Certificate Holder's compliance with this Agreement. EFSEC personnel or any designated contractors or representatives of EFSEC shall follow all worker safety and security requirements followed by the Certificate Holder and/or its contractors on the Site or on Port property.

#### **F. Retention of Records**

Throughout the duration of this Agreement, the Certificate Holder shall retain such records as are necessary to demonstrate the Certificate Holder's compliance with this Agreement. To the extent allowed by law, EFSEC shall maintain the confidentiality of any confidential records including technical business and financial information that Certificate Holder retains pursuant to this section and discloses to EFSEC. Nothing shall preclude EFSEC from disclosing any records it obtains from Certificate Holder when required by law, so long as EFSEC provides Certificate Holder thirty (30) days written notice and opportunity for Certificate Holder to seek a protective order from a tribunal of competent jurisdiction barring the disclosure of any confidential records.

#### **G. Consolidation of Plans**

Any plans required by Articles IV and VI of this Agreement may be consolidated with other required plans (by EFSEC or other governmental agency), if such consolidation is approved in advance by the EFSEC Manager.

#### **H. Notice of Federal Permit Approvals**

The Certificate Holder shall notify EFSEC when all required federal permits for the construction of the Project have been obtained, no later than thirty (30) days after receipt of the last permit.

#### **I. Notice of City Permit Approvals**

The Certificate Holder shall notify EFSEC when the required City of Vancouver Wastewater Permit has been obtained, within thirty (30) days after receipt of the Permit.

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

The Certificate Holder shall pay to EFSEC such reasonable costs as are actually and necessarily incurred by EFSEC for inspection and monitoring to ensure Certificate Holder's compliance with this Agreement during the Construction and Operation of the Project. Inspection and monitoring costs pursuant to this section are exclusive of EFSEC's monthly cost allocation that is attributable to Certificate Holder. Certificate Holder shall pay such monitoring and inspection costs according to the following schedule and process:

1. Within thirty (30) days of the Effective Date, the Certificate Holder is required to make a deposit or otherwise guarantee payment using any of the methods described in Article III.O in the amount of \$\_\_\_\_\_, which is EFSEC's estimate of reasonable monitoring costs for a quarter of the calendar year.
2. By December 1 of every successive year during the Term, EFSEC shall adjust the amount required to be held in deposit or for which the Certificate Holder guarantees payment to reflect EFSEC's current estimate of the reasonable inspection and monitoring costs for a quarter in the ensuing calendar year. Within thirty (30) days of receipt of the estimate the Certificate Holder

shall deposit any additional funds to the extent needed to increase the amount on deposit consistent with the revised estimate or otherwise guarantee payment of the amount. If the amount required to be held in deposit decreases, EFSEC shall refund to the Certificate Holder any funds in excess of the revised estimate within thirty (30) days of completing the revised estimate.

3. EFSEC shall prepare statements for each quarter of every calendar year during the Term documenting actual monitoring costs incurred. Within thirty (30) days of the receipt of the statement the Certificate Holder shall pay the amount necessary to restore the total amount on deposit to the level established pursuant to sections J.1 and J. 2, above. If the Certificate Holder has guaranteed payment using any of the methods described in Article III.O, Certificate Holder shall pay the amount due within thirty (30) days of receiving the invoice.
4. Any account into which Certificate Holder deposits funds or any instrument by which Certificate Holder guarantees payment pursuant to section J.1 and J.2, above, shall be structured to authorize EFSEC to withdraw funds or collect payment without approval of the Certificate Holder in the event that the Certificate Holder fails to make payment of actual monitoring costs when due.

#### **K. EFSEC Liaison**

The General Manager of Vancouver Energy is designated as the person who will act as a liaison between EFSEC and the Certificate Holder.

#### **L. Changes in Project Management**

The Certificate Holder shall notify EFSEC of any change in the primary management personnel including the EFSEC Liaison specified in Article III.K of this Agreement, or scope of responsibilities of such personnel, for the Project. Notification shall be in writing and shall occur within thirty (30) days of making such change.

#### **M. Approval of Required Construction and Operational Plans**

EFSEC may delegate to the EFSEC Manager authority to approve or deny the Construction and Operational plans required by Articles IV and VI of this Agreement. Where EFSEC has delegated the authority to approve or deny plans pursuant to this section or otherwise by the terms of this Agreement, the EFSEC Manager shall ensure the Construction and Operational plans have been sufficiently reviewed prior to Approval. Nothing herein impacts the ability of the manager to contract with other agencies for review per chapter 463-58 WAC.

The EFSEC Manager may allow temporary exceptions from plan requirements or provisions of this Agreement when such exceptions are not contrary to the purposes of the Agreement, provided that a record is kept and EFSEC notified during regular reporting.

EFSEC or the EFSEC Manager, when applicable, shall review for Approval any plan submitted pursuant to Articles IV and VI within sixty (60) days of receipt of each plan, unless otherwise specified in this Agreement. If EFSEC identifies corrections that are required before it can approve a plan, it shall notify the Certificate Holder in writing within sixty (60) days of receipt of the plan. Certificate Holder shall amend the plan to resolve the required correction and submit the amended plan for review and Approval within sixty (60) days of receipt of the amended plan. EFSEC is deemed to have approved any plan submitted for review if EFSEC does not issue a written decision approving the plan or identifying corrections within sixty (60) days from the date the plan is submitted. Nothing in this section shall

preclude EFSEC and Certificate Holder from agreeing to a different timeframe for EFSEC's review of any plan.

#### **N. Amendment or Modification of Agreement**

1. This Agreement may be amended pursuant to EFSEC rules and procedures. Any requests for amendments to this Agreement shall be made in writing.
2. Transfer of or change in ownership of the Project shall be subject to the specific requirements of WAC 463-66-100.
3. The following changes to the terms or conditions of the Sections or Attachments to this Agreement or plans required pursuant to this Agreement shall not require amendment of this Site Certification Agreement pursuant to section N.1 above:
  - a. Any change that does not increase the size, intensity or throughput or materially alter the location or purpose of the Project, and does not create significant adverse environmental impact not previously analyzed or anticipated by this Agreement.
  - b. Changes to plans, specifications or other elements required due to changes in applicable rules or regulations provided that the Certificate Holder shall notify EFSEC of the change or modification no later than thirty (30) days after becoming aware of the need for such change or modification.
  - c. Repair or replacement of equipment or infrastructure.

