DRAFT SITE CERTIFICATION AGREEMENT

BETWEEN

THE STATE OF WASHINGTON

AND

SUMAS ENERGY 2, INC.

For the

SUMAS 2 GENERATION FACILITY

SUMAS, WASHINGTON
WHATCOM COUNTY, WASHINGTON

Executed _____; 2002

ENERGY FACILITY SITE EVALUATION COUNCIL

OLYMPIA, WASHINGTON

DRAFT SITE CERTIFICATION AGREEMENT

FOR THE SUMAS 2 GENERATION FACILITY

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SITE CERTIFICATION AGREEMENT

FOR THE SUMAS 2 GENERATION FACILITY

between

THE STATE OF WASHINGTON

and

SUMAS ENERGY 2, INC.

This Site Certification Agreement (SCA or Agreement) is made pursuant to Chapter 80.50 of the Revised Code of Washington (RCW) by and between the State of Washington, acting by and through the Governor of the State, and Sumas Energy 2, Inc. (SE2), 335 Parkplace, Suite 110, Kirkland, Washington, 98033.

SE2 filed, as required by law, an application with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification for the construction and operation of a natural gas-fired electric generation facility in Sumas, Washington. The Council reviewed the application, conducted public and adjudicative hearings, and by order, recommended approval of the application by the Governor. On (date), the Governor approved the Site Certification Agreement authorizing SE2 to construct and operate the Sumas 2 Generation Facility. The Council will administer this Agreement for the State of Washington.

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

The effective date of this Agreement shall be (date), 2002.

ARTICLE I. SITE CERTIFICATION

A. Site Description

1. The Site on which the Sumas 2 Generation Facility (S2GF) is to be constructed and operated is located in Sumas, Washington, south of the U.S./Canada border, north of State Route 9, and is more particularly described in Attachment 1. Within thirty (30) days of the effective date of this Agreement, the Certificate Holder shall provide the Council with the legal description of property acquired for wetland mitigation. This legal description will be added to Attachment 1 to this Agreement.

2. The route of the natural gas pipeline connecting the S2GF to the metering station located on the U.S./Canada border is described with particularity in Attachment 2. The Certificate Holder shall provide the Council with the final legal description of the natural gas pipeline no later than six (6) months after pipeline construction is completed. This final legal description will be added to Attachment 2 of this Agreement.

3. The route of the electrical transmission line connecting the S2GF to transmission lines located on the U.S./Canada border is described with particularity in Attachment 3. The Certificate Holder shall provide the Council with the final legal description of the electrical transmission line no later than six (6) months after transmission line construction is completed. This final legal description will be added to Attachment 3 of this Agreement.

4. The Certificate Holder shall provide a fully executed and recorded declaration of restrictive covenants for the eastern and western mitigation areas one hundred and eighty (180) days prior to the beginning of site preparation. The executed and recorded declaration of restrictive covenants shall be included in Attachment 5 of this Site Certification Agreement.

B. Site Certification

The State of Washington hereby authorizes Sumas Energy 2, Inc. (SE2 or Certificate Holder), to construct and operate the Sumas 2 Generation Facility (S2GF) as described in Article I.C subject to the terms and conditions set forth in Council Order No. 768, Findings of Fact and Conclusion of Law, and Order Recommending Site Certification on Condition, and this Site Certification Agreement. Such construction and operation shall be located within the areas designated for construction described herein and in the Second Revised Application, and as described in Attachments 1, 2 and 3 to this Agreement. In addition, this Agreement incorporates the settlements

and stipulated agreements made between SE2 and parties to the adjudicatory hearings set forth in Attachments 6, 7, 8, 9, 10 and 11 to this Agreement.

This Site Certification Agreement authorizes SE2 to begin construction within ten (10) years of the effective date of this Agreement. *Provided*, that the construction schedule that SE2 submits pursuant to Article IV.V of this Agreement demonstrates SE2's intention, and good faith basis to believe that construction will be completed within eighteen months of beginning construction.

If SE2 does not begin construction within five (5) years of the effective date of this Agreement, the Certificate Holder shall report to the Council its intention to continue and shall certify that the statements and conditions contained in the Second Revised Application are still valid and applicable, or identify any changes and propose appropriate resulting changes in the Site Certification Agreement to address changes. Construction may begin only upon prior Council authorization, upon the Council's finding that no changes to the Site Certification Agreement are necessary or appropriate, or upon the effective date of any necessary or appropriate changes to the Site Certification Agreement.

C. Project Description

1. Combustion Turbine Generators (CTGs)

   The Generation Facility is a nominal 660 megawatts (MW) combined cycle, electric generating facility, with a gross nominal generating capacity of 669 MW (approximately 9 MW is consumed on site). The Generation Facility consists of two natural gas-fired combined-cycle combustion turbine generator (CTG) units, and one steam turbine driven generator. Each gas-fired generator is expected to have a nominal power rating of 186 MW at average annual ambient temperatures. The Generation Facility will be fired by natural gas, delivered at an estimated pressure of 435 psig, as measured at the turbine fuel train. Natural gas will be fired in the turbine's combustion section using Selective Catalytic Reduction (SCR) as a post-combustion NOx reduction device. The Generation Facility shall operate only in its combined-cycle combustion configuration.

2. Heat Recovery Steam Generators (HRSGs)

   The high temperature exhaust produced by each CTG will flow directly to a HRSG. Exhaust gases leaving the HRSG boiler will exit into a 180 foot tall steel stack with Federal Aviation Agency (FAA) approved aircraft warning lights and/or obstruction markings if such lights or markings are required by FAA.

3. Steam Turbine

High pressure steam produced by each HRSG will be directed to a condensing steam turbine rated to produce a nominal 296 MW.

4. Fuel Supply

The Generation Facility will be fueled with natural gas, delivered to the site by a 4.5-mile pipeline from the U.S./Canada border. The natural gas will be produced in Canada and delivered by West Coast Pipeline Ltd. to the Canadian border approximately one mile east of Sumas. At the border, the natural gas will pass through a pressure reducing station that drops the pressure below 500 pounds per square inch (psi), an odorizing station and a metering station, before entering the 4.5-mile pipeline. A fuel gas system will be provided on site to supply natural gas at suitable pressure and temperature to each combustion turbine, the auxiliary boiler(s), and any other miscellaneous uses, such as unit heaters.

5. Water Supply System

The Generation Facility will use two sources of water supply: (1) industrial water from the City of Sumas' May Road well field; and (2) municipal water from the City's municipal well field. Both sources of water will be obtained from the City of Sumas pursuant to the City's existing water rights.

6. Water Discharge System

All process wastewater and sanitary sewer water from the S2GF will be discharged to the City of Sumas' municipal sewage collection system at the boundary of the Site.

7. Cooling System

The S2GF will be cooled by a parallel condensing system consisting of a wet condenser and a dry condenser operating in parallel to provide heat dissipation over the range of ambient conditions.

8. Electrical Interconnection

The Generation Facility will be interconnected to a new 230 kilovolt (kV) electrical transmission line through a new switchyard located at the S2GF. The 230 kV transmission line will be connected into BC Hydro's Clayburn Station located in British Columbia, approximately 5.9 miles north of the Site. The U.S. portion of the new electrical transmission line is approximately 0.6 mile in length.

ARTICLE II. DEFINITIONS

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

1. "Application" or "Second Revised Application" means the Second Revised Application for Site Certification, designated No. 99-1, filed by SE2 with EFSEC on June 29, 2001 for the Sumas 2 Generation Facility (S2GF), and incorporated by reference herein, including all revisions to the Application.

2. "Approval" (by EFSEC) means an affirmative action by EFSEC or its authorized agents regarding documents, plans, designs, programs, or other similar requirements submitted pursuant to this Agreement.

3. "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting the S2GF with existing energy supply, processing, or distribution systems, including, but not limited to, the natural gas fuel line from the S2GF metering point at the U.S./Canada border to the turbines, and the electrical transmission lines connecting the S2GF to the U.S./Canada border, and a water delivery and return system (which includes pipelines for reclaimed water, municipal water, and wastewater). The S2GF does not include pipelines for municipal water, industrial water or wastewater, other than those elements located on the generation facility site.

4. "Begin construction" or "Beginning of construction" means for the Site: the initiation of any actual construction activities such as form work, rebar, and pouring concrete for the power block structures; for the natural gas pipeline: excavation of the pipeline trench; and for the electrical transmission line: pouring footings for, or erection of, transmission line structures

5. "Begin operation" or "Beginning of operation" means the time that the first electricity produced by the S2GF is delivered for commercial sale to the electrical power grid.

6. "Certificate Holder" means Sumas Energy 2, Inc., or its successor.

7. "City" means the City of Sumas, Washington.

8. "Combustion turbine" means a natural gas-turbine configured to drive an electric generator.

9. "County" means Whatcom County, Washington.

10. "Ecology" or "WDOE" means the Washington Department of Ecology.

11. "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 purpose of this Agreement.

12. "Generation Facility" means the two natural gas fired combined cycle combustion turbine units with heat recovery steam generators and associated equipment, buildings and structures.

13. "Pipeline" means the natural gas pipeline element of "Associated facilities" except where the context clearly indicates otherwise.

14. "SCCLP" means the Sumas Cogeneration Company, L.P., which owns the Sumas Cogeneration Company L.P. Plant, a cogeneration facility in Sumas, Washington, commonly referred to as "SE1."

15. "SE2" means Sumas Energy 2, Inc., a Washington special purpose corporation formed to develop, permit, finance, construct, own and operate the Sumas 2 Generation Facility, or its corporate successors. SE2 will manage all of the affairs of the S2GF, and will exercise the rights and perform the obligations under this SCA. SE2 shall be the guarantor of the S2GF's performance and ability to perform these obligations.

16. "S2GF" means the Generation Facility and its associated facilities. The specific components of the S2GF are identified in Article I.C.

17. "Site" means the property identified in Attachment 1, located in Sumas, Washington, on which the Generation Facility is to be constructed and operated.

18. "Site Certification Agreement" (also termed the "SCA" or the "Agreement") means this formal written agreement between Sumas Energy 2, Inc. and the State of Washington, which governs the construction and operation of the S2GF, including all attachments hereto and exhibits, modifications, amendments, and documents incorporated herein.

19. "Site preparation" means any of the following activities: clearing, grading, filling, pre-loading, surcharge fill placement, excavation, and preparation of lay down areas, as they apply to the Site, the natural gas pipeline and the electrical transmission line.

20. "WDFW" means the Washington Department of Fish and Wildlife.

21. "Wetland" means a wetland as determined by the United States Natural Resource Conservation Service or the Washington Department of Ecology for the Site, and a wetland as determined by United States Army Corps of Engineers for the Pipeline route.

22. "UBC" means Uniform Building Code.

23. "WUTC" means the Washington State Utilities and Transportation Commission.

ARTICLE III. GENERAL CONDITIONS

A. Legal Relationship

1. This Agreement shall bind the Certificate Holder, its subsidiary corporations, affiliated partnerships, contractors, subcontractors, and their successors in interest, and the state and any of its departments, agencies, divisions, bureaus, commissions, boards, or its political subdivisions, subject to all the terms and conditions set forth herein, as to the approval of the Site, the Generation Facility, the Pipeline the electrical transmission line, and the construction and operation of the S2GF.

2. This Agreement, which includes those commitments made by the Certificate Holder in the Second Revised Application (the Second Revised Application is hereby incorporated by reference), 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. This Agreement incorporates the settlements and stipulated agreements made between SE2 and parties to the adjudicatory hearings set forth in Attachments 6, 7, 8, 9, 10 and 11 to this Agreement, as well as the other Attachments listed on page 66 of this Agreement.

B. Enforcement

1. This Agreement may be enforced by resort to all remedies available at law or in equity.

2. This Agreement may be modified, suspended, or revoked pursuant to Chapter 34.05 RCW and Chapter 80.50 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 rules promulgated thereunder, or for violation of any applicable resolutions or orders of EFSEC.

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

C. Notices and Filings

Filing of any documents or notices required by this Agreement with EFSEC shall be deemed to have been duly made after delivery to EFSEC's offices in Thurston County. Notices to be served 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 335 Parkplace, Suite 110, Kirkland, Washington, 98033.

D. Rights of Inspection

Throughout the duration of this Agreement, the Certificate Holder shall provide access to the Site, the Generation Facility, all associated facilities therein and their respective rights of way, any wetland mitigation areas, and all records relating to the construction and operation of the S2GF, 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.

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. Natural Gas Pipeline

1. During the design, construction, operation, and maintenance of the Pipeline, the Certificate Holder shall comply with WUTC rules and regulations governing natural gas pipelines, Washington Administrative Code (WAC) chapter 480-93, and with applicable federal pipeline safety rules and regulations, including those rules set forth in 49 Code of Federal Regulations (C.F.R.) Parts 191 and 192.

