

December 28, 2018

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

RE: *PacifiCorp*  
Docket No. ER19-\_\_\_\_\_ -000

Dear Secretary Bose:

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (2012), Part 35 of the Federal Energy Regulatory Commission’s (“Commission”) regulations, 18 C.F.R. Part 35 (2018), and Order No. 714<sup>1</sup> regarding electronic filing of tariff submittals, PacifiCorp hereby tenders for filing the following jurisdictional agreement:

Project Construction Agreement Project Title: PacifiCorp Energy Supply Management / Milford Solar I TSR (“Construction Agreement”), between PacifiCorp Energy Supply Management (“ESM”) and PacifiCorp Transmission, executed December 20, 2018, to be designated as PacifiCorp Service Agreement No. 918 under PacifiCorp’s Volume No. 11 Open Access Transmission Tariff (“OATT”).

## **1. Background and Description of Filing**

On December 20, 2018, ESM (PacifiCorp’s merchant function) and PacifiCorp’s Transmission function entered into the Construction Agreement. Under the Construction Agreement, PacifiCorp’s Transmission function agrees to perform and ESM agrees to pay for work necessary to accommodate a separate request for Network Transmission Service submitted by ESM.

Section 2 of the Construction Agreement provides that the term of the agreement begins on the later of the date of execution or another date designated by the Commission. The agreement shall terminate within ninety (90) days of the earlier of: (i) PacifiCorp Transmission’s receipt of final payment of actual costs by ESM; or (ii) PacifiCorp Transmission’s refund of overpayment to ESM, pursuant to Section 4 of the Construction Agreement; or (iii) Following PacifiCorp Transmission’s determination of actual costs after completion of construction, in the event that neither a final payment nor a refund is required pursuant to Section 4 of the agreement.

The project description and scope, as set out in Section 3 and Exhibit B, obligate PacifiCorp Transmission to, among other things, reconduct the Spanish Fork – Timp 138 kV transmission line, provide new relay settings for the Company’s Spanish Fork substation, provide

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<sup>1</sup> *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).

a new circuit breaker and switches at the Timp substation, and relocate a section of underbuilt distribution line. The estimated costs for the project's scope of work is \$5,907,300, which includes \$504,300 in direct assignment facilities costs and \$5,403,000 in Network Upgrade Costs. The remaining commercial terms are provided in Sections 4 through 33 of the Agreement. Accordingly, PacifiCorp respectfully requests that the Commission accept the Construction Agreement, attached hereto, for filing.

## **2. Effective Date and Request for Waiver**

The Construction Agreement is intended to implement service under PacifiCorp's OATT. Accordingly, it is a "service agreement" under the Commission's regulations and is being filed within 30 days of service commencing.<sup>2</sup> Therefore, in accordance with 18 C.F.R. § 35.3(a)(2), PacifiCorp requests an effective date of December 20, 2018 for the Construction Agreement.

To the extent that any filing requirement in Part 35 of the Commission's regulations is not satisfied by this filing and the materials enclosed herewith, PacifiCorp respectfully requests waiver of such requirements.

## **3. Designation**

PacifiCorp requests that the Construction Agreement be designated as PacifiCorp Service Agreement No. 918.

## **4. Enclosure**

The following enclosure is attached hereto:

Enclosure      Project Construction Agreement between PacifiCorp and ESM, to be designated as PacifiCorp Service Agreement No. 918.

## **5. Communications**

All communications and correspondence regarding this filing should be forwarded to the following persons:

Thomas C. Woodworth  
Assistant General Counsel  
PacifiCorp  
825 N.E. Multnomah, Suite 1800  
Portland, OR 97232  
(503) 813-5356  
(503) 813-7252 (facsimile)  
[Tom.Woodworth@PacifiCorp.com](mailto:Tom.Woodworth@PacifiCorp.com)

Rick Vail  
Vice President, Transmission  
PacifiCorp  
825 N.E. Multnomah, Suite 1600  
Portland, OR 97232  
(503) 813- 6938  
(503) 813- 6893 (facsimile)  
[Richard.Vail@PacifiCorp.com](mailto:Richard.Vail@PacifiCorp.com)

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<sup>2</sup> 18 C.F.R. § 35.3(a)(2) (2018); see also *Int'l Transmission Co., et al.*, 139 FERC ¶ 61,022 at P 13 (2012).