#### **O. Form of Financial Assurances**

1. Where this Agreement authorizes or requires use of any of the following security or assurance instruments to demonstrate financial responsibility for obligations arising under this Agreement they shall comply with the following standards:
  - a. Performance Bond: If the Certificate Holder provides financial security for the performance of its obligations through a Performance Bond, it shall meet the following requirements. The Performance Bond shall be issued by a surety registered with the Washington State Insurance Commissioner and, at the time of delivery of the bond is on the authorized insurance provider list published by the Insurance Commissioner. The Performance Bond shall be for a term of one (1) year and shall be renewed, extended, or replaced so that it remains in effect for the remaining term of this Agreement or until the secured obligations are satisfied, whichever occurs sooner. In order to ensure renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least one (1) month in advance of its expiration date. Failure to secure such renewal or extension shall constitute a default of the Certificate Holder under this Agreement and under the Bond provisions; or,
  - b. Letter of Credit: If the Certificate Holder provides financial security for the performance of its obligations through a letter of credit, it shall meet the following requirements. The Letter of Credit shall be issued by a bank whose long-term debt is rated "A" or better by a Rating Service. The Letter of Credit shall be for a term of one (1) year and shall be renewed, extended, or replaced so that it remains in effect for the remaining term of this Agreement, or until the secured obligations are satisfied, whichever occurs sooner. The State of Washington, by and through EFSEC or its successor or designees, shall be authorized under

the Letter of Credit to make one (1) or more drawings thereon upon certification to the issuing bank of the Certificate Holder's failure to perform its obligations when due.

- c. Insurance: If the Certificate Holder provides financial security for the performance of its obligations through an insurance policy, it shall meet the following requirements. With the exception of the Worker's Compensation if placed with the State Fund, the insurance shall be provided by an insurance company that has a financial strength rating of at least "A-, VII" as rated by A.M. Best, Standard & Poor's A- Rating or Moody's A2 rating. The insurance shall be for a term of one (1) year and shall be renewed, extended, or replaced so that it remains in effect for the remaining Term of this Agreement, or until the secured obligations are satisfied, whichever occurs sooner. If coverage is provided on a claims made basis, the retroactive date of the policy must be prior to the commencement of any insured activities on the premises and will provide coverage for not less than three (3) years after decommissioning, unless this Agreement specifies a different duration for specific policies. Certificate Holder will require each of its contractors and subcontractors to maintain, or will maintain insurance on the subcontractors' behalf, any insurance obtained to satisfy an obligation under this Agreement. In no event will Certificate Holder's liability be limited to its insurance coverage. Prior to the time a policy is required pursuant to this Agreement, upon each renewal and upon request, the Certificate Holder will provide to EFSEC acceptable certificates of insurance evidencing the required insurance policies.
2. Nothing herein shall preclude EFSEC from authorizing Certificate Holder to use any other form of financial instrument determined by EFSEC to be sufficient to ensure the availability to EFSEC of funds needed to cover an identified financial obligation.

#### **P. Order of Precedence**

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

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

#### **Q. Conditions, Mitigation and Commitments**

Construction, Operations, De-Commissioning, and plans required prior to Beginning of Construction pursuant to Article IV of this Agreement or prior to Beginning Commercial Operations pursuant to Article VI of this Agreement shall be consistent with conditions, mitigation and commitments contained in this Agreement, including the Order Recommending Site Certification and measures set forth in attachments 4, 5, and 6, which are incorporated herein by reference.

#### **R. Dust and Air BMPs**

The Certificate Holder will implement fugitive dust and diesel emission control measures during Construction, Operations, and De-Commissioning from earth work, road use and other similar activities

consistent with Washington Associated General Contractors Brochure, “Guide to Handling Dust from Construction Projects.” Common BMPs include the application of water to unpaved areas to prevent entrainment of fugitive dust. During Construction and De-Commissioning, emissions are also minimized by covering exposed piles of earth, limiting vehicle idling time, and other BMPs.

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

### **A. Preliminary Site Restoration Plan**

The Certificate Holder is responsible for Project decommissioning and site restoration pursuant to Council rules. At least ninety (90) days prior to Beginning of Construction, the Certificate Holder shall submit to EFSEC an Initial Project Decommissioning and Site Restoration Plan pursuant to the requirements of chapter 463-72 WAC. The Certificate Holder shall not Begin Construction prior to obtaining Approval of the Restoration Plan from EFSEC. The Restoration Plan shall be consistent with the scope identified in Article VIII.A.3.

### **B. Securing Insurance and Financial Assurances Prior to Beginning Construction**

1. At least thirty (30) days before Beginning Construction, the Certificate Holder shall obtain the following insurance and financial assurances:
  - a. Guarantee of financial responsibility in the amount of sixteen million six hundred fifty thousand dollars (\$16,650,000.00) in estimated costs of decommissioning through a sinking fund, site closure bond or any other form of instrument identified in Article III.O. The Certificate Holder shall maintain the guarantee for costs of decommissioning until decommissioning is complete.
  - b. Insurance for pollution liability and environmental impairment liability with combined limits not less than twenty-five million dollars (\$25,000,000.00) per occurrence, which shall be maintained until Certificate Holder obtains coverage specified in Article VI.B.1.
  - c. Commercial General Liability insurance for bodily injury, property damage, personal injury, contractual liability, products and completed operations and cross-liability coverage with limits not less than ten million dollars (\$10,000,000.00) per occurrence/fifteen million dollars (\$15,000,000.00) aggregate, which shall be maintained during and after Construction and during Operations. These limits can be achieved through a combination of primary and excess/umbrella liability coverage. If Certificate Holder utilizes umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.
  - d. Builders Risk insurance upon the work at the Facility Site to the full value which shall be maintained until final completion of Facility Construction and obtaining the “all-risk” property insurance specified in Article VI.B.2. The insurance will include coverage against the “all-risk” perils including earthquake, wind and flood for physical loss and damage.
  - e. Worker’s Compensation insurance with statutory limits as required by Washington law applicable to and covering employees of Certificate Holder engaged in performance of the work and Employer’s Liability insurance or stop gap insurance with limits not less than one million dollars (\$1,000,000.00). Certificate Holder shall maintain this insurance during the term of this Agreement. In the event that the workers at the Facility are employed by one (1) or more contractors of the Certificate Holder rather than the Certificate Holder directly, the

Certificate Holder will not be required to maintain such coverage, but will require such contractor or contractors to maintain such coverage for all workers at the Facility.