2. The WUTC shall notify the Certificate Holder and EFSEC of any noncompliance of the comprehensive written specifications and standards with the regulations set forth in the WAC 480-93 and 49 C.F.R. Part 192. The WUTC shall submit a noncompliance report to the Certificate Holder and EFSEC within 45 days of completion of an audit.

3. The WUTC shall monitor the design, construction, operation and maintenance of the Pipeline. If the WUTC becomes aware of any noncompliance with state or federal regulations during the design, construction, operation and maintenance of the Pipeline, the WUTC shall notify the Certificate Holder and EFSEC, and the Certificate Holder may be

subject to appropriate enforcement action by the WUTC as authorized by R.C.W. 80.28.212.

G. Consolidation of Plans

Any plans required by this Agreement may be consolidated with other such plans, if such consolidation is approved in advance by EFSEC.

H. Site Certification Agreement Compliance Monitoring and Costs

The Certificate Holder shall pay to the Council such reasonable monitoring costs as are actually and necessarily incurred during the construction and operation of the S2GF to assure compliance with the conditions of this Agreement as required by Chapter 80.50 RCW. The amount and manner of payment shall be prescribed by EFSEC pursuant to applicable rules and procedures.

I. Site Restoration

The Certificate Holder is responsible for site restoration pursuant to Council Rules. The Certificate Holder shall submit its initial site restoration plan to the Council in accordance with the requirements set out in Article IV.B of this Agreement. The Certificate Holder may not begin construction until the Council has approved a plan adequately providing for, and funding, site restoration. A detailed site restoration plan shall be submitted consistent with Council Rules.

J. EFSEC Liaison

The Certificate Holder shall designate a person to act as a liaison between EFSEC and SE2.

K. Changes in Project Management

The Certificate Holder shall notify EFSEC of any change in the management of, or responsibilities for, the S2GF.

L. Amendment or Modification of Agreement

1. This Agreement may be amended pursuant to EFSEC rules and procedures then in effect. Any requests by the Certificate Holder for amendments to this Agreement shall be made in writing.

2. A change in ownership of the S2GF shall require an amendment to this Agreement. An application for change in ownership shall provide an analysis of the effects of such change on the areas identified under Chapters 463-36, 463-39 and 463-42 WAC or as subsequently amended, and

demonstrate that the successor is able and willing to comply with all terms and conditions of this Agreement.

3. Any change of terms or conditions of a Notice of Construction/Prevention of Significant Deterioration (NOC/PSD), Title V Air Operating Permit, or this Site Certification Agreement required by federal law or regulations, shall be governed by applicable law and regulation and shall not require modification of this Site Certification Agreement in the manner prescribed in L.1, above. Any changes in the terms or conditions of Attachment 1 – Site Legal Description, Attachment 2 – Natural Gas Pipeline Legal Description, Attachment 3 – Electrical Transmission Line Legal Description, and Attachment 5 – Restrictive Covenant for Eastern and Western Wetland Mitigation Sites, shall not require modification of this Site Certification Agreement in the manner prescribed in L.1 above, unless otherwise required by Council.

4. In circumstances where the S2GF causes a significant adverse impact on the environment not previously analyzed or anticipated by this Agreement or where such impacts are imminent, EFSEC may impose 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 90 days, and may be extended once for an additional ninety (90) day period if deemed necessary by EFSEC.

5. Future amendments to this Site Certification Agreement shall be incorporated as attachments to this Agreement.

M. Order of Precedence

In the event of an inconsistency in this SCA, 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 Site Certification Agreement;

3. Attachment 13, Council Order No. 768, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification On Condition;

4. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

ARTICLE IV. PLANS, APPROVALS AND ACTIONS REQUIRED PRIOR TO CONSTRUCTION

The following plans, submittals and/or approvals shall be submitted to the Council a minimum of ninety (90) days prior to the beginning of construction, unless otherwise specified below:

A. Right-of-Way Map

A detailed map showing right-of-way acquisition and land uses impacted within the right-of-way will be submitted to EFSEC and WUTC ninety (90) days prior to the beginning of construction of the Pipeline and the electrical transmission line.

B. Initial Site Restoration Plan

At least ninety (90) days prior to the beginning of site preparation, the Certificate Holder shall submit to the Council its initial site restoration plan, which will provide for the funding of site restoration at the end of the S2GF's useful operating life or in the event of the S2GF being terminated before it has completed its useful operating life.

At a minimum, the initial site restoration plan shall address both the possibility that site restoration occurs at the end of the useful life of the S2GF and also the possibility of the S2GF being suspended or terminated during construction. The plan shall comply with the Council's rules and shall include at least the following components:

1. A description of the assumptions underlying the plan. For example, the plan should explain the anticipated useful life of the S2GF, the anticipated time frame of site restoration, and the anticipated future use of the Site.

2. An initial plan for demolishing facilities, salvaging equipment, and disposing of waste materials.

3. An initial plan for disposing of hazardous materials (if any) present on the Site, and remediating hazardous contamination (if any) at the site.

4. An initial plan for restoring the Site, including the removal of structures and foundations and the regrading of the Site, if appropriate.

5. The provision of financial assurances to ensure that funding is available and sufficient for site restoration. Such financial assures will include evidence of pollution liability insurance coverage in an amount not less than ten million dollars ($10,000,000), and a site closure bond or other financial instrument or security in an amount justified in the initial site restoration plan.

6. Provisions for retaining systems owned and operated by the City of Sumas.

7. Provisions for retaining and protecting wetlands mitigation sites.

8. Provisions for restoration of the electrical transmission line and natural gas pipeline.

Prior to beginning site preparation, the Certificate Holder must obtain approval from the Council of the initial site restoration plan, including, but not limited to, approval of the amount, type and issuer of the site closure bond, or other financial instrument or security.

C. Transmission Corridor and Natural Gas Pipeline Restoration Plan

Ninety (90) days prior to the beginning of site preparation, a detailed construction and restoration plan for the electrical transmission corridor and the Pipeline shall be prepared to address wetland, riparian, and aquatic habitat protection standards and submitted to the Council for approval. The Certificate Holder shall not begin site preparation prior to obtaining approval from the Council of the electrical transmission corridor and natural gas pipeline restoration plan. The Certificate Holder shall consult with, and seek consensus with, Ecology and WDFW during development and review of this plan. It shall include restoration, revegetation and maintenance practices, schedules, monitoring methods, contingencies, and noxious weed control measures. Among other things, the plan shall provide that:

1. In the event of damage to or removal of vegetation along the Pipeline route resulting from construction by the Certificate Holder, the Certificate Holder shall return the area affected to the previously existing topsoil condition and restore previously existing plant species. Restoration or replacement of vegetation from wetland areas along the route of the Pipeline is governed by Article IV.D below.

2. Shrub Habitat

    a. Shrub and riparian areas that are cleared for construction of the Pipeline or the electrical transmission line will be restored to shrub habitat by the Certificate Holder following construction. For shrub areas that are cleared and that are not returned to shrub habitat or have not met the revegetation success criteria in Article VII.J.2, mitigation shall be by replacement of shrub habitat (restoration or creation) in selected locations that are controlled by the Certificate Holder, or otherwise protected (restoration or creation) in an amount equal to twice the unrestored shrub area. Successful planting of shrubs in formerly disturbed herbaceous sites (such as abandoned agricultural fields) shall qualify. It is understood by the parties

that the Pipeline and electrical transmission line are being constructed in easements, not on property owned by the Certificate Holder; therefore, the Certificate Holder will not have control of activities of the easement owner after the Certificate Holder's restoration activities are implemented.

b. With respect to the electrical transmission line, trimmed material and tree trunks will typically be left on the ground in natural vegetated areas for habitat features. Footing construction areas are to be restored and revegetated to pre-construction conditions.

3. Herbaceous Habitat

a. Disturbance impacts to herbaceous habitat shall be mitigated by restoration of the disturbed areas using approved native species with safeguards against weedy invasive species.

b. In areas where the Pipeline traverses cultivated agricultural areas, or areas occupied exclusively with grasses, the grass areas will be re-seeded, while areas planted in corn may be left as is.

4. Forest Habitat

Trees that are removed from the rights of way due to construction, and trees beyond fifteen feet from the Pipeline centerline that are removed from the rights of way in the course of maintenance activities, shall be replaced. Replacement trees shall be appropriate for the habitat and a transmission corridor, and will be planted in selected locations that are controlled by the Certificate Holder, or otherwise protected. Those locations will be more than fifteen feet from the centerline of the pipe. Tree replacement will be at a ratio of three new trees for each tree removed.

5. Suggested native species that may be used for revegetation in emerging pasture wetlands include: Slough Sedge, Beaked Sedge, Spike Bentgrass, Bluejoint Reedgrass, and Northern Mannagrass.

6. No Red Fescue or Douglas Spirea shall be used for revegetation.

7. Seeds, seedlings and plants shall be obtained only from established and reputable sources in the Pacific Northwest.

8. The electrical transmission line construction plan shall contain, at a minimum, design features that prevent avian electrocution and collision.

9. If the design standards or requirements for protection of the wetland, riparian or aquatic habitat cannot be met, the Certificate Holder shall confer with WDFW and, insofar as possible, agree on the appropriate standards or requirements to be used, prior to requesting any revisions to these standards from EFSEC.

D. Wetland Mitigation Plan

The Certificate Holder shall prepare a wetland mitigation plan that includes a combination of wetland enhancement and creation to compensate for the wetlands that will be filled and/or altered at the Site. Ninety (90) days prior to the beginning of site preparation the wetland mitigation plan shall be submitted to EFSEC for approval, and at the same time, shall be submitted to Ecology and WDFW for review and comment. The Certificate Holder shall not begin site preparation prior to obtaining approval from the Council of the wetland mitigation plan.

The wetland mitigation plan shall be based upon Exhibit 184.5, and the Wetland Delineation & Mitigation Report dated June 26, 2000 (filed with EFSEC as Exhibit 161.4), as modified by the Second Revised Application and the prefiled testimony of A. David Every (Exhibit 184). Exhibit 184.5 and Exhibit 161.4 are herby incorporated by reference. In general, the wetland mitigation plan shall include the following:

1. The western half of the Site, or "West Mitigation Area," will be used for compensatory mitigation, and Generation Facility construction will only occur in the eastern half of the Site. The Port of Bellingham property, or "East Mitigation Area," will also be used for compensatory mitigation (*see* Exhibit 184.5). All wetlands within the mitigation areas will be enhanced and much of the uplands within the mitigation areas will be converted to wetlands. The remaining uplands will be enhanced to support forested habitat and serve as a wetland buffer.

2. Within the meadow and cornfield portions of the mitigation areas, cover by non-native species will be reduced and a variety of wetland habitat types will be established. Topographic modifications will be made to create palustrine aquatic bed (PAB) communities that are semi-permanently flooded and support aquatic plants. Additionally, palustrine emergent wetland communities that are seasonally flooded (PEMC) will be created adjacent to and near the PAB communities. The PEMC communities will support a variety of wetland grasses, sedges, rushes, and flowering herbs. Palustrine scrub-shrub (PSS) and palustrine forested (PFO) wetland communities will be established as well. These communities will comprise the majority of the compensatory mitigation areas and will support a variety of native trees and shrubs. Native coniferous evergreen and broad-leaved

deciduous trees will be planted in the areas where upland forest will be established.

3. Upland forest will be established within the approximately one (1) acre of upland meadow corn field located in the southern portion of the mitigation areas.

4. To enhance the forested wetland area in the northwest portion of the Site (the PSS/PFO wetland community), several hundred Western red cedars and Western hemlocks will be planted in the forested and shrubbed wetland. The cedars will be planted on 15-foot centers or in pods through the wetland where the elevation is conducive for their growth. The Certificate Holder shall develop a detailed plan for these plantings and shall consult with, and seek consensus with, WDFW during the development and review of the plan. The parties agree that the plan will include site-specific performance standards that will be in lieu of the vegetation performance standards set forth in the June 2000 Wetland Delineation & Mitigation Report (Exhibit 161.4).

5. Suggested native species that may be used for revegetation in the on-site constructed wetlands include: Black Cottonwood, Red Alder, Salmonberry, Scouler Willow, Pacific Willow, Red-osier Dogwood, Slough Sedge, and Tall Mannagrass.

6. Suggested native species that may be used for revegetation in the on-site enhanced wetlands include: Black Cottonwood, Red Alder, Salmonberry, Scouler Willow, Pacific Willow, and Red-osier Dogwood. Western Red Cedar and Western Hemlock will be planted to enhance the existing PSS/PFO wetland.

7. Suggested native species that may be used for revegetation in the on-site nonwetland buffer include: Western Hemlock, Western Red Cedar, Black Cottonwood, Red Alder, Vine Maple, Wild Rose, Salmonberry, Scouler Willow, Bearded Fescue, Hair Bentgrass, and Native Bluegrass (Poa nervosa).

8. Suggested native species that may be used for revegetation in emergent pasture wetlands include: Slough Sedge, Spike Bentgrass, Bluejoint Reedgrass, and Northern Mannagrass.

