

MEMORANDUM OF AGREEMENT FOR AGRICULTURAL MITIGATION FUND

THIS MEMORANDUM OF AGREEMENT FOR AGRICULTURAL MITIGATION FUND ("Agreement") is entered into this 20 day of March 2024 ("Effective Date"), between Sunstone Solar, LLC, an Oregon limited liability company (hereinafter "Sunstone Solar"), and the Morrow County Board of Commissioners (hereinafter "Commission").

WHEREAS, Sunstone Solar proposes to construct and operate a solar power generation energy facility on private agricultural-zoned land in Morrow County, Oregon ("the Project") that is under review by the Oregon Energy Facility Siting Council ("EFSC") for a Site Certificate.

WHEREAS, the Commission commented on Sunstone Solar's Application for Site Certificate in a letter to EFSC dated September 20, 2023, expressing support for an agricultural mitigation package to reduce, minimize and mitigate impacts to the local agricultural economy and provide additional "reasons" for EFSC to grant exception to Oregon's Statewide Planning Goal 3 for Sunstone Solar's proposal.

WHEREAS, Sunstone Solar has quantified impacts from the Project on Morrow County's agricultural economy and has developed an Agricultural Mitigation Plan that has identified potential mitigation projects and programs capable of reducing impacts to the local agricultural economy.

WHEREAS, Sunstone Solar and the Commission wish to support the agricultural economy in Morrow County through mitigation projects funded by the Agricultural Mitigation Plan, which may include the increased use of weed control technologies, investments in wheat harvest facilities, or other measures.

WHEREAS, the Commission and Sunstone Solar have determined that it is in the best interest of the Morrow County's agriculture economy that Sunstone Solar donate certain funds to be used to increase the economic productivity and resilience of Morrow County farming as set forth below.

WHEREAS, the Commission desires to accept such funds under the terms and conditions set forth herein.

NOW THEREFORE, Sunstone Solar and Commission agree as follows:

- 1) **Agricultural Mitigation Donations:** Sunstone Solar shall pay Morrow County a one-time payment of \$1,179 per acre for up to approximately 9,400 acres of cropland that is utilized for the Project ("Donation") to be used to mitigate agricultural impacts of the Project in Morrow County. The Donation shall be deposited into a separate Sunstone Solar Agricultural Mitigation Account ("Mitigation Account") established and administered by Morrow County. Sunstone Solar shall pay the Donation to the Commission within 60 days of commencing construction on the first phase of the Project. If for any reason, Sunstone Solar terminates the development of the Project before commencing construction, then Sunstone Solar shall have no obligation to perform any obligation under this Agreement, including payment of all or a portion of the Donation. Construction will begin only once Sunstone Solar has initiated material infield earthworks for the construction of the Project under a signed engineering, procurement, and construction agreement. Construction shall not be triggered by (i) Sunstone Solar's due diligence activities on the Project's site (including, without limitation, geotechnical boring, preliminary studies, field tiling surveys, plans, entitlement-related studies, push-pull tests, and other site assessments, surveys, environmental assessments, reports, or test results) or (ii) any work performed by or on behalf of the servicing utility company. Sunstone Solar and the Committee

recognize that the final acreage of crop land that is utilized for the Project and used as a basis for calculating the Donation may be less than the approximate 9,400 acres described in this section.

- 2) **Creation of a County Advisory Committee:** The Commission shall establish a nine-person Advisory Committee to make recommendations on the distribution of Agricultural Mitigation Funds ("Mitigation Funds") from the Mitigation Account. The Advisory Committee shall be composed of:
 - a) one representative from Morrow County government, selected by the Commission;
 - b) one representative from an academic institution engaged in agriculture research in Morrow County or an agricultural-related nonprofit entity located in Morrow County, selected by the Commission;
 - c) one dryland farm producer in the County, selected by the Commission;
 - d) two representatives from the Morrow Soil and Water Conservation District, selected by the Morrow Soil and Water Conservation District Board;
 - e) two representatives from Morrow County Grain Growers, selected by the Morrow County Grain Growers Board; and
 - f) two representatives with subject matter expertise over statewide or regional agriculture issues, selected by the Energy Facility Siting Council.
- 3) **Advisory Committee:** The Advisory Committee shall make recommendations to the Commission regarding uses of the Mitigation Funds based on the guidelines provided by the Sunstone Solar Agricultural Mitigation Plan. Such uses may include projects described in the Agricultural Mitigation Plan or other projects recommended by the Committee to accomplish the purposes of this Agreement and the Agricultural Mitigation Plan. The Commission shall only approve a distribution of Mitigation Funds to projects recommended by the Advisory Committee.
- 4) **Donation To Be Used Only to Benefit Dryland Wheat Agriculture:** The Commission shall only use the Donation to fund proposed mitigation projects objectively designed to mitigate the impacts of the Project on Morrow County's dryland wheat agricultural economy, including proposed mitigation projects designed to increase the economic productivity and resilience of Morrow County dryland wheat farming and dryland wheat farmers. The Commission shall be allowed to use a maximum of one percent (1%) of the Donation to pay for administrative expenses solely necessary to evaluate proposals to receive Mitigation Funds and to prepare annual reports required by this Agreement.
- 5) **Reporting:** The Advisory Committee will provide an annual report to the Commission, the Oregon Department of Energy's Energy Facility Siting Council and Sunstone Solar describing the use of the Donation for each year of the Term of this Agreement or until the Donation is fully spent. Each annual report will include details, to the extent possible, regarding how the Donation is being disbursed or invested and an evaluation of how each disbursement, in general, complies with agricultural mitigation projects. The annual report will include the impact of each use of the Donation, including statistics on the number of farmers benefiting, impacts on agriculture yields, and other relevant benefits. Copies of the reports shall be provided by April 15 each year.
- 6) **Audit Rights:** The Advisory Committee agrees that Sunstone Solar or their authorized representative(s), and any governmental agency that regulates the Advisory Committee or Sunstone Solar, may, at all reasonable times during the Term and for four (4) years thereafter and upon reasonable notice, inspect and audit the books and records of the Advisory Committee for the sole purpose of evaluating the Advisory Committee's compliance with this Agreement and any law applicable to the Advisory Committee. Sunstone Solar and the Advisory Committee agree that at least one audit will occur within five (5) years of the Donation payment. The Advisory Committee will retain all applicable books and records for 4 years after the expiration or termination of this Agreement or such longer period as required by applicable law. Any such audit will be conducted by Sunstone Solar's corporate internal audit personnel or by a certified public accountant firm selected by Sunstone Solar and the Advisory