- f. Automobile Insurance covering owned, non-owned, and hired automobiles during Construction and Commercial Operations with limits not less than one million dollars (\$1,000,000.00).
2. The Applicant will require that any Construction contractor and all subcontractors working on the Project maintain insurance as required in sections B.1.b., B.1.c. B.1.e, and B.1.f above. Any deficiency in the limit, coverage, or policy conditions of such subcontractors' insurance or the financial failure of a subcontractor's insurer shall be the responsibility of Certificate Holder.

### **C. Study to Determine Operational Financial Assurances**

1. The Certificate Holder shall undertake a study to identify an appropriate level of financial responsibility for the potential costs of response and cleanup of an emergency incident during Commercial Operations at the Project including: oil spills or other Project incidents; any attendant natural resource damages; and costs to the state, the City of Vancouver and other agencies providing mutual aid for their response actions to reduce the risks and impacts from such an event from operations at the Project. This study will specifically address: the factors in RCW 88.40.025, Evidence of Financial Responsibility for Onshore or Offshore Facilities, including a reasonable worst-case spill volume; other industry and regulatory thresholds for the appropriate level of financial responsibility of the cost of cleaning up the spilled oil; the frequency of operations at the Project; prevention measures employed by the Project that could reduce impacts through spill containment, immediate discovery and shutoff times; and the damages that could result from the spill (including restoration). The study should identify any constraints related to the commercial availability and affordability of financial responsibility. The Certificate Holder shall submit the study at least ninety (90) days before Beginning Construction.
2. Within thirty (30) days of receipt of the Study to Determine Operational Financial Assurances, EFSEC shall issue an Order setting forth the amount of financial responsibility for potential emergency incidents from Commercial Operations that is based on information provided in the Study and will be required prior to Beginning Commercial Operations pursuant to Article VI.B.

### **D. Update of Plans Submitted with Application**

1. The Certificate Holder has submitted the following plans with the Application:
  - a. Construction Management Plan, Safety Manual and Security Plan;
  - b. Construction Transportation Management Plan;
  - c. Construction Phase Spill Prevention, Control and Countermeasure Program;
  - d. Inadvertent Discovery Plan;
  - e. Contaminated Media Management Plan;
  - f. Marine Mammal Monitoring Plan;



- g. Construction Wildlife Monitoring Plan; and
  - h. Water Quality Protection and Monitoring Plan.
2. The plans identified in section D.1, above, were based on the Project design and potential impacts known at the time of their submittal. EFSEC has reviewed the plans described in section D.1, above, and has identified through comments transmitted to the Certificate Holder any items that must be addressed to obtain Approval of each plan. At least sixty (60) days prior to Beginning Construction the Certificate Holder shall prepare and submit to EFSEC updates of these plans to address: current Project design; mitigation measures identified in this Agreement; and issues identified during EFSEC's preliminary review. EFSEC shall review for Approval the updated elements of the plans for consistency with Project design, mitigation measures identified in this Agreement, and prior EFSEC comments. The Certificate Holder shall not Begin Construction prior to obtaining Approval of the updated plans.

#### **E. Construction Design, Drawings and Specifications**

1. The Certificate Holder shall submit to the EFSEC Manager those Construction plans, specifications, drawings and design documents (Drawings and Specifications) that demonstrate the Project will be in compliance with the conditions of this Agreement and with applicable requirements, including seismic design criteria and applicable codes, and provisions and standards specified in the Application. At EFSEC's direction, the Certificate Holder shall provide copies of any Drawings and Specifications to WDFW, Ecology and other agencies for comment.
2. Phased Submittal and Approval: Certificate Holder may submit and EFSEC shall review for Approval the Drawings and Specifications in phased submittals that separately and sequentially address different Construction elements, whether for the entire Site or in specific Project Areas, including, but not limited to: site preparation, ground improvements, utilities, foundations, structural engineering, and mechanical engineering. Approval of each phased submittal shall authorize Certificate Holder to proceed with any Construction activities described therein. Certificate Holder must submit each phased submittal at least ninety (90) days prior to beginning any Construction activity described in the phased submittal. Cumulatively, the Drawings and Specifications submitted for the Project shall include site plans, temporary sedimentation control plans, foundation drawings, structural drawings and calculations, equipment and material specifications, and vendor guarantees for equipment performance as appropriate.
3. Construction and Use of Water Utility Infrastructure:
  - a. The Certificate Holder will obtain water only from the City and/or Port municipal systems. At least thirty (30) days prior to the Beginning of Construction, the Certificate Holder shall provide to EFSEC proof of contract or permit for the water supply source it intends to use during Construction and Commercial Operations.
  - b. The Certificate Holder will install a City waterline loop to add redundancy to the water distribution system. The waterline loop will consist of approximately one thousand seven hundred sixty (1,760) linear feet of twelve-inch (12") diameter ductile iron waterline connecting two existing twelve twelve-inch (12") diameter ductile iron waterlines already in-place within the Port. The Certificate Holder will provide Construction plans and specifications to EFSEC and the City at least sixty (60) days before Beginning Construction.

## **F. Construction Schedule**

The Certificate Holder shall update the Construction schedule submitted with the Application. The update to the Construction schedule shall address the primary Construction phases for the Project, and shall be generally based on the elements contained in this Agreement and the Application. At least thirty (30) days prior to Beginning Construction, the Certificate Holder shall submit the updated Construction Schedule.