9. No Red Fescue or Douglas Spirea shall be used for revegetation.

10. Seeds, seedlings, and plants for revegetation shall be obtained only from established and reputable sources in the Pacific Northwest.

11. The wetland mitigation plan shall include a complete application of the Washington State Wetland Function Assessment Method (WFAM) to the Site, including the 8.8 acres of scrub-shrub and forested wetland in the assessment, and calculating the acre-points for the proposed mitigation action. The Certificate Holder shall evaluate and discuss the increase and decrease (in acre-points) of each wetland function evaluated in the WFAM analysis.

12. The performance standards for trees and shrubs set forth on pp. 23 and 24 of the June 26, 2000 Report are modified so that 50% of the cover for those vegetation types will be achieved by Year 10.

13. The Certificate Holder shall modify the design of the drainage ditches on the Site, including the outlet design, to ensure that an adequate supply of water is provided to the wetlands being created and enhanced, and to provide additional habitat features. This modification will include maintaining a vegetative channel east of the forested and shrubbed wetland, along the south property line, and the east property line south of the connection with the 42-inch culvert as shown in Figure 2.7-1A of the Second Revised Application. Additional vegetative channels will be considered for the north side and east side, north of the existing 42-inch culvert, of the Site, provided that there is adequate width on the east side of the property site in conjunction with a landscaped screen. The Certificate Holder shall develop a design plan for these modifications and shall consult with, and seek consensus with, WDFW during development and review of the plan.

14. The Certificate Holder shall work with Ecology and WDFW during the development of the wetland mitigation plan to ensure that the final design provides some buffering along the southern edge of the mitigation area, without planting trees in the median strip between Haul Road and State Route 9. Possibilities may include planting trees in the wetlands and uplands along the southern edge of the mitigation area, or if permitted, planting shallow rooted shrubs or other vegetation in the median strip.

15. The Certificate Holder shall develop a performance plan ("Performance Plan") for the wetland mitigation in coordination with Ecology and WDFW. The Performance Plan will include the following: a description of monitoring that must be performed; a monitoring schedule; submittal of monitoring reports on a prescribed schedule; performance standards for each aspect of

the wetland mitigation plan; and contingencies in the event that any aspect of the wetland mitigation plan fails. Performance standards shall be developed using guidance in publications available on Ecology's wetlands homepage, as well as "Success Standards for Wetlands Mitigation Projects – A Guideline" (Mary Ossinger, WSDOT Environmental Affairs Office, Draft August 1999). The Performance Plan shall include design and grading drawings, typical cross sections, and detailed planting plans. The Certificate Holder shall ensure that it will not use plant species not native to the Puget Lowlands bioregion. The Performance Plan shall be submitted to Ecology for review and to EFSEC approval. The Certificate Holder shall modify the Performance Plan documents should Ecology's review indicate items in need of revision.

16. Monitoring pursuant to the Performance Plan shall be performed one, two, three, four, five, seven, and ten years after construction of the wetland mitigation areas. Performance monitoring reports shall be submitted to the Council, with a copy to Ecology and WDFW, annually for the first five years, and in years seven and ten, no later than thirty (30) days after the end of the annual monitoring period.

17. In lieu of the dedication or easement to the City of Sumas described in Sections 1.4 and 3.4 of the Second Revised Application, prior to beginning of site preparation, the Certificate Holder shall execute and record a restrictive covenant with respect to the western and eastern wetland mitigation areas in substantially the form attached as Attachment 6 and Attachment 7. The executed and recorded restrictive covenant shall be added to this Agreement as Attachment 5.

E. Air Quality Offsets

1. Within twelve (12) months of the effective date of this Agreement, the Certificate Holder shall submit to EFSEC for approval a plan for offsetting 100% of the NO_x and particulate matter (PM_{10}) emissions from the S2GF by reducing actual emissions in the Fraser Valley airshed. For purposes of this provision, the "Fraser Valley airshed" is defined as the triangle-shaped Fraser Valley delta, including both United States and Canadian territory, between the Strait of Georgia and the City of Hope, bounded on the north by the Coastal Mountains, and on the south by the Cascade Mountains to the northern slope of the Alger Hills south of Bellingham.

   As a means of procuring the regional offsets, the Certificate Holder shall issue a Request for Proposals (RFP) for offset projects. Prior to issuing the

RFP, the Certificate Holder shall submit the RFP to EFSEC for approval. The Certificate Holder shall submit to EFSEC monthly progress reports detailing the Certificate Holder's progress towards obtaining required offsets. The Certificate Holder shall submit such reports until such time as EFSEC approves the Certificate Holder's plan for offsetting NO_x and PM_{10} emissions.

2. The Certificate Holder shall endeavor in good faith to negotiate offset projects that it believes will be acceptable to the Council. In the event that the Certificate Holder is unable to negotiate offset projects or to obtain the Council's approval of proposed projects, the Certificate Holder may satisfy its obligation under the above provision (Article IV.E.1) by the payment of $1,500,000 (U.S.) at the beginning of S2GF operations, into a fund to be administered jointly by the Washington Department of Ecology and the British Columbia Ministry of Water, Land and Air Protection, or other agencies or organizations approved by EFSEC, and to be used for the improvement of air quality in the Fraser Valley Airshed.

3. The requirements of Article IV.E shall be complied with prior to the beginning of operation of the S2GF.

F. Geotechnical Soils Investigation

1. A detailed geotechnical investigation shall be undertaken to establish the areas and extent of liquefiable soil layers in the Site and the proposed site of the Pipeline and the electrical transmission lines.

2. The geotechnical investigation shall be performed by a qualified licensed consultant in accordance with industry standards, and a report with recommendations shall be prepared and submitted to EFSEC ninety (90) days prior to the beginning of site preparation.

3. The geotechnical investigation shall be conducted in coordination with and take account of the information and data produced by the probabilistic seismic hazard assessment described in Article IV.G below.

4. In areas where saturated liquefiable soils are present, some form of in situ densification may be used to improve the liquefiable soils. Whenever depth to non-liquefiable soils is not too great, over-excavation and replacement with non-liquefiable soils may be used. Alternatively, pile foundation

support may be used to transfer loads to competent soils below liquefiable layers.

G. Probabilistic Seismic Hazard Assessment

1. Prior to the beginning of site preparation, the Certificate Holder shall perform a probabilistic seismic hazard assessment (PSHA) based on Site specific and Whatcom County geologic and seismologic conditions.

2. The PSHA shall be performed by a qualified licensed consultant in accordance with industry standards, and a report with recommendations shall be prepared and submitted to EFSEC ninety (90) days prior to the beginning of site preparation.

3. The PSHA shall include further assessment of the Sumas fault and the presence and recency of any seismic activity or surface displacement. The PSHA shall be conducted in coordination with and take account of the information and data produced by the geotechnical soils investigation described in Article IV.F above.

4. In the final S2GF design, the Certificate Holder shall develop Site-specific seismic design criteria for the S2GF for foundation and major equipment design based on the findings of the PSHA and the geotechnical soils investigation described in Article IV.F above.

5. At a minimum, the Generation Facility shall be designed to comply with the Seismic Zone 3 standards of the Uniform Building Code (UBC).

H. Unsteady State Flood Modeling Report

1. In consultation with the Whatcom County Public Works Department, River and Flood Section, and the City of Sumas, the Certificate Holder shall complete the unsteady state flood modeling of the Site for selected flood events. The modeling shall include the following elements:

    a. Creation of a "calibration" model. The calibration model shall recreate flood conditions in the Sumas area during the November 1990 flood by running the hydrograph of this flood through a model based on the most accurate early-1990s topography and comparing the results to observed conditions during the November 1990 flood.

b. Creation of a "base conditions" model. The base conditions model updates the topography of the calibration model by adding fill that has occurred in the local area since the early-1990s.

c. Creation of a "proposed conditions" model. This modifies the base conditions model by adding the fill that is proposed for the Site.

d. The hydrographs for two historic flood events, the November 1990 flood and the November 1995 flood, shall be run at 50%, 100% and 150% on all three models.

2. The modeling results shall be used to evaluate any potential adverse off-Site impacts.

3. In the event that any unreasonable adverse off-Site impacts are identified, the Certificate Holder shall evaluate reasonable alternatives for mitigating such impacts in consultation with City of Sumas, Whatcom County, the City of Abbotsford or Province of British Columbia flood control staff, depending on the jurisdiction in which the adverse impact occurs. The Certificate Holder shall use the above described models in the evaluation process.

4. At least one hundred and eighty (180) days prior to the beginning of construction, the Certificate Holder shall submit for the Council's approval, a report of the unsteady state modeling results and recommendations for reasonable mitigation of any unreasonable adverse off-site impacts.

I. Noise Monitoring and Design

1. The Certificate Holder shall conduct pre-construction noise monitoring.

a. A minimum of twelve (12) noise monitoring locations shall be selected at up to a distance of 3.5 miles from the Generation Facility, with some located on each side of the U.S.-Canada border. The Certificate Holder shall consult with the City of Sumas, Whatcom County, the City of Abbotsford and the Province of British Columbia, regarding the selection of monitoring locations, with a focus on residential receptors.

b. In addition to monitoring A-weighted sound levels, the Certificate Holder shall evaluate pre-construction low frequency noise and tones, including the gathering of one-third octave band data.

c. The Certificate Holder shall provide the results of pre-construction noise monitoring to EFSEC, the City of Sumas, Whatcom County, the City of Abbotsford and the Province of British Columbia.

2. The Certificate Holder shall pay attention to noise control issues during the detailed design of the Generation Facility. The Certificate Holder has proposed to install numerous noise attenuation features, many of which address low frequency noise and tones as well as other noise. The Certificate Holder shall include noise level specifications in equipment contracts. The Certificate Holder may also install barriers or enclosures for noise sources, additional stack silencers, and silencing for building ventilation and air condenser fans, or use reactive silencers or active noise control systems. Specific measures shall be determined through an iterative process during final Generation Facility design.

3. The final Generation Facility design shall make appropriate allowances for the possibility that the Certificate Holder may be required to install additional noise mitigation measures after operation, including (where appropriate) providing space to accommodate additional noise attenuation equipment or sound barriers.

J. Construction Management Plan

The Certificate Holder shall develop and submit for the Council's review and approval a detailed construction management plan, which shall encompass the primary construction phases (excavation, filling or grading) for the S2GF. The construction plan shall be generally based on the mitigation measures contained in this Agreement. The Certificate Holder agrees that applicable conditions set out in this Agreement shall be incorporated into the construction management plan. This construction management plan shall be completed ninety (90) days prior to the start of site preparation. The Certificate Holder shall consult with and seek consensus with WDFW during the development and review of this plan. The Certificate Holder shall not begin site preparation prior to obtaining Council approval of the construction management plan.

K. Construction Traffic Management Plan

Ninety (90) days prior to the beginning of site preparation, a construction traffic management plan shall be submitted to EFSEC for its review and approval. The Certificate Holder shall not begin site preparation prior to obtaining Council approval of the construction traffic management plan. The traffic management plan shall include, but not be limited to, the following:

1. A traffic control plan indicating the methods to be used to implement necessary traffic rerouting, means of assuring access to impacted properties, and methods of providing temporary traffic control for safety.

2. A program which will facilitate the exchange of commuting information among construction workers and encourage ride sharing.

3. A parking plan showing available parking areas for construction workers.

L. Construction Plans and Specifications

1. Ninety (90) days prior to the beginning of site preparation the Certificate Holder shall submit to EFSEC or its designated representative for approval, those construction plans, specifications, drawings and design documents that demonstrate compliance with Agreement conditions. The design documents will include, but are not limited to, conceptual design studies, flow diagrams, system descriptions, detailed design drawings, plans, specifications, and vendor guarantees for equipment and processes as appropriate. The Certificate Holder shall not begin site preparation until it receives approval to do so.

2. S2GF buildings, structures, and pipelines shall be designed and constructed consistent with the requirements found in the City of Sumas construction codes and ordinances; building codes to include the Uniform Building Code (UBC), and specifically Section 301(a), mechanical; plumbing; ventilation; and fire and life safety codes and standards; and other applicable construction related codes and requirements. Buildings and structures are defined in the UBC Section 403 and 420. Work exempt from consistency requirements is defined in UBC Section 301(b), as amended by the City of Sumas.

3. At a minimum, the Generation Facility shall be designed to comply with the Seismic Zone 3 standards of the Uniform Building Code (UBC).

M. Natural Gas Pipeline Construction Specifications

The Certificate Holder shall prepare comprehensive written specifications and standards for the Pipeline consistent with regulations set forth in 49 C.F.R. Part 192.

1. Specifications shall include a map that identifies the Pipeline and its components. At least ninety (90) days prior to the start of construction or reconstruction of the Pipeline the Certificate Holder shall file for approval such comprehensive written specifications and standards for the Pipeline with EFSEC and WUTC. The Certificate Holder shall not begin construction of the Pipeline until it receives EFSEC approval to do so.