Committee. Sunstone Solar will provide reasonable notice to the Advisory Committee before the audit or inspection. Audit reports will be provided to the Oregon Department of Energy.

- 7) **Notification of Government Agencies.** Sunstone Solar and the Commission are committed to submitting appropriate documentation relating to this Agreement to the Oregon Department of Energy, as soon as practicable after the Parties execute this Agreement. The Commission also agrees to participate in any necessary discussions with the Oregon Department of Energy regarding the Project. Within ten (10) business days of mutual acceptance of the Agreement, the Commission will provide a letter or other suitable notification to the Oregon Department of Energy stating, based on the mitigation provided pursuant to this Agreement, that the Commission's agricultural impact concerns have otherwise been satisfied in connection with the Project.
- 8) **Term:** The Donation shall be fully spent within 10 years of receiving payment. This Agreement shall automatically terminate when the Donation is fully spent. Sections 7, 8, and 9 will survive the termination of this Agreement.
- 9) **Indemnification:** The Commission agrees to defend, indemnify, and hold Sunstone Solar and its parents, employees, agents, affiliates, and successors harmless from and against any and all claims, actions, losses, damages or other liabilities arising out of the Commission's actions under this Agreement as a result of (a) any action that is based upon any negligent act or omission or willful misconduct of the Commission; or (b) any action that is based upon property damage or bodily harm, including death.
- 10) **Compliance with Laws:** Sunstone Solar and the Commission will comply at all times with all applicable state laws, regulations, and any other applicable legal requirements, including any applicable nondiscrimination laws.
- 11) **Governing Law:** This Agreement will be governed by and interpreted according to the laws of the State of Oregon.
- 12) **Amendments:** This Agreement may be amended, supplemented or modified only by a writing signed by the Commission and Sunstone Solar. The Commission and Sunstone Solar agree that this Agreement may not be modified in any manner that conflicts with EFSC's findings on the Agricultural Mitigation Plan without EFSC's prior consent. This includes, but is not limited to, any amendment or modification that allows the Donation to be spent on another purpose besides to mitigate agricultural impacts of the Project in Morrow County.
- 13) **Assignment:** Sunstone Solar will provide notice to the Commission regarding the assignment of this Agreement.
- 14) **Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes all prior representations and statements. The Commission represents, and the parties acknowledge, that the Commission cannot approve Sunstone Solar's Application for Site Certificate under review by EFSC.
- 15) **Counterparts:** This Agreement may be executed in counterparts, each of which will constitute an original and all of which together will constitute one document. A facsimile or electronic signature will have the same effect as an original.

16) **Notice:** Any notice required by this Agreement shall be given by hand delivery or by placing said notice in the United States Mail, first-class postage prepaid, and addressed as follows:

Sunstone Solar:

Sunstone Solar, LLC
130 Roberts Street
Asheville, NC 28801

Commission:

Morrow County Board of Commissioners
P.O. Box 788
Heppner, OR 97836

[SIGNATURES ON FOLLOWING PAGE]



Executed in duplicate, and mutually delivered as effective, on the Effective Date.

SUNSTONE SOLAR, LLC, an Oregon limited liability company

By DocuSigned by:
Jon Saxon
33318059643945C...

Name Jon Saxon

Title: Authorized Representative

MORROW COUNTY BOARD OF COMMISSIONERS

By 

Name David Sykes

Title: Chair

By Thecused

Name Jeff Wenholz

Title: Commissioner

By 

Name Ploy Drago Jr.

Title: Commissioner