## **6. Notice**

Pursuant to 18 C.F.R. § 35.2(e), a copy of this filing is being served on the following:

Joseph Hoerner  
VP, Energy Supply Management  
PacifiCorp Energy Supply Management  
825 N.E. Multnomah, Suite 600  
Portland, OR 97232  
(503) 813-6412  
[Joseph.Hoerner@PacifiCorp.com](mailto:Joseph.Hoerner@PacifiCorp.com)

Utah Public Service Commission  
Heber M. Wells Building  
160 East 300 South  
Salt Lake City, UT  
[psc@utah.gov](mailto:psc@utah.gov)

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

Respectfully Submitted,

*/s/ Thomas C. Woodworth*  
Thomas C. Woodworth  
*Counsel for PacifiCorp*

**PROJECT CONSTRUCTION AGREEMENT**  
**PROJECT TITLE: PACIFICORP ENERGY SUPPLY MANAGEMENT /**  
**MILFORD SOLAR 1 TSR**

This Project Construction Agreement (“Agreement”) is made and entered into this 20th day of December, 2018, between PacificCorp, on behalf of its merchant function (“Customer” or “ESM”), and PacificCorp, on behalf of its transmission function (“Company”), is for work to be performed by PacificCorp for Customer. Hereinafter, Customer and PacificCorp may be individually referred to as a “Party” or collectively referred to as the “Parties.”

**RECITALS:**

- A. WHEREAS, Company is a transmission provider which owns and operates certain facilities for the transmission of electric power and energy located in Utah; and
- B. WHEREAS, Customer is a Network Transmission Customer of Company; and
- C. WHEREAS, Customer has submitted a request to Company to provide Network Transmission Service for an underlying Generation Interconnection Project and Company has determined the requirements for integration (“Project”); and
- D. WHEREAS, the Parties have agreed to perform the work required to complete the Project.

NOW THEREFORE, in consideration of and subject to the mutual covenants contained herein, the Parties agree to the following:

1. **DEFINITIONS.**

**Applicable Laws and Regulations** shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any governmental authority.

**Applicable Reliability Standards** shall mean the requirements and guidelines of North American Electric Reliability Corporation (“NERC”), the Western Electricity Coordinating Council (“WECC”), and the balancing authority area of the transmission system to which the Customer is directly interconnected.

**Direct Assignment Facilities** shall mean facilities or portions of facilities that are constructed by Company for the sole use/benefit of the Customer requesting service. Direct Assignment Facilities shall be specified in this Agreement. The Customer will pay all costs of Direct Assignment Facilities.

**Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

**Network Upgrades** shall mean additions, modifications, and upgrades to Company's transmission system required at or beyond the point at which the customer's facilities connect with company's transmission system. Network Upgrades are integrated with and support Company's Transmission System for the general benefit of all users of such transmission system. The cost of Network Upgrades may or may not be directly assigned to the Customer.

2. **TERM & TERMINATION.** This Agreement shall be effective upon the later of the following: (1) the date of execution by both Parties, or (2) the effective date established by the Federal Energy Regulatory Commission ("FERC") upon acceptance for filing. Unless terminated earlier pursuant to the termination provisions of Section 4.3 or Section 12, this Agreement shall terminate ninety (90) calendar days after the earliest of the following to occur:

- (i) Company's receipt of final payment of actual costs by Customer; or
- (ii) Company's refund of overpayment to Customer, pursuant to Section 4 of this Agreement; or
- (iii) Following Pacificorp's determination of actual costs after completion of construction, in the event that neither a final payment nor a refund is required pursuant to Section 4 of this Agreement.