## **G. Construction Communication Plan**

The Certificate Holder shall develop a Construction Communication Plan. The Plan shall address the provision of timely communication to the public, City, Clark County, EFSEC, and other appropriate state agencies (e.g., Parks and Recreation Commission, WSDOT) of major Construction phases and the duration of temporary noise and surface transportation impacts during the primary Site Preparation and Construction phases for the Project and shall be generally based on the mitigation measures contained in this Agreement. At least ninety (90) days prior to Beginning Construction, the Certificate Holder shall submit the Construction Communication Plan to EFSEC for review and Approval. The Certificate Holder shall not Begin Construction prior to obtaining Approval of the Construction Communication Plan.

## **H. Environmental Compliance Monitoring Plan**

The Certificate Holder shall develop an Environmental Compliance Monitoring Plan for the Construction phase of the Project. The Environmental Compliance Monitoring Plan shall include criteria for when work should be stopped for the Construction phase of the Project and all notification requirements. Compliance monitoring will cover all Construction related environmental requirements including monitoring, mitigation, use of BMPs, stormwater management, waste handling and other similar elements. At least ninety (90) days prior to Beginning Construction, the Certificate Holder shall submit the Environmental Compliance Monitoring Plan to EFSEC for review and Approval. The Certificate Holder shall not Begin Construction prior to obtaining EFSEC Approval of the Environmental Compliance Monitoring Plan.

## **I. WDFW Notification**

The WDFW Region 5 Habitat Program Manager will be notified in writing (e-mail, FAX, or mail) from the Certificate Holder (or agent/contractor) no less than three (3) working days prior to the start of in-water Construction activities. The notification will include the contractor's name, project location, and starting date for work.

# **ARTICLE V: PROJECT CONSTRUCTION**

## **A. Compliance with Plans and Permits Required**

The Certificate Holder is responsible for Construction of the Project in a manner consistent with the plans, specification, submittals and other requirements identified in the Agreement applicable to Site Preparation and Construction activities and the Construction Stormwater General Permit included as Attachment 2 to this Agreement.

## **B. Environmental Monitoring During Construction**

1. Prior to Beginning Construction, the Certificate Holder shall hire an Environmental Compliance Monitor (ECM) that meets minimum qualifications established by EFSEC. The payment of the

ECM's costs shall be addressed pursuant to Article III.J. The ECM reports to EFSEC and is responsible for confirming the following: the Certificate Holder is implementing the Environmental Compliance Monitoring Plan required by Article IV.H; the Certificate Holder is complying with applicable environmental regulations and mitigation measures relevant to Construction; and the Certificate Holder promptly addresses any incidents of noncompliance consistent with the process identified in section 4, below. The Certificate Holder shall provide the ECM with the ability to direct work to be stopped consistent with the process identified in section 4, below.

2. The Certificate Holder shall implement the Environmental Compliance Monitoring Plan required by Article IV.H 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 and permits.
3. Copies of Plans and Permits Kept On Site. A copy of the Site Certification Agreement, Plans identified in Article IV approved by EFSEC, and all applicable Construction permits will be kept on 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. The ECM will provide a monthly report to EFSEC on any environmental noncompliance reported or discovered as well as corrective actions necessary to resolve the noncompliance. Upon identification of an environmental noncompliance issue, the ECM will work with the responsible subcontractor or direct-hire workers on any corrective actions necessary to resolve the noncompliance. If noncompliance is not corrected in a reasonable period of time the ECM will notify the Certificate Holder that a "stop work" order needs to be issued for that portion of the work not in compliance with the Project environmental requirements.
5. No Construction work involving excavation, ground improvement, filling, construction dewatering, re-grading, nor work involving over or in-water activities shall be performed at any time unless the ECM is at the Site.
6. All ECM reports are to be submitted to EFSEC at the same time that they are submitted to the Certificate Holder's project manager. EFSEC shall be promptly notified of any emergency response or "stop work" orders that have been issued.

### **C. Mitigation**

During the Construction phase of the Project, the Certificate Holder shall ensure that all activities are undertaken in a manner consistent with the mitigation and commitments contained in Attachment 5.

### **D. Construction Reporting**

Construction progress reports shall be filed by the Certificate Holder with EFSEC within thirty (30) days after each three (3)-month period of Construction. Each report shall describe the status of Construction, identify and summarize any events that required notification to EFSEC or other government agency, and identify any changes in the Construction schedule.

### **E. Construction Inspection**

EFSEC shall contract with the City of Vancouver Department of Community and Economic Development to provide Construction inspection services for all Project buildings, structures and utilities

to determine consistency with approved plans and specifications. If the City is unable or unwilling to perform this function, the Certificate Holder will coordinate with EFSEC to identify and select alternative public agencies or private firms to provide these services.

The Certificate Holder will pay for City (or other selected agency) costs to perform the required inspection services, including third party consultant costs, in accordance with established fee schedules.

#### **F. As-Built Drawings**

The Certificate Holder will maintain on file record drawings of all facility improvements and will allow access to EFSEC to the record drawings upon request following reasonable notice.

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

1. Construction Timing: The Certificate Holder will adhere to the following time restrictions for the Project Construction:
  - a. If tree removal cannot be avoided during the nesting season (February 15 to September 1), the Certificate Holder shall prepare a preconstruction nesting survey no more than two (2) weeks prior to removal to ensure that no active nests are present. If active nests of protected migratory birds are found, tree removal activities will be suspended until after nests have hatched and young have fledged.
  - b. In-water work window:
    - i. All in-water work that generates temporary noise, including temporary pile vibratory installation and removal and drilling for casings, will only occur during the approved in-water work window from September 1 to January 15.
    - ii. Upland impact pile driving associated with shore based mooring points, foundations for the mooring dolphin access points, and the trestle abutment will only occur during the approved in-water work window from September 1 to January 15 to minimize the potential for adverse impacts to aquatic habitat.
    - iii. If installation of ground improvements along the shoreline is expected to cause release of sediments to surface water, this work shall also adhere to the approved in-water work window from September 1 to January 15.
    - iv. Modifications to the in-water work window may be authorized upon Approval by EFSEC in consultation with WDFW and NOAA.
2. Noise Monitoring: The Certificate Holder will conduct noise monitoring in accordance with the Construction Wildlife Monitoring Plan (Article IV.D.1.g).
3. Marine Mammal Monitoring: The Certificate Holder will implement the approved Marine Mammal Monitoring Plan (Article IV.D.1.f).
4. Habitat Mitigation: The Certificate Holder will provide a minimum of two and one-fifth (2.2) acres of compensatory habitat mitigation, consisting of urban landscaping within the Site that includes a minimum of eight (8) tree units (per VMC 20.770). The mitigation area shall be

monitored for two (2) years after planting and all trees that do not become successfully established will be replaced.