2. The Pipeline shall be designed as follows:

    a. Pipe. The Pipeline will be constructed using electric resistance welded low carbon steel pipe API-5L, X56 or better. The pipe will be designed for a maximum hoop strength less than 20% of the specified minimum yield strength (SMYS). The pipe will have a longitudinal joint factor (E) of 1.00.

    b. Specified Minimum Yield Strength. The Pipeline will be constructed of pipe having a specified minimum yield strength of at least 56,000 psi.

    c. Pipe Thickness. The Pipeline will be constructed of pipe that is 0.375 inches thick.

    d. Flexibility. The Pipeline will be designed to prevent thermal expansion or contraction from causing excessive stresses in the pipe or associated components as defined in 49 C.F.R. § 192.159.

    e. External Pipe Coating. In order to resist corrosion, the Pipeline will be coated with fusion-bonded epoxy overlain with a layer of extruded polyethylene.

    f. Valves & Flanges. Valves will meet or exceed the minimum requirements found in 49 C.F.R. § 192.145. Flanges will meet or exceed the minimum requirements found in 49 C.F.R. § 192.147.

    g. Welds. Pipeline joints will be welded by qualified welders following written welding procedures specifying the methods for welding all required pipeline joints. Welding procedures and pipeline welders will be qualified in accordance with API Standard 1104. The procedures will be submitted to the EFSEC and WUTC for approval prior to construction. These procedures will include methods for welding all required pipeline joints.

During construction, welder qualification records will be available as required by 49 C.F.R. § 192.227, and will include a Coupon Test Report.

h. Depth. The Pipeline will be buried a minimum of 4 ½ feet (to the top of the pipe) to minimize the possibility of inadvertent third-party damage. Warning tape will be placed in the trench above the Pipeline to warn anyone excavating of the pipeline's location.

i. Specific Stream and River Crossing Methods

Stream Name:	Method:
Sumas Creek	Horizontal Directionally Drill
Johnson Creek	Horizontal Directionally Drill
Bone Creek	Horizontal Directionally Drill

j. Bedding. Pipeline bedding and shading material will consist of sand or sand-like material, with a minimum of 6 inches of fine materials no larger than 3/8-inch to protect the pipe and coating. Bedding will cover the entire Pipeline.

k. Operating Temperature. The gas operating temperature is expected to be no higher than 60 degrees Farenheit. The temperature derating factor (T) will be 1.00. (See 49 C.F.R. § 192.115.)

l. Cathodic Protection. The Pipeline will be further protected from corrosion by a Sacrificial Anode Cathodic Protection System, with sacrificial anode beds installed at intervals along the pipeline. The system will be designed based on the results of a site-specific cathodic protection survey. Test stations will be installed at several locations along the line to facilitate monitoring of the system.

m. Emergency Valves. The Pipeline will have two isolation valves. An emergency shut down valve will be installed at the regulator station within twenty feet of the border. A second valve will be located at the Generation Facility. The valves at the regulator station and at the Generation Facility will have blow down stations that will allow for the safe release of natural gas to the atmosphere in a safe manner. They will have manual valves and vertical stacks made of carbon steel pipe that rise to at least 10 feet above ground surface. A remote shutoff valve operated from the Generation Facility main control room will be installed at the border pressure reducing station.

n. Control System. Pressure monitoring devices will be installed at each end of the Pipeline to monitor the pressure drop of the Pipeline. The pressure

signal at the border pressure regulating station will be transmitted to the control room at the Generation Facility. The Generation Facility supervisory control system will be designed to send a signal to close the emergency shut down valve at the border station under high or low pressure conditions, or if the rate of pressure decay exceeds established parameters.

o. Pressure Regulation and Overpressure Protection. A pressure regulation station will be designed to include overpressure protection to prevent the line pressure from exceeding maximum allowable operating pressure (MAOP). The maximum operating pressure will not exceed 499 psig. The Certificate Holder shall request approval from WUTC and EFSEC to operate the Pipeline at pressure exceeding 250 psig that is within 100 feet of buildings as required by WAC 480-93-030 Prescribed Areas.

3. Hydrostatic test water use and control plan

Ninety (90) days prior to the Beginning of Construction, the Certificate Holder shall submit to EFSEC for approval a hydrostatic test water use and control plan. A copy of the plan shall also be submitted to WUTC. The hydrostatic test water use and control plan shall include, but not be limited to, the following elements:

a. Perform 100 percent radiographic inspection of all welds prior to installation.

b. Screen the intake hose (3/32" perforations) to prevent entrainment of fish. The maximum approach velocity shall not exceed 0.4 feet/second.

c. At least sixty (60) days prior to use, provide to EFSEC, WDOE and WDFW a list of specific locations proposed for withdrawal and discharge of hydrostatic test water and allow EFSEC to review and approve the list in consultation with WDFW and WDOE. No discharges or withdrawals shall occur without prior Council approval.

d. Notify EFSEC, WDFW and WDOE of intent to begin using specific locations for withdrawal at least 48 hours prior to testing.

e. Maintain adequate flow rates at all times to protect aquatic life and provide for all other water body uses, including downstream withdrawals.

f. Hydrostatic test manifolds shall be located outside wetlands and riparian areas.

g. If a utility line is pressure tested using water or chlorinated water, and such water is to be discharged to waters of the State upon completion of the test, such discharge shall not cause an exceedance of State water quality standards.

h. None of the hydrostatic test water will be discharged directly into surface waters of the State. Any hydrostatic test water discharged into a Publicly Owned Treatment Works (POTW) will meet all applicable pre-treatment standards.

i. Regulate discharge rate and use energy dissipation device(s) in order to prevent erosion of upland areas, stream bottom scour, suspension of sediments, or excessive stream flow.

4. The Certificate Holder shall notify EFSEC and WUTC at least thirty (30) days in advance of initial ground breaking for Pipeline construction.

N. Stormwater

1. The Certificate Holder shall file with EFSEC a Notice of Intent to be covered by a General Permit for Stormwater Discharges Associated with Construction Activities at least ninety (90) days prior to the beginning of site preparation.

2. The Certificate Holder shall prepare a construction stormwater pollution prevention plan (SWPPP) and submit it to EFSEC for approval, and to WDOE and WDFW for review and comment at the same time that the Notice of Intent required in Article IV.N.1 above. Source control Best Management Practices (BMPs) will be selected and identified during a detailed design of the Site, and will be included in the required construction SWPPP.

3. Ninety (90) days prior to the beginning of site preparation the Certificate Holder shall prepare a stormwater drainage design plan and submit it to EFSEC for approval. The Certificate Holder shall submit a copy of the plan to Ecology for review and comment.

a. The plan shall comply with the requirements of the Department of Ecology's Stormwater Management Manual for Western Washington, (SWMM) dated August 2001. The requirements of the August 2001 SWMM shall apply to all points of discharge from the Site.

b. The plan shall include the design of an orifice intended to permit an adequate flow of water into the created and enhanced wetland area located on the southwest portion of the Site and shall include a means of directing increased stormwater flows into the proposed drainage along the north and east property lines.

c. The design shall also include an orifice intended to permit an adequate flow of water into the created and enhanced wetland area located to the east of the Site and shall include a means of directing increased stormwater flows directly into the existing 42-inch stormwater drainpipe when such increased flow would potentially create scour or erosion within the new wetland areas.

4. In accordance with the SWMM dated August 2001, the Certificate Holder shall control runoff such that stormwater discharges shall match developed discharge durations to predeveloped durations for the range of predeveloped discharge rates from 50% of the 2-year peak flow up to the full 50-year peak flow. Also, developed peak discharges rates will not exceed the predeveloped peak discharge rates for 2, 10, and 50-year return periods.

5. The Certificate Holder shall not begin site preparation prior to obtaining Council approval of the stormwater pollution prevention plan and the stormwater drainage design plan.

O. Sediment and Erosion Control

A site-specific sediment and erosion control plan will be submitted for review and approval to EFSEC ninety (90) days prior to the beginning of site preparation. The Certificate Holder shall consult and seek consensus with Ecology and WDFW during the development and review of this plan. The Certificate Holder shall not begin site preparation prior to obtaining Council approval of the sediment and erosion control plan.

1. Generation Facility Construction

Best Management Practices (BMPs) will be designed and implemented for construction at the Site. BMPs will be selected from Ecology's Stormwater Management Manual for Western Washington dated August 2001, as appropriate for the site slopes, the construction activities, weather conditions, and vegetative buffers, and in accordance with any amendments or revisions made by the date of design submittal.

a. Sediment control measures will be based on a 10-year design storm. Runoff-control (detention) measures will consider the 2-year, 10-year and 100-year design storms. Water quality measures (other than sediment removal) will be based on the 6-month, 24-hour duration storm.

b. All construction practices will emphasize erosion control over sediment control through such non-quantitative activities as:

- straw mulching and vegetating disturbed surfaces;
- retaining original vegetation wherever possible;
- timing grading operations to dry seasons;
- directing surface runoff away from denuded areas;
- keeping runoff velocities low through minimization of slope steepness and length; and
- providing and maintaining stabilized construction entrances.

c. All "out of the water" soil disturbing activities associated with wetland, stream, or river crossings shall occur during the dry portion of the year, typically late spring through early fall.

d. Construction related activity that may be necessary within the wetted channel and/or within fifty feet of the bank shall be limited to the period of June 15 through October 15.

e. Construction activities will be controlled to the extent possible to help limit erosion. Clearing, excavation and grading will be limited to areas necessary for construction of the Generation Facility. Areas outside the construction limits will be identified and clearly marked, and equipment operators will be instructed to avoid these areas.

f. It is assumed that the pre-loading surcharge piles will be largely impervious due to the degree of compaction achieved during placement. The detention pond/wet pond and drainage channel will be constructed first, to provide detention and sedimentation functions for the surcharge construction phase as well as the permanent operation of the Site. At the conclusion of construction, sediment from construction will be removed from the detention pond to restore its design capacity for permanent operations.

g. To effectively drain the work site during filling and construction, the predominantly level Site will require construction of temporary swales or

ditches, to direct flow toward the proposed detention pond, proposed drainage channel and existing 42" storm drain flowing easterly toward an unnamed tributary of Sumas Creek, a tributary to Johnson Creek. Temporary erosion and sedimentation control measures must be implemented upstream of the storm sewer to reduce loss of sediment from the site. A combination of such measures, including sediment traps, silt fences, check structures and slope ditches, temporary and permanent water conveyance structures, matting and erosion control blankets, and quarry spall construction entrances, shall be used.

2. Offsite Utility Route Construction

a. Similar temporary erosion and sedimentation control measures will also be applied along the construction routes of offsite utilities, including the natural gas Pipeline and electrical transmission line.

b. The proposed creek and river crossings by the Pipeline will be constructed by means of horizontal directional boring. Bore pit construction setbacks will be a minimum of ten feet from existing riparian trees and shrubs on the high banks.

c. The Pipeline will be located a minimum of five feet below the cross-section of stabilized channels, and seven feet below the cross-section of meandering channels.

d. If the elevation of the pipe construction trench on either side of the creek is lower than the ordinary high water elevation of the creek, bentonite clay collars will be poured in the trench backfill to prevent the migration of creek water through the Pipeline trench. The clay collars would be placed near the face of the bore pits to ease the installation, and to minimize any potential for bentonite migration to the creek.

e. In addition to measures listed above, utility route construction BMPs will also include:

- Weather protection of stockpiled bedding and backfill materials and topsoil;
- Careful placement of trench excavation spoils so as to minimize impact to drainage courses;
- Routine street sweeping;
- Quarry spall entrances to materials storage sites and field offices; and

- Surface restoration that immediately follows trench backfill.

P. Construction Water Use and Control Plan

Ninety (90) days prior to the beginning of site preparation, the Certificate Holder shall prepare a construction water use and control plan for review and approval by EFSEC. During development and review of the plan, the Certificate Holder shall consult with, and seek consensus with, WDFW. The construction water use and control plan shall include, but shall not be limited to, a hydrostatic test water use and discharge plan.

1. Hydrostatic Test Water Use and Discharge Plan

   The hydrostatic test water use and discharge plan shall include, but not be limited to the following elements:

   a. None of the hydrostatic test water will be discharged directly into surface waters of the State. Any hydrostatic test water discharged into a publicly owned treatment works (POTW) will meet all applicable pre-treatment standards;

   b. A list of specific locations proposed for withdrawal and discharge of hydrostatic test water and schedule for such discharges. No withdrawals or discharges shall occur without prior Council approval;

   c. Notification of EFSEC of intent to begin using specific locations for withdrawal at least forty-eight (48) hours prior to testing;

   d. Provisions for maintaining adequate flow rates at all times to protect aquatic life and provide for all other water body uses, including downstream withdrawals; and

   e. Provisions for ensuring all hydrostatic test water discharges meet applicable state and federal standards.