3. **SCOPE AND PERFORMANCE OF WORK:**

a. **Project Description and Scope.** Company, in order to accommodate the Project, will need to: Reconducto the Spanish Fork – Timp 138 kV transmission line, provide new relay settings for Spanish Fork substation, provide a new circuit breaker and switches at Timp substation, and relocate a section of underbuilt distribution line.

b. **Company Responsibilities.** Company agrees to design, procure, and install the Project as depicted in the attached Exhibit B, Estimated Scope of Work.

c. **Customer Responsibilities.** Customer agrees to design, procure, and install the Project as depicted in the attached Exhibit B, Estimated Scope of Work.

d. **Performance Standards.** Each Party shall perform all its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice (as such terms are defined in this Agreement). To the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in breach of this

Agreement for compliance therewith.

4. **OWNERSHIP/RESPONSIBILITY FOR COSTS:**

4.1. **Ownership.** Each Party shall retain ownership and maintain equipment installed by the respective Party.

4.2. **Estimated Costs.** The Company's estimated cost for Company's Scope of Work for the Project is \$5,907,300, which includes \$504,300 in Direct Assignment Facilities costs and \$5,403,000 in Network Upgrade costs. Direct Assignment Facilities costs are those costs associated with the installation of Direct Assignment Facilities, while Network Upgrade costs are those costs associated with the installation of Network Upgrades. Company shall notify Customer, in writing, within thirty (30) calendar days if, at any time during the course of the Project, Company expects the cost of performing the work identified under this Agreement to exceed \$7,100,000.

The estimated cost includes engineering, labor, materials, subcontracts, and applicable overheads. The cost estimate is based on the following assumptions:

- Cost estimate is based on calendar year 2018 dollars.
- If construction is delayed, the cost estimate will likely need to be adjusted.
- Estimate assumes no exceptional site preparation will be needed.
- Estimate assumes project will be built during normal hours and will not require schedule compression or overtime.

4.2.1. **Direct Assignment Facilities Costs.** In consideration of the work to be performed by Company, Customer agrees to pay the estimated Direct Assignment Facilities costs of \$504,300 within thirty (30) calendar days after the Effective Date. Customer shall reimburse Company for the actual cost to complete the work. Following completion of the Project, Company shall determine its actual costs for the Direct Assignment Facilities identified in the Scope of Work. Company's actual costs shall include all direct costs plus applicable overheads. If the actual costs are more than the estimated costs, Company will forward a copy of the actual costs to Customer along with an invoice for the additional amount within one hundred twenty (120) calendar days after completion of construction. If the actual costs are less than the estimated costs, Company will forward a copy of the actual costs to Customer along with a refund to cover the overage within one hundred twenty (120) calendar days after completion of construction. Customer will have thirty (30) calendar days after receiving any invoice to make payment in full.

4.2.2. **Network Upgrade Costs.** Company agrees to pay the estimated Network Upgrade costs of \$5,403,000. Company will commence work following filing of this Agreement at the Commission and receipt of Direct Assignment Facilities Costs from the Customer.

4.3. Authorization of Additional Amounts for Project Costs. In the event that Company determines the Project Costs may exceed \$7,100,000, Company shall notify Customer and request that Customer provide written approval authorizing such additional amounts for Project Costs within thirty (30) days of such notice. Company's obligation to proceed with the Project associated with such additional amounts shall be contingent upon receipt of such approval, along with a prepayment in such additional amount. Customer shall be responsible for such estimated costs, as increased pursuant to such written authorization. If Customer does not authorize such additional amounts within such thirty (30) day period, this Agreement shall terminate after Company gives Customer written notice and an additional fifteen (15) days to cure. If Customer agrees to the cost increase, a modification to this Agreement will be prepared to indicate the additional funding amount.