5. Weed Survey: Prior to Beginning Construction the Certificate Holder will conduct a survey of the Site to identify and eradicate noxious weeds and invasive plants currently on the Site. The following additional activities shall be implemented during Project Construction to prevent the spread of noxious weeds and invasive plants:
  - a. Provide wheel wash equipment at the Area 200 access to limit the dispersion of noxious weed seeds;
  - b. Restrict Construction activities to the area needed to work effectively to limit the ground disturbance.
  - c. Use weed-free straw, hydromulch, or similar ground cover for temporary erosion control during Construction.
6. Aquatic Invasive Species: Contractors responsible for in- or over-water work shall provide documentation to the Certificate Holder that all equipment and materials that will be used in- and over-water have been cleaned to comply with applicable aquatic invasive species statutes and rules, including WAC 660-120 (7)(j). Documentation shall be provided that in-water equipment and Construction materials have either not been in contact with waters containing state prohibited aquatic invasive species which could be potentially transferred to the Columbia River, or that equipment and materials have been appropriately decontaminated from potentially transferrable aquatic invasive species prior to arrival at the Site.
7. The Certificate Holder will complete Construction consistent with the following conditions:
  - a. If at any time the stone column seismic stability work is expected to cause release of sediments below the high waterline, this work shall also adhere to the work window specified in Article V.G.1.b.
  - b. If at any time, as a result of project activities, fish are observed in distress, a fish kill occurs, or water quality problems develop (including equipment leaks or spills), immediate notification will be made to the Washington Military Department's Emergency Management Division at 1-800-258-5990, and to the Region 5 Habitat Program Manager.
  - c. Extreme care will be taken to ensure that no petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or deleterious materials are allowed to enter or leach into the stream.
  - d. Equipment used for this project will operate stationed on a barge, boat, bank, or pier.
  - e. All work operations will be conducted in a manner that causes little or no siltation to adjacent areas.
  - f. Piling installation or removal will be accomplished primarily by vibratory methods, and will use an impact hammer and "proofing" will occur only when sound attenuation devices, such as a "bubble curtain" are employed.

- g. Any impact hammer pile driving will be accomplished during daytime hours to avoid attracting fish to lights at night.
- h. The existing piling will be removed and disposed of in an upland location such that they do not enter waters of the state. In the event that the piles cannot be completely removed then the remainder of the piles will be removed with a clamshell bucket, chain, or similar means, or cut off two (2) feet below the mudline.
- i. All holes or depressions will be backfilled with clean native bed materials to reduce leaching of residual chemicals into the water column.
- j. Replacement grating for walkways will be designed to pass a minimum of sixty (60) percent sunlight in areas over shallow-water habitat (less than thirty (30) feet deep).

#### **H. Construction Noise**

The Certificate Holder and its contractors and subcontractors shall use industry standard noise attenuation controls during Construction to mitigate noise impacts including mufflers on Construction equipment. Unless otherwise restricted by Article V.H, noise generating Construction activities will not begin before 7:00 AM and shall cease no later than 10:00 PM to reduce the potential for noise impacts from this activity. The Certificate Holder will, to the greatest extent feasible, schedule noise generating Construction activities to the hours between 7:00 AM and 8:00 PM. If noise generating Construction activity is required between the hours of 10:00 PM and 7:00 AM, the Certificate Holder will consult with the City and will notify EFSEC in advance of the activity.

#### **I. Construction Safety and Security**

The Certificate Holder shall implement the Construction Security Plan required by Article IV.D.1.a during the Construction Phases of the Project. In addition, the Certificate Holder shall comply with applicable federal and state safety regulations, as well as local and state industrial codes and standards and security requirements imposed by the Port and/or federal agencies. The Certificate Holder and all contractors and subcontractors shall make every reasonable effort to maximize safety for individuals working at the Site.

#### **J. Contaminated Soils**

The Certificate Holder shall implement the Contaminated Media Management Plan required by Article IV.D.1.e during the Construction phase of the Project. In addition, the Certificate Holder shall comply with applicable federal and state safety regulations and the Site specific consent decree and/or covenants and other requirements established by Ecology associated with existing Site cleanup activities.

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

The Certificate Holder shall implement mitigation measures to minimize visual light and glare impacts. Most Construction will occur during the day. If Construction activities require night lighting, lights will be directed towards the Site and will be the minimum wattage required for safety and operations. Temporary Construction lighting will be adjusted and/or shielded to minimize light spillover or direct glare and will be turned off when not in use or required for Site security.

## **L. Waste Materials and Cleanup**

During Construction of the Project, solid Construction debris, such as scrap metal, cable, wire, wood pallets, plastic packaging materials, and cardboard, will be removed by licensed disposal operators and recycled or disposed at local landfills licensed to accept such waste. Should any hazardous waste be generated, it will be collected, handled, stored and disposed of in accordance with applicable federal, state, and local regulations.

## **M. Construction Transportation and Traffic**

The Certificate Holder shall implement the Construction Transportation Management Plan required by Article IV.D.1.b during the Construction phase of the Project. If a roadway managed by a public or private entity must be blocked or access restricted as a result of Construction, advanced planning and notification to stakeholders will be conducted. All road closures and traffic control activities will be coordinated through the General Manager or his delegate, and taking into consideration the Construction Transportation Management Plan.