Q. Construction Phase Spill Prevention, Control and Countermeasure Program

In order to prevent spills of petroleum products or toxic materials that could contaminate soil, ground water or surface waters during the construction phase, the Certificate Holder shall prepare and submit to EFSEC for approval, a construction phase spill prevention, control and countermeasure program (SPCCP), consistent with the requirements of 40 C.F.R. Part 112, ninety (90) days prior to the beginning of site preparation. The Certificate Holder shall not begin site preparation prior to obtaining Council approval of the construction phase SPCCP. The construction phase SPCCP shall be implemented prior to the beginning of site preparation. The

applicant shall require all contractors working on the S2GF to have a spill prevention and countermeasure program consistent with 40 C.F.R. Part 112. The program shall address oil and chemical storage, containment, site security and personnel training. The program shall also address measures that will be taken to control and contain discharge, cleanup actions, notification of appropriate agencies and a list of available cleanup materials, to include, but not be limited to, the following elements:

1. Engineered spill control measures shall be utilized in the unlikely event that spill prevention measures are inadequate.

2. Tanks shall be enclosed in curbs or dikes with volume adequate to contain the spill.

3. Potential spill areas shall have concrete floors to contain spills in the unlikely event of a double failure of tank and dike. Spills to the concrete floors shall be soaked up by absorbent materials. These resulting solid (and possibly hazardous) waste materials shall be deposited in an approved land fill.

4. Floor drains of equipment buildings that are a potential source of lubricating oil spills shall pass through an API oil separator before discharging to the retaining pond. Floor drains in the water treatment area shall flow to the neutralizing tank to be neutralized before discharge to the sanitary sewer.

5. The construction contractor shall be required by the Certificate Holder to implement appropriate spill control measures.

    a. Equipment fueling shall be performed in areas with impervious linings or floors to keep spilled fuel from reaching the soil.

    b. Fuel dispensers shall be designed for the particular use on site. For example, nozzles small enough to fit within the fueling neck of the fuel tank will be used.

    c. Appropriate containers for fuels, lubricants and chemicals shall be used.

    d. Temporary spill containment shall be implemented around equipment, such as large cranes, that must be refueled in place.

    e. During periods of heavy rainfall and after construction equipment tanks have been filled or emptied, secondary containment areas shall be inspected for accumulations of water containing any oil sheen indicating the presence of pollution. If an oil sheen is not detected, the rainwater may be drained to the detention pond system. If pollution is detected, the contaminated water

must be isolated and removed, either with absorbents or by pumping and trucking the polluted water to a Publicly Owned Treatment Works via licensed waste hauler.

6. Construction Phase Spill Contingency Plan

In order to minimize the environmental impact from any spill of petroleum products or toxic materials during the construction phase of the S2GF, the Certificate Holder shall prepare and submit to EFSEC for approval a spill contingency plan. This plan shall address measures that will be taken to control and contain spilled materials, cleanup actions, notification of appropriate agencies and a list of available cleanup contractors and oil cleanup materials. The Certificate Holder shall submit the plan at the same time that it submits the construction phase SPCCP required in Article IV.Q. The plan shall address the following:

a. Immediate Actions:

- Notification of the control room and plant manager;
- Notification of the plant personnel, and evacuation if necessary;
- Obtaining spill kit;
- Protection of all drains;
- Estimation of all quantities released (i.e., down all drains, total spill); and
- For large spill – procedures to arrange for cleanup and remediation.

b. Secondary Actions:

- Notification of Management through call down list;
- Implementation of Fire Prevention;
- Isolation of area; and
- For small spill only - Clean-up crew will be assembled by plant manager or plant engineer.

7. The construction phase SPCCP shall address procedures for notification of EFSEC, WDFW, Ecology, and EPA as applicable, in the event of a spill of petroleum products or toxic materials.

R. Construction Emergency Plan

The S2GF shall be constructed by contractors experienced and familiar with the construction of gas-fired electrical generation plants and with the construction of gas pipelines and electrical transmission lines. The construction specifications shall require contractors to prepare and implement a safety program that includes an emergency plan. The emergency plan shall be primarily focused on weather related events and accidents, and small hazardous material spills related to fuels used for construction equipment. At a minimum, the plan shall require the sounding of an alarm with the requirement that all employees gather at a predetermined gathering place. The Certificate Holder shall submit the emergency plan to EFSEC for approval ninety (90) days prior to the beginning of site preparation. The Certificate Holder shall not begin site preparation prior to obtaining Council approval of the construction emergency plan.

S. Fire Protection Plan

After consultation with the appropriate Fire Marshal, the Certificate Holder shall submit to EFSEC for approval all fire protection plans to be in force during construction and operation of the S2GF. Such plans shall be submitted ninety (90) days prior to the beginning of site preparation.

T. Explosions

The S2GF shall be equipped with detectors to provide warning of the release of flammable or explosive gases. The detection system will be described in the final design plans.

U. Aesthetics and Landscaping Plan

Ninety (90) days prior to the beginning of construction, the Certificate Holder shall submit to EFSEC an aesthetics and landscaping plan for approval.

1. The Generation Facility will be constructed in a manner that is aesthetically compatible with the adjacent area. Major exterior components of the Generation Facility will be painted tan or other natural colors to minimize visual contrasts with the background.

2. All Site areas not needed for S2GF facilities, roadways, drainage or cooling ponds will be planted with trees and shrubs, including native species to the maximum extent feasible, to provide visual buffering, and to provide feeding, foraging and nesting opportunities for wildlife species known to occur in the vicinity of the S2GF. This provision does not preclude the planting of lawn around S2GF facilities. Landscaped areas will primarily be located on the south perimeter between the Generation Facility and Bob Mitchell Avenue Extension, along the north perimeter, and on the eastern perimeter.

V. Construction Schedule

Thirty (30) days prior to the beginning of site preparation, the Certificate Holder shall submit an overall construction schedule. Updates to the construction schedule shall be submitted as necessary thereafter.

W. Need and Consistency

1. Need. Prior to beginning construction of the S2GF, the Certificate Holder shall enter into one or more power purchase agreements that provide in the aggregate for the purchase and sale of at least 60% of the design capacity of the S2GF. Any such power purchase agreement shall have a term of at least five (5) years.

2. Consistency. The Certificate Holder shall ensure that at least one of the following conditions is satisfied prior to beginning construction of the S2GF. For purpose of this provision, "Purchaser" means any entity that has entered into a power purchase agreement with the Certificate Holder, for a term of at least five (5) years, providing for the purchase and sale of more than 40% of the S2GF's design capacity:

    a. If the Purchaser has adopted an integrated resource plan: (i) the project is of the type included in the Purchaser's preferred resources acquisition strategy; (ii) the plan has reviewed commercially available supply and demand side resources and evaluated them on a consistent basis; (iii) the plan was developed with public participation; and (iv) the plan was reviewed by the utility's regulatory body.

    b. If the Purchaser has not formally adopted an integrated resource plan: (i) the Purchaser has reviewed commercially available supply and demand side resources; or (ii) the Purchaser is located in the service territory of a utility that has an integrated resource plan meeting the criteria set forth in section 2.a. (above); or (iii) the project is consistent with the priorities and principles expressed in the relevant Northwest Conservation and Electric Power Plan.

3. At least sixty (60) days prior to beginning construction of the S2GF, the Certificate Holder shall provide EFSEC with sufficient evidence to enable EFSEC to determine whether the Certificate Holder has satisfied its obligations under this Agreement relating to need and consistency. Within forty five (45) days after receiving such evidence, EFSEC shall determine whether such obligations have been satisfied.

ARTICLE V. PROJECT CONSTRUCTION

A. General Construction Procedures

The Certificate Holder shall provide an independent environmental monitor (EM) with "stop-work" authority that reports to EFSEC.

1. The EM shall be under the supervision and employ of the Certificate Holder and independent from any construction contractor party utilized. The EM shall report independently to EFSEC regarding the specific environmental protection criteria set out in this Agreement.

2. Standard environmental monitoring criteria shall be developed for EFSEC, in consultation with WDFW and Ecology, prior to beginning construction of the S2GF.

3. The Certificate Holder shall identify EM "stop-work" implementation criteria for EFSEC, in consultation with WDFW and Ecology.

4. No excavation, filling or regrading work shall be performed at any time unless there is full, concurrent independent environmental monitoring.

5. All EM reports are to be submitted to EFSEC at the same time that they are submitted to the Certificate Holder's project engineer.

6. EFSEC, WDFW, and Ecology are to be promptly notified by facsimile (fax) or in person of any emergency response or any work stoppage requested by the EM.

B. Construction Reporting

The Certificate Holder shall submit quarterly construction progress reports within thirty (30) days after the end of the quarter. The Certificate Holder shall submit notices of significant changes in the construction schedule with EFSEC within fifteen (15) days of the schedule change.

C. Surface Runoff and Erosion Control

1. During site preparation and construction, the Certificate Holder shall require its contractors to meet standards set forth in this Site Certification Agreement. The Certificate Holder will set forth such conditions necessary

thereto in its bidding documents, plans, and contracts that will be developed in consultation with the Council.

2. The Certificate Holder shall comply with the stormwater control provisions in Article IV.N, the provisions relating to excavation and sediment and erosion control described in Article IV.O, and the construction water use provisions of Article IV.P, and shall require all contractors to comply therewith.

3. Sedimentation, erosion control, dust control, and related construction plans pertaining to work on the site and on permanent and/or temporary roads must conform to requirements set forth in Article IV.O or alternative plans submitted by the Certificate Holder to, and approved by, the Council.

4. The Certificate Holder will consult with Ecology and WDFW during the preparation of such plans.

5. In the event of unforeseen surface water runoff during construction, the Certificate Holder will comply with all pertinent industry standards and state BMPs for control of such runoff. The Certificate Holder further shall take such actions as are deemed necessary and reasonable by the Council to control said runoff. The Certificate Holder will promptly notify the Council of the occurrence or likely occurrence of any surface water runoff problems.

6. The Certificate Holder will take such steps as are necessary to assure that construction activity will not result in a violation of applicable turbidity criteria in the State of Washington Water Quality Standards. The Council may, at its discretion, and after consultation with Ecology and Fish and Wildlife, grant a temporary waiver of such standards upon request by the Certificate Holder.

D. Fugitive Dust

To control fugitive dust during construction, water will be applied as necessary, and access roads will be graveled or paved as practical.

E. Wetland and Aquatic Standards

1. Construction Timing

   a. All "out of the water" soil disturbing activities associated with wetland, stream, or river crossings shall occur during the dry portion of the year, typically late spring through early fall.

   b. Construction related activity that may be necessary within the wetted channel and/or within fifty feet of the bank shall be limited to the period of June 15 through October 15. This provision shall supersede any other or inconsistent dates provided elsewhere.

2. Access, Staging, and Ancillary Areas

   a. All equipment crossing a water body must use a construction bridge. Culvert crossings are not allowed.

   b. All equipment bridges shall be designed to pass the maximum flow and be maintained to prevent flow restrictions during the period that the equipment bridge is in place.

   c. The only access roads, other than the construction right of way, that may be used in wetlands are those existing roads that can be used with no modification and no impact on the wetland.

   d. The Certificate Holder shall locate all staging areas, additional spoil storage areas, and other additional work areas at least 50 feet away from the ordinary high water mark or wetland boundary. In no event shall vegetation be cleared between these areas and the water body or wetland. The Certificate Holder shall limit the size of such areas to the minimum needed to construct the wetland or water body crossing.

   e. The Certificate Holder shall refuel all construction equipment at least 100 feet from water bodies or wetland boundaries.

3. Spoil Pile Placement and Control

   a. The upper 12" of topsoil will be reserved, separated from subsoil, and returned to the trench as a final layer for planting.

   b. All spoil material from water body crossings must be placed in the right of way at least 50 feet away from the ordinary high water line. All spoil shall be contained within sediment filter devices

4. General Construction Procedures/ Monitoring of Performance

a. The Certificate Holder shall notify the WDFW at least 48 hours prior to commencement of pipe installation activities under each water body.

b. In wetlands and riparian areas, the Certificate Holder shall limit the construction rights-of-way to 50 feet or less.

c. In wetlands and riparian areas, vegetation that must be removed shall be cut at ground level, leaving existing root systems intact. The Certificate Holder shall limit pulling of tree stumps and grading activities to those areas where root systems would directly interfere with trenching, pipe installation and backfill.

d. If standing water or saturated soils are present, the Certificate Holder shall use low ground weight construction equipment and/or operate on prefabricated equipment mats.

e. Pre-construction wetland hydrology, which will be documented during pre-construction planning, will be maintained with the installation of impermeable plugs at the edge of the wetland, and in the pipeline trench, comprised of an impermeable material.

f. Silt fencing will be used to protect wetlands outside the construction corridor from sedimentation.

g. The affected wetland areas will be regraded to pre-project contours.

h. The flow of the existing ditches will be restored and maintained after construction.

i. Disturbed areas will be revegetated with approved native vegetation, or vegetation consistent with ongoing agricultural use, prior to the next wet season following construction.

j. Emergent wetland areas will be reseeded or hydro-seeded with a mix of native species, identified in section II.E.7 of Attachment 7 to this Agreement, which will be selected after consultation with WDFW prior to the next growing season.

k. Sections 1.4 (Mitigation Measures), 2.10 (Surface Water Runoff), 2.14 (Construction Methodology), and 3.4 (Plants and Animals) of the Second Revised Application contain applicable mitigation measures.

