

## **Decommissioning Statement**

The Grazing Yak Solar Project (Project) will encompass 377 acres, and will include the solar array, the collection line, two laydown yards, and the existing Golden West Wind Energy Project substation. The solar array will be located on approximately 272 acres owned by the Applicant and identified as parcel 1200000390. The Project WSE-O was approved by the El Paso County Planning Commission on March 5, 2019 and by the Board of County Commissioners (BoCC) on April 9, 2019. The Decommissioning Plan was discussed at length during the Planning Commission hearing since the Applicant requested a waiver of the request for a Decommissioning Plan for the Project. The Applicant provided the following support with the request to waive the requirement to include a detailed Decommissioning Plan and funding for decommissioning at this time, and instead provide a Decommissioning Agreement (attached) that provides a timeline to provide a Decommissioning Plan and financial assurances prior to the termination of Project operations.

A detailed Decommissioning Plan and financial assurances would require that the Applicant understand future values of the materials comprising the solar facilities and the technology upgrades available in the future. Rapidly changing solar technology prohibits an understanding of the need to decommission in 25 years versus the financial feasibility to repower the Project with more efficient solar facilities. In addition, the requirement that a bond or other financial surety be posted for the current or projected value of solar facility materials would significantly impact the financial burden to construct the Project. Rather, the Applicant would prefer to be able to post a financial surety after the Project has matured and provided the Applicant with the anticipated Project profit.

It is feasible that the life of the Project could outlive the current Power Purchase Agreement (PPA) between the utility offtaker, Colorado Springs Utility (CSU), and the Applicant. As such, technology upgrades may be advantageous which would result in a partial decommissioning of specific parts of the solar facilities with replacement of upgrades to continue energy generation.

The Applicant understands the Planning Commission's concern for the Applicant filing for bankruptcy and abandoning the Project, however, it is anticipated that in that unlikely scenario, the utility offtaker, CSU, would assume ownership and operation of the Project to continue benefitting from the required power generated.

Since the timeline, extent of, and details of Project decommissioning are unknown and variable in nature, the Applicant requested and received a waiver for the decommissioning plan and surety requirement for approval of the Project WSE-O in the Planning Commission Approval Letter of the WSE-O district rezone dated March 5, 2019. Conditions 11 and 12 in the Planning Commission Approval Letter identified the requirements for the Applicant to provide a Project Decommissioning and Site Restoration Plan (PDSRP) at least six months prior to the initiation of decommissioning activities, and financial assurances sufficient for decommissioning costs no later than five years prior to the termination of the delivery of power. The Applicant requests that the Project 1041 be approved without inclusion of a detailed Decommissioning Plan, and that this statement and Decommissioning Agreement (attached) satisfy that requirement for approval of the Project 1041.

## **DECOMMISSIONING AGREEMENT**

Grazing Yak Solar, LLC. (Developer), its successors or assigns, shall provide to El Paso County (County) in Colorado, a Project Decommissioning Plan for review and approval. At least six (6) months prior to the initiation of decommissioning activities, Developer shall prepare a Grazing Yak Solar Project (Project) Decommissioning and Site Restoration Plan (PDSRP) prepared in sufficient detail to identify, evaluate, and resolve all major hauling, deconstruction, environmental, and public health and safety issues reasonably anticipated by the Developer on the date thereof and submit the same to the County for review and approval. The PDSRP shall describe the process that will be used to evaluate the options and select the measures that will be taken to restore, reclaim, or preserve the Project site and to otherwise ensure the protection of the public against risks or danger resulting from the Project decommissioning. The PDSRP shall include a discussion of economic factors regarding the costs and benefits of restoration options versus the relative public risks or danger resulting from the Project; it shall address provisions for funding or bonding arrangements to meet the Project site restoration or management costs; and it shall include an estimate of the market resale value of the equipment and salvage value of all other equipment and materials that do not have value at resale. The PDSRP shall be prepared in detail commensurate with the time until site restoration is to begin. Decommissioning activities are identified in the Project Power Purchase Agreement (PPA). Specifically, per Section 10.7, the Seller (Grazing Yak Solar, LLC) shall, at its sole expense and cost, dispose of or cause the disposal of all PV Modules and other Facility equipment at the end of its useful life in accordance with the manufacturer's recommendations, Good Utility Practices and Applicable Laws.

### **Decommissioning Scope and Timing**

Developer, its successors or assigns, as the case may be, shall decommission the Project prior to expiration of the term of this Agreement or within eighteen (18) months following a date whenever the Project has not produced or sold electricity for twenty-four (24) consecutive months once the Project has achieved Commercial Operation. The Developer will be exempted from the decommissioning requirement if the twenty-four (24) month period of no energy output described above is the result of a repair, restoration or improvement to an integral part of the Project that affects the generation of electricity that is being diligently pursued by the Developer, or a Force Majeure Event or if otherwise extended by the Board of County Commissioners at an open and public meeting prior to the twenty-four (24) month period of no energy output described above.

After the project has achieved Commercial Operation, if the facility ceases operation or does not produce energy for twenty-four consecutive months, Developer shall either restore operations and/or energy production. If operations are not restored within twenty-four months, dismantling shall be concluded within six months thereafter.