Construction barges working at the berth shall be stationed outside of the Columbia River navigation channel and appropriate notification of the Construction shall be made to the United States Coast Guard (USCG) and River Pilots.

## **ARTICLE VI: SUBMITTALS REQUIRED PRIOR TO BEGINNING COMMERCIAL OPERATIONS**

### **A. Establishment of the Voluntary Mitigation Fund**

1. To mitigate the categories of Project impacts listed below that were identified in the Final EIS the Certificate Holder will establish a voluntary Mitigation Fund in an interest-bearing account that shall be administered by EFSEC.
2. The Certificate Holder shall pay into the Mitigation Fund according to the following schedule. Prior to Beginning Operations, the Certificate Holder will make an initial deposit of one million dollars (\$1,000,000.00) into the Fund. Consistent with the schedule of incremental increases in throughput through satisfaction of the Performance Based Facility Throughput condition in Article VII.B, below, Certificate Holder shall make up to two (2) additional deposits into the Mitigation Fund pursuant to the following schedule: (1) within sixty (60) days of increasing throughput to an average of two hundred seventy thousand (270,000) barrels per day, Certificate Holder shall deposit into the Fund an additional five hundred thousand dollars (\$500,000.00); and (2) within sixty (60) days of increasing throughput to an average of three hundred sixty thousand (360,000) barrels per day, Certificate Holder shall deposit into the Fund an additional five hundred thousand dollars (\$500,000.00).
3. EFSEC or its designee shall administer the Fund and make payments from the Mitigation Fund consistent with Article VII.J of this Agreement.

### **B. Securing Insurance and Financial Assurances Prior to Beginning Commercial Operations**

In addition to those insurance policies and guarantees that are required to be maintained throughout Commercial Operations pursuant to Article IV.B, the Certificate Holder shall obtain the following insurance at least thirty (30) days before Beginning Commercial Operations, which shall be maintained over the Term:

1. Insurance for pollution liability and environmental impairment in the amount determined pursuant to Article IV.C that includes coverage for risks of facility incidents that were the subject of the approved Study to Determine Operational Financial Assurances. Such insurance shall be maintained until Operations cease. The Certificate Holder shall reevaluate the amount of insurance every five (5) years from the date of Beginning Commercial Operations to ensure sufficient funds and, if deemed appropriate at that time, EFSEC may adjust the amount according to the Certificate Holder's reevaluation.
2. "All-risk" property insurance (including boiler and machinery insurance) upon all Facility buildings and facilities: The insurance will include coverage extension for the perils of earthquake, windstorm and flood coverage, in an amount equal to the full replacement cost thereof. The insurance will contain an agreed valuation provision in lieu of any co-insurance clause, an ordinance and law endorsement and debris removal coverage and a waiver of subrogation endorsement. The insurance will be provided with a maximum deductible of one million dollars (\$1,000,000.00) or five (5) percent of values per Facility area.

### **C. Update of Plans Submitted with Application**

1. The Certificate Holder has submitted the following plans with the Application:
  - a. Operations Spill Prevention, Control and Countermeasure Plan (SPCCP);
  - b. Facility Oil Handling Plan;
  - c. Operations Facility Safety Program; and
  - d. Operations Facility Oil Spill Contingency Plan.
2. The plans identified in section C.1, above, were based on the Project design and potential impacts known at the time of their submittal. EFSEC has reviewed the plans described in section 1, above, and has identified through comments transmitted to the Certificate Holder any items that must be addressed to obtain Approval of each Plan. At least sixty (60) days prior to the Beginning of Commercial Operations the Certificate Holder shall prepare and submit to EFSEC updates of these plans to address: final Project design; mitigation measures identified in the this Agreement; and issues identified during EFSEC's preliminary review of each plan. EFSEC shall review for Approval the updated elements of the plan for consistency with Project design, mitigation measures identified in this Agreement, and prior EFSEC comments. The Certificate Holder shall not Begin Commercial Operation prior to obtaining Approval of the updated plans.

### **D. Structural Inspection Plan**

No later than sixty (60) days prior to Beginning Commercial Operation, the Certificate Holder shall develop and submit to EFSEC a Structural Inspection Plan for regular inspection of the facility's structural integrity, and after significant seismic events. The plan shall be completed consistent with industry standards and regulations and indicate the proposed inspection schedule. Protocols shall include at a minimum inspection of the following Project elements:

1. Foundations;
2. Piping and pipelines;



3. Dock and marine terminal elements;
4. Storage tanks;
5. Fire suppression and fire and other safety alarm systems;
6. Rail Infrastructure.

## **ARTICLE VII: PROJECT OPERATION**

### **A. Compliance with Plans and Permits Required**

The Certificate Holder is responsible for operating the Project in a manner consistent with the plans, specification, submittals and other requirements identified in the Agreement applicable to Project Operations, the Industrial Stormwater General Permit included as Attachment 2 to this Agreement, and the Notice of Construction, included as Attachment 2 to this Agreement.

### **B. Throughput Performance Measures**

The Certificate Holder shall operate the Project to restrict throughput consistent with the following restrictions:

1. Upon Beginning Commercial Operations, the throughput shall not exceed a maximum average of one hundred eighty thousand (180,000) barrels per day.
2. If the Project operations occur without a Material Public Safety or Environmental Incident at the Project, in rail transit to the Project, or vessel transit from the Project for a period of twelve (12) consecutive months after Beginning Commercial Operations, the Certificate Holder is authorized to increase throughput to a maximum average of two hundred seventy thousand (270,000) barrels per day, subject to the process for confirmation described below.
3. If the Project operations occur without a Material Public Safety or Environmental Incident at the Project, in rail transit to the Project, or vessel transit from the Project for a period of twelve (12) consecutive months following the authorization to increase to a maximum average throughput of two hundred seventy thousand (270,000) barrels per day, the Certificate Holder is authorized to increase throughput to the maximum average of three hundred sixty thousand (360,000) barrels per day, subject to the process for confirmation described below.

The Certificate Holder will report on progress towards compliance with the performance measures identified in this section in its required monthly reports to EFSEC. Prior to implementing any increase in throughput authorized pursuant to this section, the Certificate Holder shall deliver to the EFSEC Manager written notice of Certificate Holder's intent to increase throughput at least thirty (30) days prior to the increase.