4.4. Payment of Actual Costs. In consideration of the work to be performed by Company, Customer agrees to pay the total Direct Assigned estimated costs of \$504,300 within thirty (30) calendar days after the Effective Date of this Agreement.

Customer shall reimburse Company for the actual cost to complete the work. Following completion of the Project, Company shall determine its actual costs for the Project identified in the Scope of Work. Company's actual costs shall include all direct costs plus applicable overheads. If the actual costs are more than the estimated costs, Company will forward a copy of the actual costs to Customer along with an invoice for the additional amount within one hundred twenty (120) calendar days after completion of construction. If the actual costs are less than the estimated costs, Company will forward a copy of the actual costs to Customer along with a refund to cover the overage.

Company shall keep accurate and complete accounting records in support of all cost billings and claims in accordance with generally accepted accounting principles. Upon request, Company shall provide accounting records to Customer following completion of Project.

## 5. TAXES:

5.1. Customer Payments Not Taxable. The Parties intend that all payments made by Customer to Company for the installation of the Project shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code ("IRC") and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the IRC and any applicable state income tax laws.

5.2. Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon Company. Notwithstanding Section 5.1, Customer shall protect, indemnify and hold harmless Company from the cost consequences of any current tax liability imposed against Company as the result of payments made by Customer to Company under this Agreement for the Project, as well as any interest and penalties, other than interest and

penalties attributable to any delay caused by Company.

Company shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Customer under this Agreement unless (i) Company has determined, in good faith, that the payments or property transfers made by Customer to Company should be reported as income subject to taxation or (ii) any governmental authority directs Company to report payments or property as income subject to taxation. Customer shall reimburse Company for such costs on a fully grossed-up basis, in accordance with Section 5.3, within thirty (30) calendar days of receiving written notification from Company of the amount due, including detail about how the amount was calculated.

**5.3. Tax Gross-up Amount.** Customer's liability for the cost consequences of any current tax liability under this Section 5 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Customer will pay Company, in addition to the amount paid for the Project, an amount equal to (1) the current taxes imposed on Company ("Current Taxes") on the excess of (a) the gross income realized by Company as a result of payments made by Customer to Company under this Agreement (without regard to any payments under this Article) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit Company to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Company's composite federal and state tax rates at the time the payments or property transfers are received and Company will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Company's anticipated tax depreciation deductions as a result of such payments by Company's current weighted average cost of capital. Thus, the formula for calculating Customer's liability to Company pursuant to this Article can be expressed as follows:

$$(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate}).$$

**5.4. Contests.** In the event any governmental authority determines that Company's receipt of payments or property constitutes income that is subject to taxation, Company shall notify Customer, in writing, within thirty (30) calendar days of receiving notification of such determination by a governmental authority.

**5.5. Refund.** In the event that (a) a private letter ruling is issued to Company which holds that any amount paid by Customer to Company under the terms of this Agreement

is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Company in good faith that any amount paid by Customer to Company under the terms of this Agreement is not taxable to Company, (c) any abatement, appeal, protest, or other contest results in a determination that any payments made by Customer to Company are not subject to federal income tax, or (d) if Company receives a refund from any taxing authority for any overpayment of tax attributable to any payment by Customer to Company pursuant to this Agreement, Company shall promptly refund to Customer the following:

- (i) any payment made by Customer under this Section 5 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon;
- (ii) interest on any amounts paid by Customer to Company for such taxes which Company did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii) from the date payment was made by Customer to the date Company refunds such payment to Customer; and
- (iii) with respect to any such taxes paid by Company, any refund or credit Company receives or to which it may be entitled from any governmental authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Company for such overpayment of taxes (including any reduction in interest otherwise payable by Company to any governmental authority resulting from an offset or credit); provided, however, that Company will remit such amount promptly to Customer only after and to the extent that Company has received a tax refund, credit or offset from any governmental authority for any applicable overpayment of income tax related to Company's Project.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for the Project hereunder, in the same position they would have been in had no such tax payments been made.