F. Construction Inspection

EFSEC shall contract with the City of Sumas, or other appropriate agency or private firms, to provide construction inspection services for all S2GF buildings, structures, Pipeline and electrical transmission lines to ensure consistency with the approved design and construction plans. Construction shall be in accordance with the approved design and construction plans, the UBC, and County building codes and regulations, and applicable construction, and fire and life safety codes and requirements.

G. Natural Gas Pipeline Construction and Testing

1. The Pipeline shall be constructed by a qualified construction firm with experience in constructing natural gas pipelines.

    a. Construction will be governed by a comprehensive set of specifications, and will be monitored by an experienced construction management team to ensure compliance with those specifications.

    b. Before the beginning of construction, all welding procedures will be approved and all welders qualified.

    c. All welding will be performed by qualified welders who have been tested and certified on the welding procedure. During construction, welder qualification records will be available as required by 49 C.F.R. § 192.227, and will include a Coupon Test Report. The Pipeline will be constructed using Shielded Metal Arc Welding, in compliance with industry standards.

    d. The welding procedures and pipeline welders will be qualified in accordance with API standard 1104.

    e. Welding inspectors will be on site during construction to inspect each weld and verify that proper welding procedures have been used.

    f. All above-ground pipe elbows will be long radius.

    g. The below-ground Pipeline will have cold bends and hot bends as required to fit the pipeline trench.

2. During and immediately following construction, the following tests shall be performed to ensure pipeline integrity:

a. Welds. 100% of the welds shall be inspected radiographically, by a qualified radiographer. Any defects found in welds shall be replaced or repaired. All repaired welds shall be radiographed again to ensure their integrity.

b. Coating. The entire Pipeline coating shall be "jeeped" just prior to lowering into the trench to detect holidays and other defects in the coating. Any flaws detected shall be repaired.

c. Hydrostatic Testing. The Certificate Holder shall conduct a 24-hour hydrostatic pressure test at least 150% of the maximum allowable operating pressure (MAOP) for the two segments of the Pipeline. The segment from the Canadian border to the pressure regulating station will be tested at at least 1200 psig, and the segment from the pressure regulating station to the Generation Facility shall be tested at at least 750 psig. Hydrostatic test water shall be used and discharged according to the requirements of Article IV.M.3 of this Agreement.

d. Internal Line Inspection. Following construction, the Certificate Holder shall conduct an internal line inspection with an internal inspection device commonly known as a "smart pig." This internal line inspection will verify the integrity of the line, remove debris, remove liquids remaining from the pressure testing, and serve as a baseline for use in evaluating the pipeline's condition with subsequent inspections required in Article VII.H.3 of this Agreement. Inspection device specifications shall be submitted to EFSEC and WUTC thirty (30) days prior to running the device. The Certificate Holder shall submit smart pig inspection results to EFSEC and the WUTC upon completion of the test along with a schedule for excavation, repairs and replacement of any defects that affect the integrity of the pipe or components.

e. Cathodic Protection Inspections. Following construction, and every 2 years thereafter, the Certificate Holder shall conduct a continuous potential survey to verify the effectiveness of the cathodic protection system. The Certificate Holder shall submit cathodic protection system test and inspection results, along with a schedule for repairs as necessary, to EFSEC and WUTC no later than thirty (30) days after completion of the inspections.

f. After construction, the Certificate Holder shall also conduct a stray current test to check for possible interference caused by other utilities in the area. The Certificate Holder shall submit stray current test results to EFSEC and WUTC no later than thirty (30) days after completion of the test.

H. As-Built Drawings

The Certificate Holder shall maintain record drawings on file and shall allow the Council or its designated representatives access to complete sets of as-built drawings, on request following reasonable notice.

I. Construction Noise

The Certificate Holder and its contractors and subcontractors shall use industry standard noise attenuation controls during construction to mitigate noise impacts and shall comply with applicable state and local noise emission regulations, and the following requirements:

1. No construction activities are permitted on Sundays, legal holidays, or between 10:00 p.m. and 6:00 a.m. within 1000 feet of an occupied residential dwelling.

2. All construction equipment shall have noise control devices no less effective than those provided originally by the equipment's manufacturer.

3. Pile driving or blasting operations shall not be permitted within 3,000 feet of an occupied residential dwelling on Sundays or legal holidays or between 8:00 p.m. and 8:00 a.m. on other days.

J. Construction Parking

1. The proposed parking supply of 300 stalls will accommodate the peak work force of 400 workers if the average occupancy were 1.4 workers. In order to facilitate the formation of carpools, the general contractor shall provide space where construction workers can post notices seeking ride share opportunities. In the event that parking demand exceeds the supply, the contractor shall create additional parking spaces or use the travel lanes within the lot for temporary parking.

2. The contractor will monitor the adjacent roads to prevent spillover parking. In the event that the proposed parking supply is inadequate during periods of peak demands, the Certificate Holder shall make arrangements for additional parking to be provided on the existing unused 5-acre lot on the SOCCO lumber facility on the south side of SR 9 across from the Site. This lot is surfaced in gravel.

K. Cultural and Archeological Resources

The Certificate Holder shall monitor construction to ensure that any cultural resources are properly identified, evaluated, and, if necessary, impacts are mitigated. Monitoring shall be directed by an experienced archaeologist. If cultural resources are discovered during construction monitoring, the Certificate Holder and/or the archaeologist shall request a halt to work in the affected area and shall contact the Washington State Office of Archaeology and Historic Preservation (OAHP) and EFSEC. If a discovered site contains one or more Native American burials, the monitor will notify

the appropriate Tribe and discuss mitigation measures with the Certificate Holder, Tribal representatives and the OAHP.

L. Public Services and Utilities

1. Construction activities shall be coordinated with local police and fire departments, and emergency medical service providers to ensure access to all locations in the Site vicinity in the case of an emergency.

2. To help mitigate loss of access and other traffic related impacts, adequate traffic control and signage, indicating closures and alternate routes, shall be provided during construction.

3. Construction vehicle trips in and out of the immediate construction zone shall be coordinated and scheduled away from "rush-hour" periods, to minimize general traffic disruption, consistent with the requirements of the construction traffic management plan required by Article IV.K of this Agreement.

4. During construction, precautions shall be used to ensure that excavations do not damage underground utilities, including communications cables.

M. Public Roads

1. During the construction of the S2GF, there may be an increase in the amount and weight of traffic on all roads designated by the Washington Department of Transportation for Canadian weight limits. The Certificate Holder shall make any repairs to these roads that are necessary in light of damage caused by the Certificate Holder's construction-related traffic.

2. The City shall perform pre- and post- construction evaluations of the conditions of these roads, and shall determine, on the basis of these evaluations, whether repairs are necessary following construction.

3. In addition to any damage related repairs, described above, the Certificate Holder shall repave the portion of Bob Mitchell Avenue extending north from Front Street to the Burlington Northern grade crossing, which is approximately 1700 feet long.

N. Construction Clean-Up

The Certificate Holder shall dispose of all temporary structures not intended for future use upon completion of construction. The Certificate Holder also shall dispose of used timber, brush, refuse or flammable materials resulting from the clearing of lands or from construction of the S2GF in a manner approved by the Council.

O. Construction Safety and Security

1. The safety of construction and operating personnel is required by regulations promulgated under the Federal Occupational Safety and Health Act (OSHA) and the Washington Industrial Safety and Health Act (WISHA). The Certificate Holder shall comply with applicable federal and state safety regulations and local and industrial codes and standards (such as the Uniform Fire Code or those standards administered by the National Boiler Board and Pressure Vessel Inspectors). The Certificate Holder, its general contractor, and all subcontractors shall make every reasonable effort to maximize safety for individuals working at the S2GF.

2. During construction, the Generation Facility site perimeter will be enclosed with a chain link fence and will have two (2) ingress and egress gates at completion of site preparation.

3. During construction the access gate will be staffed 24 hours per day or locked. Access to the Generation Facility site by all personnel will be through the staffed security gate. All construction and delivery vehicles will be logged in and out by the gate security person.

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

P. Response to Floods During Construction

The City of Sumas flood response plan includes monitoring the Nooksack River at Deming and Everson. As flood stage is reached, the City takes appropriate action, including such activities as notifying residents of approaching flood waters and assisting in evacuations. Upon receiving such notification:

1. The construction manager shall consult with the City of Sumas to monitor the potential for flooding at the Site.

2. Construction material that can be damaged by water or pollute the water if submerged, shall be moved to the elevated portions of the Site to remain dry above the maximum flood water elevation.

3. As flood conditions threaten upstream, construction work will be terminated and any remaining employees sent home.

4. The Generation Facility shall be secured.

ARTICLE VI. SUBMITTALS REQUIRED PRIOR TO OPERATION

The following plans, submittals and/or approvals are required prior to the start of operation:

A. Greenhouse Gas Mitigation

The Council has accepted the Certificate Holder's proposal to mitigate and offset greenhouse gas emissions from the S2GF based on the monetary path payment requirements of the Oregon Energy Facility Siting Council, Oregon Administrative Rules chapter 345, as they existed on June 29, 2001, except as otherwise provided herein.

1. Ninety days prior to commencing operation of the S2GF, the Certificate Holder shall submit for EFSEC's approval a calculation of the monetary path payment, according to the methodology set forth in Oregon Energy Facility Siting Council's Standards for Energy Facilities that Emit Carbon Dioxide. The calculation shall be based on a price per ton of carbon dioxide of fifty-seven cents ($0.57), and shall not include a surcharge for administrative expenses.

2. Upon EFSEC's approval of the Certificate Holder's calculation and the commencement of commercial operation, the Certificate Holder will make the first of five equal payments totaling the amount due under this provision to the Climate Trust or another similar organization deemed acceptable by the Council. The Certificate Holder will make each of the four subsequent payments on annual intervals. The Certificate Holder shall contract with such organizations to procure mitigation projects utilizing established criteria applied in a competitive selection process. The Certificate Holder shall also require such organization, to the extent feasible, to give preference to effective mitigation projects that are in geographical proximity to the S2GF or within the State of Washington.

B. Water Supply Wells

As a condition of the City of Sumas supplying cooling and potable water to the S2GF, the Certificate Holder shall pay for a new high-capacity well and pump at the Sumas Municipal Well Field, one or more new wells and pumps at the May Road Well Field, and two new segments of water line necessary to maintain adequate fire flow elsewhere in the industrial area.

C. Baseline Survey of Private Wells

1. To protect against a possible decrease in water quantity for surrounding wells, at least twelve (12) months prior to beginning of operation the

Certificate Holder shall perform a baseline survey of all wells within the potential zone of influence identified by the Council's Final Environmental Impact Statement and Final Supplemental Environmental Impact Statement (approximately a one-mile radius around the City of Sumas' municipal wellfield). The survey shall include wells on both sides of the international border.

2. Where well construction and geologic information is available for individual wells, such information will also be collected. With the consent of the well owners, the water level in each well surveyed will be measured to identify a background condition. Monitoring of such individual wells will be conducted quarterly until Generation Facility operations begin.

D. Installation of Monitoring Wells for Sumas Wellfields

1. At least twelve (12) months prior to beginning of operation, the Certificate Holder shall install a set of dedicated monitoring wells for the City of Sumas municipal and May Road wellfields.

2. These monitoring wells will be outfitted with pressure transducers and data loggers to provide continual monitoring of the water level response resulting from wellfield production.

3. The monitoring wells will be located to provide both near and distant water level responses, according to the wellfield characteristics.

4. Prior to S2GF beginning of operation, the Certificate Holder shall also perform a controlled test of the two City wellfields to confirm the zone of influence from withdrawals for the Certificate Holder. Any additional areas of influence identified through this testing shall be added to the pre- and post-operation well monitoring network.

E. Stormwater Management and Pollution Prevention During Operation

1. The Certificate Holder shall file with EFSEC a Notice of Intent to be covered by a General Permit for Stormwater Discharges Associated with Industrial Activities at least thirty (30) days prior to beginning operation.