### **C. First Call for Washington Refiners**

To ensure availability of feedstocks to Washington state refineries, in-state refiners will have first call on all commercially available barrels, which are barrels that are not under contract with a purchaser. The Certificate Holder shall report on its compliance with this measure to EFSEC on an annual basis.

#### **D. Mitigation**

During Project Operations, the Certificate Holder shall operate the Project in a manner consistent with operational BMPs and other mitigation measures in Attachment 6 to this Agreement.

#### **E. Noise Emissions**

The Certificate Holder shall operate the Project in compliance with applicable Washington State noise standards of WAC 173-60 and the Performance Standards established by VMC 20.935.030.

#### **F. Vessel and Rail Safety and Security**

The Certificate Holder will undertake the following safety and security measures during Project operations:

1. The Certificate Holder will only accept tank cars at the Facility that meet the following standards:
  - a. Meet or exceed the U.S. DOT-117 standards specified in Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains Rule (HM-251) as amended by the FAST Act and codified at 49 CFR 179.202 (including any related federal agency or congressional modifications to those standards); and
  - b. Include a nine-sixteenths-inch (9/16") shell thickness and that comply with the Hazardous Materials: enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains Rule (HM-251) as amended by the FAST Act, and codified at 49 CFR 179.202.
2. The Certificate Holder will only accept and load crude oil onto marine vessels that have been vetted in accordance with the Tesoro Maritime proprietary vetting process, in its current form or as amended. This vetting system, "Tesoro Assessment and Ship Clearance" (TASC), is used to review and evaluate the vessel, vessel systems, management company, and vessel crews to ensure all safety and environmental standards are met by the ship, ship owner, and crew.
3. The Certificate Holder will require that loaded vessels departing from the Facility are escorted by a suitably matched tug during each vessel's transit from the Facility to the vicinity of the mouth of the Columbia River. Once in this location the tug will be released from the escorted vessel and will standby until the vessel crosses the Columbia River Bar and is underway in the open ocean.
4. The Certificate Holder will only allow loaded vessels to depart the Facility if the vessel can make the transit directly to sea with a minimum two (2) feet of under-keel-clearance while under pilotage by a Columbia River Pilot and with an under-keel-clearance of ten (10)% of the draft while crossing the Columbia River Bar with a Columbia River Bar Pilot.

#### **G. Site and Operations Security**

1. The Certificate Holder shall operate the facility consistent with Operations Site Security Plan and federal security and safety requirements applicable to the Project and the Port.
2. The safety of operating personnel is required 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 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 industrial codes and standards.

3. Employees and visitors will be required to observe and adhere to the safety and security plans and shall be provided with safety equipment where and when appropriate.

#### **H. Dangerous or Hazardous Materials**

The Certificate Holder shall handle and dispose of all solid waste material in such a manner as to prevent its entry into state ground or surface water, and consistent with chapter 463-40 WAC Dangerous Waste, chapter 173-303 WAC, (Dangerous Waste Regulations) or chapter 173-304 WAC (Minimum Functional Standards For Solid Waste Handling), whichever is applicable.

The Certificate Holder shall conduct Commercial Operations consistent with its spill planning documents including the Oil Spill Contingency Plan, Operations Facility Oil Handling Manual, and Operations Spill Prevention, Control and Countermeasure Plan that are submitted and approved pursuant to Article VI.C. These documents ensure compliance with Washington State statutes and the federal oil spill planning requirements of the U.S. Coast Guard and Environmental Protection Agency as set forth by the Oil Pollution Act of 1990.

#### **I. Air Emissions**

1. The Certificate Holder shall operate the Project so that emissions to the atmosphere comply with the Final Approval of Notice of Construction (NOC) permit Attachment 2 to this Agreement or with any subsequent NOC issued for the Project by EFSEC through extension or renewal.
2. The Certificate Holder shall properly operate and maintain in good working order all air pollution control equipment and monitoring equipment required by the NOC.
3. The Certificate Holder shall conduct all required monitoring, maintain data records and shall complete reporting as required by the NOC.
4. The Certificate Holder shall report promptly to the Council whenever the air monitoring programs disclose emergency conditions or conditions that might lead to emissions in excess of the Notice of Construction as provided in Attachment 2.

#### **J. Disposition of Funds from the Voluntary Mitigation Fund**

1. After Beginning Commercial Operations, EFSEC may disburse from and use the Voluntary Mitigation Fund established by Article VI.A for any of the following purposes:
  - a. Mitigation for the purposes identified in Attachment 6, mitigation measures or “gaps” that may be identified in one or more of the studies or drills identified in Attachment 6 and other yet to be determined mitigation measures related to the purposes listed herein, including use of Mitigation Funds to pursue grant funds available for such purposes;
  - b. Spill and fire incident response gaps identified as part of the three incident response drills described in Attachment 6;

- c. Costs associated with training and backfill pay to cover costs for emergency response personnel to attend crude by rail incident and crude oil terminal incident response training as described in Attachment 6;
  - d. Evaluation of and mitigation for potential impacts on aquatic species from marine vessel traffic, and Fish habitat restoration projects on the Columbia River as described in Attachment 6;
  - e. Proportionate share contributions to safety improvements to at-grade rail crossings identified as part of the assessment described in Attachment 6;
  - f. Public health programs for identified environmental justice populations along the rail route or within two (2) miles distance from the Terminal Facility;
  - g. Greenhouse Gas Mitigation Payment in the amount of four hundred ninety-six thousand four hundred forty dollars (\$496,440.00) to the Climate Trust or other carbon emission offset projects. The greenhouse gas mitigation obligations will sunset and cease to exist upon adoption of future state or federal greenhouse gas mitigation requirements that are applicable to the Project. Based on the Performance Based Throughput Limitations (Article VII.B) fifty (50)% of this amount may be paid prior to commencement of Commercial Operations followed by two subsequent payments of twenty-five (25)% of the total amount each, when throughput is further increased by Article VII.B;
  - h. Other mitigation measures specifically identified in the Final EIS not otherwise identified in Attachment 6.
2. Selection: Mitigation activity funded by this Article will be determined at the discretion of EFSEC or its designee through the following methods:
    - a. Identification by EFSEC or the EFSEC Manager;
    - b. Request from a public agency outside of EFSEC;
    - c. Request from the Certificate Holder.