6. **PROJECT SCHEDULE.** The Parties have agreed to the Estimated Schedule and Milestones attached as Exhibit C, Estimated Schedule and Milestones, for the completion of the Project. All project schedule milestones shall be best estimates of the time required to complete each Parties task at the time the schedule was developed.

7. **STANDARD OF WORK.** All work performed pursuant to this Agreement by either Party or their agents shall be performed in a good and workmanlike manner in accordance with Good Utility Practice and with any and all prudent and Applicable Reliability Standards.

8. **CHANGES.** The Parties may at any time, in writing, mutually agree to changes and/or additions within the general scope of this Agreement or any amendment hereto, direct the

omission of or variation in work, or alter the schedule. If such direction results in a material change in the amount or character of the work, an equitable adjustment in estimated costs and other such provisions of this Agreement as may be affected shall be made and this Agreement shall be modified in writing accordingly.

No change shall be binding upon the Parties until a change order is executed by each Party which is in writing and expressly states that it constitutes a change order to this Agreement. The issuance of information, advice, approvals, or instructions verbally or by an exchange of e-mail or in any other manner short of a writing executed by both Parties shall not constitute an authorized change order pursuant to this provision.

All revisions to this Agreement, if originally filed at FERC, will be filed by Company as an amended and restated agreement.

9. **INSPECTION.** Customer may, at its discretion and expense, inspect Company's construction work of the Project in progress upon reasonable notice and with supervision by Company. Company may, at its discretion and Customer's expense, inspect Customer's construction work of the Project in progress upon reasonable notice and with supervision by Customer. Customer will provide testing results to Company as specified in the technical specifications.

10. **TESTING.** Before the new facilities required for the Project are energized, such new facilities shall be tested by Company to ensure their safe and reliable operation in accordance with Good Utility Practice, all applicable FERC, NERC and WECC criteria and requirements, and all applicable federal, state, and local law, regulations, and requirements. If testing indicates that modifications are required, Customer shall bear the cost of all such modifications in accordance with Section 4 above, except to the extent that any such modifications are required as a result of Company's or its agents' or its subcontractors' negligence, willful misconduct, or failure to comply with Good Utility Practice.

11. **ACCESS.** Either Party shall grant the other Party reasonable escorted access to the Project consistent with such access rights as are established in prior agreements between the Parties, provided that each party provides reasonable notice and comply with the other Parties safety and security rules.

12. **RIGHT TO STOP WORK.** Customer reserves the right, upon thirty (30) days advance written notice to Company, to require Company at any time to stop all work by Company pursuant to this Agreement, provided that such stop-work order is the result of suspension or termination of the Project. Issuance of any such stop-work order shall terminate this Agreement. Upon issuance of any such stop-work order, Customer shall pay the Project Costs Company has incurred prior to the stoppage of work, including, without limitation, the costs incurred in connection with the cancellation of third-party contracts and any cancellation costs for equipment that is already ordered for the Project.

13. **GOVERNING LAW.** Enforcement or interpretation of this Agreement shall be in the state court of the State of Utah, and all parties hereby submit to the jurisdiction of said court for the stated purpose. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

14. **NO PARTNERSHIP.** This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

15. **ASSIGNMENT.** Company may at any time assign its rights and delegate its obligations under this Agreement, in whole or in part, including, without limitation, transferring its rights and obligations under this Agreement to any: (i) affiliate; (ii) successor in interest with respect to the Project, or (iii) corporation or any other business entity in conjunction with a merger, consolidation or other business reorganization to which Company is a party. Affiliate of Company includes any entity in which Berkshire Hathaway, Inc. owns more than a 5% interest, over which Berkshire Hathaway exercises management control. Should such assignment take place, Company will provide written notice to Customer. Customer shall not assign its rights, nor delegate its obligations, under this agreement without the prior written consent of Company, which shall not be unreasonably withheld, and any attempted transfer in violation of the restriction shall be void.