2. The Certificate Holder shall prepare a stormwater pollution prevention plan (SWPPP) and submit it to EFSEC for approval at the same time that it submits the Notice of Intent required in Article VI.E.1 above. The

following sections include information on the stormwater management and pollution control practices to be followed during S2GF operation, which shall be included in the SWPPP for the Generation Facility.

a. The SWPPP will contain pre-design level of detail for the permanent stormwater treatment and detention Best Management Practices (BMPs), and will establish the Certificate Holder's permanent operations Stormwater Pollution Prevention Team from appropriate employee categories. Final designs for the permanent BMPs will be incorporated into the final construction plans and specifications prepared by the civil site design engineer. An operations manual for the permanent BMPs will be prepared by the civil site design engineer and the Certificate Holder's SWPPP Team members. The plan shall comply with the requirements of the Department of Ecology's Stormwater Management Manual for Western Washington, dated August 2001. The SWPPP will include the following elements:

   i. An assessment and description of existing and potential pollutant sources;

   ii. Certification by a responsible official that stormwater discharges have been investigated for the presence of non-stormwater discharges;

   iii. A site map showing stormwater drainage areas, discharge structures, paved areas and buildings, areas where stormwater could potentially contact pollutants, surface water bodies, potential and existing vehicle service areas, and areas where soil erosion might occur;

   iv. The identification of all areas associated with industrial activity;

   v. A list of pollutants that are or have a reasonable potential to be present in stormwater discharges in significant amounts; and

   vi. A description of the BMPs that are needed to reduce the potential for discharge of significant amounts of pollutants, including operational BMPs and source control BMPs.

b. Best Management Practices (BMPs)

BMPs are the physical, structural, operational, or administrative means of providing the appropriate controls. Operational BMPs consist of company policies, operating and maintenance procedures, personnel training, good housekeeping, prohibition of undesirable practices, and other administrative practices to prevent or reduce pollution of waters of the State. Source control BMPs are physical, structural or mechanical devices or structures that are intended to prevent pollutants from entering stormwater.

The constructed permanent stormwater BMPs will include:

i. An onsite stormwater collection system of inlets, catch basins and pipes;

ii. One onsite detention/wet pond to perform sedimentation functions, and to limit runoff rates to pre-development levels in the event that the amount of stormwater collected instantaneously exceeds the cooling tower demand;

iii. Passive oil-water separators in some catch basins;

iv. Permanent erosion and sedimentation control through site landscaping, grass and other vegetative cover; and

v. A vegetated drainage channel which will further reduce sediment, oils, grease, and other automotive-related pollutants from any excess site stormwater while transporting the water to the existing 42" storm drain outlet. This channel will also convey the pre-developed level of surface runoff from an adjacent 35 acres (approximately) to the west.

c. Stormwater Pollution Prevention Team

The Certificate Holder will identify a Stormwater Pollution Prevention Team which is responsible for developing, implementing, maintaining, and modifying the SWPPP. Operational BMPs will be adopted to implement good housekeeping, preventive and corrective maintenance procedures, steps for spill prevention and emergency cleanup, employee training programs, and inspection and record keeping practices as needed to prevent stormwater pollution. Examples of good housekeeping practices that will be employed by the Certificate Holder will include:

i. Neat and orderly storage of chemicals;

ii. Prompt cleanup and removal of spillage;

iii Regular pickup and disposal of garbage and rubbish;

iv. Regular sweeping of floors;

v. Proper storage of containers; and

vi. Prevention of accumulations of liquid or solid chemicals on the ground or the floor.

d. Training

At least annually, Generation Facility operators will also receive training in the pollution control laws and regulations, and the specific features of the S2GF, that are intended to prevent releases of oil and petroleum products. These employees will also receive spill response training. Employees who support the activities at the site will be trained in the following spill response measures:

i. Recognizing areas that may be affected by a spill and potential drainage routes;

ii. Reporting of spills to appropriate individuals;

iii. Employing appropriate material handling and storage procedures; and

iv. Implementing spill response procedures.

e. Source Control BMPs

Source control BMPs consistent with those in the Department of Ecology's Stormwater Management Manual for Western Washington, dated August 2001, will be employed in the design of fueling stations, vehicle and equipment washing and steam cleaning areas, loading and unloading areas for liquid materials, aboveground storage tank systems, container storage facilities, outside storage areas, and outside maintenance areas.

f. Secondary Spill Containment

Where required, at chemical or fuel unloading sites, secondary spill containment paving will be provided for environmental protection. Hazardous substances collected within these containments will be isolated for proper cleanup and disposal according to local, state and federal regulations. Stormwater collected within hazardous material secondary

containments will be retained by normally closed valved outlets. This stormwater will be routed to the storm drainage system in a manner consistent with local, state and federal regulations.

g. Permanent Erosion and Sediment Control

In conjunction with the stormwater management controls employed, additional permanent erosion and sediment control will be accomplished through appropriate site landscaping, grass, and other vegetative cover.

The edges of the finished filled Site shall have slopes not exceeding 3:1. The sides of the filled site may be covered with topsoil, biodegradable jute matting, and seeding with tall-growing grass species intended to be un-mowed. With side slopes 3:1 or flatter, topsoil, jute matting and rye-fescue seed mixtures suitable for mowing can also be placed. For all methods, silt fencing would remain in place at the toe of the fill site slopes until vegetation is stable.

h. Permanent Waterways

The proposed drainage channel along the south and east property lines will provide the permanent waterway leading to the existing 42" storm drain outlet, for both the offsite water from the west and the excess runoff from the detention pond. It will be a grass-lined channel that offers incidental water quality benefits, but is not the main water quality enhancement feature for the Site.

i. WDFW and Ecology shall be provided with a copy of the SWPPP for review and comment.

j. Training

At least annually, Generation Facility operators will also receive training in the pollution control laws and regulations, and the specific features of the S2GF that are intended to prevent releases of oil and petroleum products. These employees will also receive spill response training. Employees who support the activities at the Site will be trained in the following spill response measures:

- Recognizing areas that may be affected by a spill and potential drainage routes;
- Reporting of spills to appropriate individuals;
- Employing appropriate material handling and storage procedures; and

- Implementing spill response procedures.

k. Inspection of Stormwater Catchbasins and Detention Systems

Stormwater catch basins and the detention/wet pond will be inspected at least annually as part of the Site preventive maintenance program. Stormwater catch basins will be cleaned if the collected deposits fill more than one-third of the sump volume below the lowest pipe invert. The detention/wet pond sediments will be removed annually to restore the necessary design settling and storage volumes of the pond. Material removed from catch basins and the detention/wet pond must be disposed of in accordance with local, state and federal regulations. If disposed of at any location other than the grit and sludge handling facilities of a publicly owned treatment works (POTW), the sediments from the catch basins and detention/wet pond shall first be analyzed to demonstrate the absence of toxic compounds.

l. Stormwater Management of On Site Runoff

Stormwater management of on site runoff will comply with the requirements of the Best Management Practices set out in Ecology's Stormwater Management Manual (SWMM) for Western Washington, dated August 2001, and in accordance with any amendments or revisions made by the date of design submittal.

m. Secondary Containment Areas

Constructed source control BMPs will also be consistent with the SWMM. Secondary containment areas consisting of pavement curbs and berms, non-porous pavement, sumps, and outlet valves, will be employed as necessary in the design of fueling stations, loading and unloading areas for chemicals, aboveground chemical storage tank systems, container storage facilities, outside storage areas and outside maintenance areas. Oil or hazardous substances collected within these containment areas will be isolated for proper cleanup and disposal according to local, state, and federal regulations, and will not be automatically directed to the detention pond.

n. Inspection of Secondary Containment Structures

During periods of heavy rainfall and after primary storage tanks have been filled or emptied, secondary containment structures will be inspected for accumulations of water. The presence of oil contamination in any accumulated rainwater will be determined by examining the surface of the

water for a sheen. If an oil sheen is not observed, accumulated rainwater will be drained from the containment. Otherwise, accumulated rainwater will be drained until the oil layer nears the intake, and the remaining oil/water mixture will either be cleaned using absorbent pads or pumped directly into drums for disposal. After draining the containment, the drain valve will be closed to prevent inadvertent drainage.

o. Periodic Inspections

The Certificate Holder's personnel will periodically inspect the system to verify the accuracy of the SWPPP, to ascertain that the controls identified in the SWPPP are adequate, and to confirm that non-permitted discharges are not entering the stormwater system. A summary of each inspection will be retained with the SWPPP, along with any notifications of noncompliance and reports on incidents such as spills.

F. Natural Gas Pipeline Operations and Maintenance Manual and Emergency Plan

Forty-five days prior to beginning operation, a detailed operations natural gas pipeline manual and emergency plan shall be submitted to WUTC and EFSEC for approval. The manual shall address standard operations and maintenance practices, and response procedures to abnormal operating conditions as required by 49 C.F.R. § 192.605 and WAC 480-93. The emergency plan shall address emergency response activities as described in WAC 480-93-180 and 49 C.F.R. § 192.615. The manual and plan will satisfy state and federal regulations related to pipeline operation and maintenance. Subsequent changes and amendments to the plan shall be filed promptly thereafter with EFSEC and WUTC.

G. Emergency Response Plan

Six (6) months prior to beginning operation, the Certificate Holder shall submit for the Council's approval an emergency response plan for the S2GF to provide for employee safety in the event of the following emergencies: an on-site chemical release, a flood, a medical emergency, a major power loss, a fire, extreme weather, an earthquake, a volcanic eruption, and a terrorist threat. The Certificate Holder shall not begin operation prior to approval of the emergency plan.

1. In preparing the plan, the Certificate Holder shall:

a. Coordinate such plan with local, state and federal agencies directly involved in implementing such a plan.

b. Follow the requirements of WAC 296-24-567 and 296-62-3112 and 29 C.F.R. §1910.38, Emergency Action Plan.

c. Include detailed provisions for public health and safety, emergency medical treatment, special emergency training programs and prevention of property damage.

d. Provide the Council with updated lists of emergency personnel, communication channels and procedures.

2. The emergency plan shall address the following in detail:

a. Evacuation Procedures;

b. Emergency Signals and Communication;

c. First Aid Procedures;

d. Emergency Medical Procedures; and

e. Establishment of a fire brigade.

3. The emergency plan shall address in detail the procedures to be followed in the event of the following:

a. Fire or explosion;

b. On-site natural gas release;

c. Off-site natural gas release;

d. Chemical Release;

e. Flood;

f. Weather abnormalities or emergencies, such as high wind, blizzard, hurricane, tornado, and extreme wind;

g. Earthquake;

h. Volcanic Eruption (Ash fall);

i. Blackout; and

j. Terrorist Threat.

H. Spill Prevention, Control and Countermeasure Plan

Within six months of the beginning of operation, the Certificate Holder shall submit to EFSEC a spill prevention, control and countermeasure plan for review and approval. The Certificate Holder shall provide a copy to WDFW and Ecology at the same time the plan is submitted to EFSEC.

1. The Spill Prevention, Control and Countermeasure (SPCC) Plan shall be approved by a professional Engineer, shall meet applicable requirements of 40 C.F.R. Part 112, and shall include the amount and type of oil(s) and hazardous materials to be stored at the Site, patterns of usage, transfer procedures and other factors that will indicate the magnitude of spill potential.

2. As required, the SPCC plan shall also describe procedures for securing valves, type of gauges, dike size and design, site security, lighting, alarms, spill response materials and equipment, inspection procedures, personnel training, emergency procedures and spill notification requirements.

3. The SPCC plan shall be implemented within twelve months of the beginning of operation.

4. The SPCC plan shall be updated a minimum of every two years.

I. Electrical Connection

1. The Certificate Holder shall pay the cost of re-conductoring the 12.47 kV 3-phase line extending from the south sub-station to Bob Mitchell Avenue.

2. The Certificate Holder shall also pay the cost to obtain and install a pad-mounted switch (equivalent to S&C Model 662-32) at a location determined by the City of Sumas adjacent to the Generation Facility in order to provide safe management of the electric utility in the vicinity of the Site.

ARTICLE VII. PROJECT OPERATION

A. Water Use

1. EFSEC recognizes the City of Sumas' groundwater withdrawal certificates No. G1-25171C, G1-23698 and G1-26398 to withdraw a total of 3,910 gpm from the Sumas aquifer. No withdrawal rights from the Sumas aquifer or any other state surface water or ground waters are granted by this Agreement. The S2GF's use of industrial and municipal water shall not exceed 802 gallons per minute (gpm).

2. The Certificate Holder shall use industrial and municipal water from the City of Sumas to meet its needs for process and cooling water. The Certificate Holder shall purchase municipal water from the City of Sumas to meet its needs for process and cooling water only when industrial water from the City of Sumas is insufficient to meet such needs.

B. Well Monitoring

1. After S2GF begins operation, monitoring of all wells within the confirmed zone of influence whose owners consented to pre-operation monitoring will be performed monthly for the first year of S2GF operation.

2. No later than thirty (30) days after the one year anniversary of S2GF's beginning of operation, the Certificate Holder will submit a report to the Council, providing the monitoring results. If a well is identified as adversely impacted by the City's increased water withdrawals, the Certificate Holder will submit for the Council's approval a mitigation plan to replace lost well production capacity and prevent further loss, and to include a monitoring plan as required in Article VII.B.4 of this Agreement. Such mitigation plan may include, but is not limited to, lowering of the pump in the well, providing additional water reserve, well redevelopment or rehabilitation to improve efficiency of production, drilling a new well, or paying for hook-up to public water, as warranted and appropriate.