The 18-month period to perform the decommissioning may be extended if there is a delay caused by sources beyond control of the Developer including, but not limited to, a Force Majeure Event, inclement weather conditions, equipment failure, wildlife considerations or the lack of equipment necessary to support decommissioning. The County shall be granted reasonable access to the Project site during decommissioning of the Project for purposes of inspecting any

decommissioning work or to perform decommissioning evaluations. County personnel, its agents or contractors, on the Project site shall observe all worker safety requirements enforced by the Developer and its contractors. If requested by the County, Developer will provide monthly status reports until all decommissioning work is completed. Decommissioning the Project shall include removal of all Project Facilities specifically to include, but not be limited to, solar arrays, racking systems, removal of foundations to a depth of two (2) feet below grade; re-grading the areas around the Project Facilities; removal of Project access roads and cables, excepting from the requirement to remove any roads and cables that the landowner (Colorado Springs Utilities) within the Project Area desires to retain; and final grading, surface restoration, and reseeded of disturbed lands (all of which shall comprise “Decommissioning”). Decommissioning shall occur in the order of removing the solar arrays as the first priority and removing the remaining Project Facilities immediately thereafter.

### **Decommissioning Funding and Surety**

Developer, its successors or assigns, as the case may be, shall provide financial assurances sufficient for Decommissioning costs in the form of a performance bond, guaranty or letter of credit, or cash to ensure the availability of funds for such costs (the “Decommissioning Surety”) to the County no later than the beginning of year twenty five (25) following the date of achieving Commercial Operation. An updated engineering estimate of the amount of the Decommissioning costs shall be provided by the Developer to the County at least sixty (60) days and no sooner than ninety (90) days prior to providing financial assurances to the County. If decommissioning should occur prior to year 25, an updated engineering estimate of the amount of the Decommissioning costs shall be provided by the Developer to the County at least 60 days and no sooner than 90 days prior to the start of decommissioning activities.

The PDSRP shall provide that the Decommissioning costs shall be reevaluated every three (3) years once financial assurances have been posted to ensure sufficient funds for Decommissioning and, if the Parties agree at that time that the Decommissioning costs need to be modified, the amount of the Decommissioning Surety shall be adjusted accordingly by letter agreement of the Parties.

### **Forms of Decommissioning Surety**

The Developer, its successors or assigns, as the case may be, shall provide the County with any, or any combination of, the following forms of financial assurances, as selected by Developer in its sole discretion:

- i. Performance Bond – Developer, its successors or assigns, as the case may be, shall provide financial assurances for the performance of its decommissioning obligations through a Performance Bond issued by a surety in good standing with, and authorized to issue surety bonds by, the State of Colorado, Division of Insurance. The Performance Bond shall be in an amount equal to the Decommissioning costs. The Performance Bond shall be for a term of at least three (3) years, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. In order to ensure continuous renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least thirty (30) days in advance of the expiration date, with proof of the same provided to the County Development Services Department.

Failure to secure such renewal or extension shall constitute a default of the Developer and breach of the conditions of the 1041 Permit and the Wind and/or Solar Energy-Overlay Zoning (WSE-O), this Agreement, and the Bond provisions; or

ii. Letter of Credit – Developer, its successors or assigns, as the case may be, shall provide financial assurances for the performance of its decommissioning obligations through a letter of credit issued by a bank whose long-term debt is rated “A” or better by a nationally recognized Rating Service. The letter of credit shall be for a term of at least one (1) year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. The County, or its designees, shall be authorized under the letter of credit to make one or more sight drawings thereon upon certification to the issuing bank that Developer, its successors or assigns, have failed to perform its decommissioning obligations when due. In order to ensure continuous renewal of the Letter of Credit with no lapse, each Letter of Credit shall be required to be extended or replaced at least thirty (30) days in advance of the expiration date, with proof of the same provided to the County Development Services Department. Failure to secure such renewal or extension shall constitute a default of the Developer and breach of the conditions of the 1041 Permit and the WSE-O Zoning, this Agreement, and the Letter of Credit provisions; or

iii. Guaranty – Developer, its successors or assigns, as the case may be, shall provide financial assurances for the performance of its decommissioning obligations by delivering a payment guaranty guaranteeing its Decommissioning obligations hereunder from an entity (a) having, at the time of delivery of such guaranty, a senior unsecured long term debt rating (“Credit Rating”) of (1) if such entity has a Credit Rating from Standard and Poor’s but not from Moody’s, BBB- or better from Standard and Poor’s or (2) if such entity has a Credit Rating from Moody’s but not from Standard and Poor’s, Baa3 or better from Moody’s or (3) if such entity has a credit rating from both Standard and Poor’s and Moody’s, BBB- or better from Standard and Poor’s and Baa3 or better from Moody’s; or (b) having audited financial statements prepared by a nationally-recognized firm of independent auditors and indicating a financial net worth of at least Seventy-five Million and No/100’s Dollars (\$75,000,000.00).

iv. Cash – Developer, its successors or assigns, as the case may be, shall provide financial assurances for the performance of its decommissioning obligations in the form of cash to be paid to the County and deposited in an escrow account with interest credited to the Developer.

### **Financial Assurances and Utility Project Ownership**

Developer, its successors or assigns, as the case may be, shall provide the Decommissioning Surety for the performance of its Decommissioning obligation arising hereunder unless if, at the time the duty to provide Decommissioning Surety arises, the owner of the Project is an investor-owned electric utility regulated by the Federal Energy Regulatory Commission and by the Colorado Public Utilities Commission, in which case the obligation to fully decommission the Project when due shall be a general obligation of the investor-owned electric utility owner.