16. **PROVISIONAL REMEDIES.** Either Party may seek provisional legal remedies, if in such Party's judgment such action is necessary to avoid irreparable damage or preserve the status quo.

17. **ENTIRE CONTRACT.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and there are no oral or written understandings, representations or commitments of any kind, express or implied, which are not expressly set forth herein.

18. **NOTICES.** Any correspondence regarding this work shall be directed to the appropriate party (or parties) as shown below:

Customer:	PacifiCorp Attn: Director, Energy Supply Management 825 NE Multnomah St, STE 600 Portland, OR 97232
Company:	Vice President, Transmission Services 825 NE Multnomah St., Suite 1600 Portland, OR 97232

19. **PAYMENT.** Payments shall be sent to:

US Mail Deliveries: Company Transmission  
P.O. Box 2757  
Portland, OR 97208

Other Deliveries: Company Transmission  
Attn: Central Cashiers  
825 NE Multnomah St., Suite 550  
Portland, OR 97232

20. **INDEMNIFICATION.** Customer (“Indemnifying Party”) agrees to protect, defend, indemnify and hold harmless the Company, its officers, employees and agents (collectively, the “Indemnified Party”) against and from any and all liability, suits, loss, damage, claims, actions, costs and expenses of any nature, including court costs and attorney’s fees, even if such actions or claims are completely groundless, growing out of injury to or death of the Indemnifying Party or its subcontractors of any tier, their employees, agents or guests, or any other person or persons, or any and all destruction, loss or damage to property arising in any way in connection with, or related to, the Company’s performance of any work or any of its obligations under the Agreement, except as to injury to persons or damage to property on the work site caused by the sole negligence of the Indemnified Party.

Moreover, at the request of the Indemnified Party, the Indemnifying Party shall defend any action, claim or suit asserting a claim that might be covered by this indemnity. The Indemnifying Party shall pay all costs and expenses that may be incurred by the Indemnified Party in enforcing his indemnity and defense agreement, including attorney’s fees actually paid by the Indemnified Party.

21. **LIMITATION OF LIABILITY.** Except as otherwise expressly provided in this Agreement, each Party's liability to the other Party for any loss, cost, claim, injury, damage, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as specifically authorized by this Agreement.

22. **FORCE MAJEURE.** A Party shall not be subject to any liability or damages for inability to meet its obligations under this Agreement to the extent that such failure shall be due to causes beyond the control of the Party, including, but not limited to the following: (a) the operation and effect of any new or modified rules, regulations and orders promulgated by FERC, any applicable state public utility commission, any municipality, or any governmental agency of the United States, or subdivision thereof (so long as the claiming party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) any Force Majeure event.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

The Party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Except for the obligation to pay amounts owed when due, time periods for performance obligations of either Party herein shall be extended for the period during which Force Majeure was in effect.

23. SUCCESSORS. This Agreement will be binding upon the Parties and will inure to the benefit of their respective successors.

24. SEVERABILITY. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

25. WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE, OR TO REQUEST THE CONSOLIDATION OF, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

26. MULTIPLE COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

27. CONTRACTORS AND SUBCONTRACTORS. Nothing in this Agreement shall prevent Company or Customer from utilizing the services of any third party contractor or subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that Company and Customer shall require a third party contractor and subcontractor to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such third party contractor and subcontractor.

28. NO THIRD-PARTY BENEFICIARIES. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons,

corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

29. **SURVIVAL.** All payment obligations and liabilities incurred before the termination or expiration of this Agreement, will survive its termination or expiration.

30. **MODIFICATIONS OR AMENDMENTS.** No modification or amendment of any provision of this Agreement shall be effective unless set forth in a written document signed by authorized representative of the Parties.