3. In the event that a well is obviously and substantially impacted before the end of the first year of operation, a mitigation plan will be developed and submitted for the Council's approval as soon as practicable after identification of the impact.

4. After the initial year of operation, monitoring will be performed semi-annually for years 2-5 of Generation Facility operation, except any areas of concern noted in the initial annual summary, which will be monitored more frequently. Annual summaries will be provided to EFSEC for years 2-5 of Generation Facility operation.

C. Aquifer Protection

The City of Sumas public water system has the resources, through City owned water rights, to meet its current and projected future needs while satisfying the S2GF water demand. The Certificate Holder shall:

1. Provide the City of Sumas with $25,000 per year to fund aquifer protection efforts and water rights acquisition during the period that the S2GF is in commercial operation.

2. Reimburse the City (as described hereafter) for a nitrate removal system in the event that, during the period that the S2GF is in operation, nitrate concentrations in the City's potable water supply exceed applicable federal, state or local standards, regardless of the cause of the nitrate exceedences. The Certificate Holder and the City agree that the initial estimate of the capital cost of a nitrate removal system is $500,000 in the year 2000. The Certificate Holder agrees that the future cost of the system is the aforementioned initial estimate adjusted annually by the GDP Implicit Price Deflator, using 2000 as a base year ("Future Costs"). The Certificate Holder hereby assumes sole financial responsibility for up to the Future Costs of the nitrate removal system.

3. Further, the Certificate Holder shall pay its proportionate share of any costs in excess of the Future Costs (based upon the Certificate Holder's contracted volume of potable water usage in relation to the City's total potable water right volume of 1,919 acre-feet per year). The Certificate Holder hereby consents to a water rate surcharge to be imposed on the S2GF by the City, in an amount sufficient to discharge the Certificate Holder's above-described financial obligation over a ten-year amortization period.

D. Water Discharge

1. The combined discharge from SCCLP Plant and the Generation Facility will not exceed the quantity of water set forth in SCCLP's existing agreement with the City of Sumas (80,000 gallons per day).

2. All discharges by the Certificate Holder to state waters shall be subject to the terms and conditions of this Agreement.

3. All discharges to the City of Sumas Municipal Sewage Collection System shall meet the discharge standards imposed on the SCCLP Plant, pursuant to the agreement between the SCCLP and the City of Sumas, and shall comply with all applicable standards.

4. The Certificate Holder shall notify EFSEC in advance of any changes to the ultimate destination of the water discharge generated by the Generation Facility, and shall obtain all applicable state and federal approvals or permits prior to such changes.

5. The Certificate Holder shall not discharge to the City of Sumas wastewater treatment plant unless the City of Sumas has obtained permission or authorization to operate the treatment plant. The Certificate Holder shall obtain all applicable state and federal approvals or permits prior to any such discharge.

6. Ninety (90) days prior to the start of wastewater discharge to the City of Sumas sewer system, the Certificate Holder shall submit a waste water discharge monitoring plan to EFSEC for approval. The waste water discharge monitoring plan shall include discharge monitoring, reporting, and record keeping requirements no less stringent than those currently applicable to the SCCLP. No waste water discharge shall occur prior to EFSEC's approval of the plan.

7. The Certificate Holder shall properly operate and maintain in good working order, all water handling facilities under its control, including the cooling towers, the circulating water, and process water facilities.

8. The Certificate Holder and its contractors shall dispose of sanitary waste in accordance with applicable local and state requirements.

9. Any use of chemicals such as biocides, anti-corrosion inhibitors, or any such additives to the cooling water system, or any other system of the S2GF which may result in any waste water discharge, must be consistent with the terms and conditions of this Agreement.

10. The Certificate Holder shall report immediately to the Council whenever the waste water discharge monitoring programs disclose the existence of

emergency conditions or conditions that might lead to a violation of the conditions of this Site Certification Agreement.

E. Air Emissions

1. The Certificate Holder shall operate the S2GF so that emissions to the atmosphere comply with the Final Approval of Notice of Construction and Prevention of Significant Deterioration (NOC/PSD) issued by the Council (Attachment 4 to this Agreement), or with any subsequent NOC/PSD or Title V Air Operating Permit issued for the S2GF by the Council 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 in the Final Approval of Notice of Construction and Prevention of Significant Deterioration issued by the Council (Attachment 4 to this Agreement), or with any subsequent NOC/PSD or Title V Air Operating Permit issued for the S2GF by the Council through extension or renewal.

3. The S2GF shall be subject to the time limitations for construction and renewal conditions as set forth in the Final Approval of Notice of Construction and Prevention of Significant Deterioration (NOC/PSD) (Attachment 4 to this Agreement), or with any subsequent NOC/PSD or Title V Air Operating Permit issued for the S2GF by the Council through extension or renewal.

4. The Certificate Holder shall report immediately to the Council whenever the air monitoring programs disclose the existence of emergency conditions or conditions that might lead to a violation of the air emission permit conditions specified in Attachment 4.

F. Noise Monitoring

1. The Certificate Holder shall perform noise monitoring following beginning of operation. In addition to monitoring A-weighted sound levels, the Certificate Holder will monitor low frequency noise and tones, including the gathering of one-third octave band data. Monitoring shall be conducted according to the plan developed during the pre-operating noise monitoring.

2. A preliminary noise monitoring report will be prepared and submitted to the Council within sixty (60) days after beginning of operations. Copies of the

report will also be provided to the City of Sumas, Whatcom County, the City of Abbotsford and the Province of British Columbia.

3. If, at any time, monitoring indicates that the Generation Facility is not in compliance with City of Sumas or Department of Ecology noise regulations or that the Generation Facility generates low frequency sounds or tones that EFSEC determines are reasonably objectionable, the Certificate Holder shall investigate the source of the noise and identify, develop and implement one or more means of mitigating the noise including, but not limited to, installing additional noise mitigation measures at the Generation Facility.

4. No later than thirty (30) days after the end of the S2GF's first operational year, the Certificate Holder shall submit for the Council's approval a report providing the pre- and post-operation monitoring results and any mitigation plan found to be necessary. Copies of the report will also be provided to the City of Sumas, Whatcom County, the City of Abbotsford and the Province of British Columbia.

5. Once post operational monitoring indicates that the Generation Facility is in compliance with City of Sumas and Department of Ecology noise regulations and that there is no reasonably objectionable low frequency noise or tones, the post-operation noise-monitoring program will be deemed complete. However, the Certificate Holder shall be required to repeat operational noise monitoring in the 5th year of Generation Facility operation, and at 5-year increments of Generation Facility operation thereafter, to confirm that noise generated by the Generation Facility has not changed substantially. Monitoring Reports shall be submitted no later than thirty (30) days after the end of the monitoring period.

G. Lighting

Outdoor or directional lighting angles shall be adjusted to minimize glare impacts, or supplemental light shields and/or vegetation shall be used for extra screening in those areas where glare or light spillover would be obtrusive to nearby residents or to users of State Route 9 or Bob Mitchell Avenue.

H. Natural Gas Pipeline Operation

The Pipeline shall be operated and maintained as outlined in the Second Revised Application for Site Certification, including the following:

1. Qualified Operators. Qualified operators shall operate and maintain the Pipeline. Operators shall comply with State and federal pipeline safety regulations concerning operator training and certification. The Certificate Holder will develop operator qualification requirements and submit such qualifications to EFSEC and WUTC prior to Pipeline operation.

2. Leak Detection Surveys. The Certificate Holder shall conduct monthly leak detection surveys, inspecting the right of way visually and with the use of flame ionization gas detectors. Leak Detection survey reports shall be submitted to EFSEC and WUTC no later than fifteen (15) days after the inspection.

3. Internal Line Inspections. The Certificate Holder shall conduct inspections with internal inspection devices (smart pigs) during major Generation Facility shutdowns, which will occur approximately every five years. Results of internal line inspections shall be submitted to EFSEC and the WUTC no later than thirty (30) days after the inspection has been completed.

4. Cathodic Protection Inspections. The Certificate Holder shall regularly monitor the effectiveness of the cathodic protection system. The Certificate Holder shall inspect the system twice a year, and shall conduct a continuous potential survey once every two years following construction. Results of the cathodic protection system inspections, and continuous potential surveys shall be submitted to EFSEC and WUTC no later than thirty (30) days after the inspections have been completed.

5. The Certificate Holder shall report to EFSEC and the WUTC any accident or safety related condition at the same time the accident or condition is reported to the U.S. Department of Transportation, Office of Pipeline Safety.

I. Right-of-Way Maintenance Practices

1. No herbicides or pesticides shall be used in or within 100 feet of a water body unless such use has been approved by EFSEC, in consultation with WDFW and WDOE, as a means of preventing the spread of undesirable exotic vegetation.

2. The Certificate Holder shall not utilize vegetation maintenance practices for normal right of way maintenance over the full width of the permanent right of way in wetlands and riparian areas. To facilitate periodic Pipeline surveys, however, a corridor centered on the Pipeline up to ten feet wide may be maintained in a herbaceous state. In addition, trees that are located within fifteen feet of the Pipeline and are greater than fifteen feet in height may be selectively cut and removed from the right of way by the Certificate Holder. Trees beyond fifteen feet from the centerline of the Pipeline that are cut or removed in the course of maintenance activities shall be replaced using the replacement criteria described in Article IV.C.

3. Right of Way Management Plan. Sixty (60) days prior to the end of construction in the electrical transmission line and Pipeline rights of ways, the Certificate Holder shall submit a right of way management plan to WDFW for review, and to EFSEC for Approval.

J. Monitoring of Revegetation

1. The Certificate Holder shall monitor the success of revegetation annually, with written annual reports to EFSEC and copies to WDFW and WDOE, for the first five years, the seventh year and the tenth year after construction. The reports shall be submitted no later than thirty (30) days after the monitoring period.

2. Revegetation of wetland, riparian, and upland areas that are currently vegetated with native species is considered successful if the native herbaceous and/or woody cover is at least eighty percent of the total cover, and native species diversity is at least fifty percent of the diversity originally planted in the area.

3. If revegetation of the riparian and upland habitat is not successful at the end of five years, the Certificate Holder shall provide offsite mitigation using the replacement criteria found in Article IV.C. If wetland revegetation is not successful at the end of five years, the Certificate Holder shall develop and implement (in consultation with a professional wetland ecologist and the Departments of Ecology and Fish and Wildlife) a plan to actively revegetate the wetland with native wetland herbaceous and woody plant species, and shall submit such plan for EFSEC approval.

4. The Certificate Holder shall develop specific procedures to prevent the invasion or spread of undesirable exotic vegetation.

K. Safety and Security

1. The safety of operating personnel is required by regulations promulgated under the Federal Occupational Safety and Health Act (OSHA) and the Washington Industrial Safety and Health Act (WISHA). The Certificate Holder shall comply with applicable federal and state safety regulations and local and industrial codes and standards (such as the Uniform Fire Code or those standards administered by the National Boiler Board and Pressure Vessel Inspectors). The Certificate Holder, its general contractor, and all subcontractors shall make every reasonable effort to maximize safety for individuals working at the S2GF.

2. The Generation Facility perimeter shall be enclosed with a chain link fence and shall have two (2) ingress and egress gates at completion of site preparation.

3. During operation, the S2GF shall retain the perimeter fencing and access gates used during construction, or will provide similar security measures. The access gate shall be monitored by on-site personnel from the Generation Facility Control Room using closed circuit television and voice intercom recorders.

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

L. Dangerous or Hazardous Materials

The Certificate Holder shall handle, treat, store, and dispose of all dangerous or hazardous materials in accordance with state standards for hazardous and dangerous wastes, Chapter 463-40 WAC and Chapter 173-303 WAC. 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.

SIGNATURES

Dated and effective this _____ day of _____, 2002.

FOR THE STATE OF WASHINGTON

_____

Gary Locke, Governor

FOR SUMAS ENERGY 2, INC.

_____

Charles Martin

ATTACHMENTS

Attached hereto and incorporated in this Agreement by this reference are the following:

1. Site Legal Description

2. Natural Gas Pipeline Legal Description

3. Electrical Transmission Line Legal Description

4. Approval of Prevention of Significant Deterioration and Notice of Construction

5. Restrictive Covenant for Eastern and Western Wetland Mitigation Sites

6. Settlement Agreement Between Washington Department of Ecology and Sumas Energy 2 Regarding Second Revised Application

7. Settlement Agreement Between Washington Department of Fish and Wildlife and Sumas Energy 2 Regarding Second Revised Application

8. Partial Settlement Agreement Between Washington Utilities and Transportation Commission and Sumas Energy 2 Concerning Natural Gas Pipeline Issues

9. Appendix A to Settlement Agreement Between WUTC and SE2

10. Stipulation and Settlement Agreements Between Washington Utilities and Transportation Commission and Sumas Energy 2

11. Partial Stipulation Agreement Between City of Sumas and Sumas Energy 2

12. Stipulated Withdrawal of Bonneville Power Administration

13. Council Order No. 768, Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification On Condition