#### **K. Stormwater Discharge**

The Certificate Holders shall ensure that all discharges of stormwater from the Facility are made in a manner consistent with the requirements of the NPDES permit included as Attachment 2 to this Agreement.

#### **L. Wastewater Discharge**

1. The Certificate Holder shall discharge all sanitary and industrial wastewater to the City municipal wastewater system.
2. All discharges of wastewater by the Certificate Holder shall be subject to the terms and conditions of this Agreement and any requirements of the City Industrial Wastewater Permit and applicable City ordinances.

3. Any use of chemicals such as biocides, anti-corrosion inhibitors, or any other system of the Project which may result in any wastewater discharge shall be in conformance with applicable regulatory standards.

#### **M. Aesthetics and Landscaping**

All landscaping (installed and existing) on the Site shall be maintained by Certificate Holder for its intended purpose for the duration of the Project.

#### **N. Transportation and Traffic**

The Certificate Holder will work with the appropriate agency with jurisdiction to undertake the following safety related transportation improvements:

- Post a twenty-five (25) MPH speed limit on Old Lower River Road south of SR 501, where no posted speed sign exists;
- Reconfigure traffic control devices at the Old Lower River Road/Old Alcoa Facility Access Road intersection;
- Add texturing/coloring treatments to the striped crosswalk on the private access approach to Lower River Road (SR 501), between the Far West Steel property and the proposed Storage area.

#### **O. Structural Inspections**

1. The Certificate Holder shall develop and conduct a periodic program to monitor the structural integrity of Project's facilities consistent with the Structural Inspection Plan required pursuant to Article VI.D.
2. Appropriate actions shall be undertaken if problems or discrepancies are identified during the inspections, and shall be reported to EFSEC. Records shall be maintained consistent with the requirements of Article III.F and shall be made available to the EFSEC upon request.

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

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

1. The Certificate Holder shall submit a Detailed Site Restoration Plan to EFSEC for Approval consistent with the provisions of WAC 463-72-050 at least ninety (90) days prior to the expiration of this Agreement or notification of the intent to terminate the Project, provided that EFSEC may allow an extension of the deadline for good cause shown. Site restoration activities shall not begin until the Detailed Site Restoration Plan is approved by EFSEC.
2. The Detailed Site Restoration Plan will address the minimum requirements contained in WAC 463-72-040 and the approved Preliminary Site Restoration Plan required by Article IV.A of this Agreement. The Detailed Restoration Plan shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues presently anticipated by the Certificate Holder. The Detailed Restoration Plan shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the

Site or otherwise protect the public against risks or danger resulting from the Project. The Detailed 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 Site restoration or management costs. The Detailed 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 Detailed Site Restoration Plan.

3. The Detailed Site Restoration Plan shall include the following specific elements:
  - a. Timing and Scope of decommissioning and Site restoration;
  - b. Decommissioning Funding and Surety;
  - c. A description of the assumptions underlying the plan. For example, the plan should explain the anticipated timeframe of Site restoration, and the anticipated future use of the Site;
  - d. A plan for demolishing facilities, salvaging equipment, and disposing of waste materials;
  - e. 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;
  - f. A plan for restoring the Site to the determined post Project condition;
  - g. Provisions for retaining systems and equipment owned and operated by the Port, the City and, any other municipality, or any utility.

## **B. Decommissioning**

1. Site restoration shall include decommissioning involving: removal of the Project Structures including foundations; removal of Project access roads (except for roadways the Port wishes to retain); and reseeded of disturbed soils (all of which shall comprise "Decommissioning"). The following exceptions to Decommissioning are specifically excluded and shall remain at the Site following Decommissioning:
  - a. Infrastructure or equipment that is owned and operated by, or provides access to systems that are owned and operated by, the Port, the City, any other municipality, or any utility unless the utility owner requests removal;
  - b. Ground improvements;
  - c. Dock improvements including dock structural improvements, mooring changes, and control room, but excluding improvements specific to loading crude oil;
  - d. Rail Infrastructure improvements described in Article I.C.1, excluding tracks and other improvements in the Unloading Facility described in Article I.C.2; and
  - e. Improvements retained by the Port pursuant to the Ground Lease Between Port of Vancouver, USA and Tesoro Savage Petroleum Terminal, LLC, dated July 23, 2013, as amended on April 26, 2016, or amended hereafter, provided that the Port obtains any necessary

authorization or approvals from EFSEC for its retention and continued use of those improvements that are subject to EFSEC jurisdiction.

2. EFSEC shall be granted reasonable access to the Site during Decommissioning of the Project for purposes of inspecting any Decommissioning work or to perform Decommissioning evaluations. EFSEC personnel on the Site shall observe all worker safety and security requirements enforced and observed by the Certificate Holder and its contractors. If requested by EFSEC, the Certificate Holder will provide monthly status reports until this decommissioning work is completed.

**C. Project Termination / Amendment**

1. Termination of this Site Certification Agreement, except pursuant to the expiration of its term or any other terms of this Agreement, is an amendment of this Agreement.
2. The Certificate Holder shall notify EFSEC in writing of its intent to amend the Site Certification Agreement including the intent to terminate the Project.
3. The Council may initiate proceedings leading to amendment of this Agreement pursuant to WAC 463-66-090.
4. A decision by the Certificate Holder to not proceed with all or portions of the deferred elements identified in Article I.C is not considered to be a Termination event that requires an amendment of this Agreement.

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

Dated and effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**ATTACHMENTS:**

1. Project Legal Description
2. Permits
3. Council Order
4. Mitigation Measures and Commitments Applicable to Design of the Project
5. Mitigation Measures and Commitments Applicable to Construction
6. Mitigation Measures and Commitments Applicable to Operations

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