31. **RECITALS.** The above stated recitals are incorporated into and made part of this Agreement by this reference to the same extent as if these recitals were set forth in full at this point.

32. **WAIVER.** Waiver of any right, privilege, claim, obligation, condition, or default shall be in writing and signed by the waiving Party. No waiver by a Party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach, and no waiver by a party of any right under this Agreement shall be construed as a waiver of any other right.

33. **DISPUTE RESOLUTION.**

33.1. **Submission.** In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement, such Party (the "disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) calendar days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in a Federal court under Federal law.

33.2. **Arbitration Procedures**

Any arbitration initiated under these procedures shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) calendar days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) calendar days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party

to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

### **33.3. Arbitration Decisions**

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) calendar days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service.

### **33.4. Costs**

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective as of the day and year first herein above written.

## COMPANY

/s/ Rick Vail

Signature

Rick Vail

Printed Name of Signor

VP, Transmission

Title of Signor

12/20/18

Date

## CUSTOMER

/s/ Joseph Hoerner

Signature

Joseph Hoerner

Printed Name of Signor

VP, Energy Supply Management

Title of Signor

12/20/18

Date

**Exhibit A**  
**Project Estimate**

	<b>Network Upgrade Cost</b>	<b>Direct Assigned Cost</b>
Spanish Fork substation	\$16,200	\$0
Timp substation	\$384,300	\$0
Spanish Fork - Timp 138kV transmission	\$5,002,500	\$0
Spanish Fork - Timp distribution 5.23 Miles	\$0	\$504,300
<b>Total</b>	<b>\$5,403,000</b>	<b>\$504,300</b>

**Exhibit B**  
**Estimated Scope of Work**

**Spanish Fork substation**

Company will be responsible for:

- Development and installation of new relay settings for the Spanish Fork – Timp transmission line; and
- Once new OPGW is installed, decommissioning of the Spanish Fork – Lake Mountain microwave link.

**Timp substation**

Company will be responsible for:

- Design, procurement, installation, and ownership of a new 138 kV circuit breaker (and associated switches); and
- Development and installation of new relays and settings for the Spanish Fork – Timp transmission line.

**Spanish Fork – Timp transmission line**

Company will be responsible for:

- Rebuilding/reconductoring of approximately 5.23 miles of transmission line from Timp substation to structure 213 (with 1272 ‘Bittern’ conductor);
- Installation of  $\frac{1}{2}$ ” OPGW in the shield wire position from Timp to Spanish Fork substation; and
- Reconfiguring underbuilt distribution circuit along the rebuilt/reconductored transmission line path.

**Exhibit C**  
**Estimated Schedule and Milestones**

The estimated schedule and milestones are driven by the below timeframes which may be adjusted through the course of the Project. If there is a delay in any of the below activities, there will be, at a minimum, a day for day slip in the entire schedule. Any delays in the Project have the potential to affect the entire schedule.

<b>Milestone</b>	<b>Date</b>
Execute Construction Agreement	12/31/2018
Company Engineering & Procurement Commences	2/1/2019
Transmission Provider Permitting and Property Complete	7/1/2019
Transmission Provider Engineering Design Complete	2/1/2020
Construction Begins	4/1/2020
Construction Complete	11/15/2020
Contingent Projects Complete	11/15/2020

**PROJECT CONSTRUCTION AGREEMENT**  
**PROJECT TITLE: PACIFICORP ENERGY SUPPLY MANAGEMENT /**  
**MILFORD SOLAR 1 TSR**

This Project Construction Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, between PacifiCorp, on behalf of its merchant function (“Customer” or “ESM”), and PacifiCorp, on behalf of its transmission function (“Company”), is for work to be performed by PacifiCorp for Customer. Hereinafter, Customer and PacifiCorp may be individually referred to as a “Party” or collectively referred to as the “Parties.”

**RECITALS:**

- A. WHEREAS, Company is a transmission provider which owns and operates certain facilities for the transmission of electric power and energy located in Utah; and
- B. WHEREAS, Customer is a Network Transmission Customer of Company; and
- C. WHEREAS, Customer has submitted a request to Company to provide Network Transmission Service for an underlying Generation Interconnection Project and Company has determined the requirements for integration (“Project”); and
- D. WHEREAS, the Parties have agreed to perform the work required to complete the Project.

NOW THEREFORE, in consideration of and subject to the mutual covenants contained herein, the Parties agree to the following:

1. **DEFINITIONS.**

**Applicable Laws and Regulations** shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any governmental authority.

**Applicable Reliability Standards** shall mean the requirements and guidelines of North American Electric Reliability Corporation (“NERC”), the Western Electricity Coordinating Council (“WECC”), and the balancing authority area of the transmission system to which the Customer is directly interconnected.

**Direct Assignment Facilities** shall mean facilities or portions of facilities that are constructed by Company for the sole use/benefit of the Customer requesting service. Direct Assignment Facilities shall be specified in this Agreement. The Customer will pay all costs of Direct Assignment Facilities.

**Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts

known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

**Network Upgrades** shall mean additions, modifications, and upgrades to Company's transmission system required at or beyond the point at which the customer's facilities connect with company's transmission system. Network Upgrades are integrated with and support Company's Transmission System for the general benefit of all users of such transmission system. The cost of Network Upgrades may or may not be directly assigned to the Customer.

2. **TERM & TERMINATION.** This Agreement shall be effective upon the later of the following: (1) the date of execution by both Parties, or (2) the effective date established by the Federal Energy Regulatory Commission ("FERC") upon acceptance for filing. Unless terminated earlier pursuant to the termination provisions of Section 4.3 or Section 12, this Agreement shall terminate ninety (90) calendar days after the earliest of the following to occur:

- (i) Company's receipt of final payment of actual costs by Customer; or
- (ii) Company's refund of overpayment to Customer, pursuant to Section 4 of this Agreement; or
- (iii) Following PacifiCorp's determination of actual costs after completion of construction, in the event that neither a final payment nor a refund is required pursuant to Section 4 of this Agreement.

3. **SCOPE AND PERFORMANCE OF WORK:**

a. **Project Description and Scope.** Company, in order to accommodate the Project, will need to: Reconduct or the Spanish Fork – Timp 138 kV transmission line, provide new relay settings for Spanish Fork substation, provide a new circuit breaker and switches at Timp substation, and relocate a section of underbuilt distribution line.

b. **Company Responsibilities.** Company agrees to design, procure, and install the Project as depicted in the attached Exhibit B, Estimated Scope of Work.

c. **Customer Responsibilities.** Customer agrees to design, procure, and install the Project as depicted in the attached Exhibit B, Estimated Scope of Work.

d. **Performance Standards.** Each Party shall perform all its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice (as such terms are defined in this Agreement). To the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in breach of this Agreement for compliance therewith.

4. **OWNERSHIP/RESPONSIBILITY FOR COSTS:**

4.1. **Ownership.** Each Party shall retain ownership and maintain equipment installed by

the respective Party.

4.2. Estimated Costs. The Company's estimated cost for Company's Scope of Work for the Project is \$5,907,300, which includes \$504,300 in Direct Assignment Facilities costs and \$5,403,000 in Network Upgrade costs. Direct Assignment Facilities costs are those costs associated with the installation of Direct Assignment Facilities, while Network Upgrade costs are those costs associated with the installation of Network Upgrades. Company shall notify Customer, in writing, within thirty (30) calendar days if, at any time during the course of the Project, Company expects the cost of performing the work identified under this Agreement to exceed \$7,100,000.

The estimated cost includes engineering, labor, materials, subcontracts, and applicable overheads. The cost estimate is based on the following assumptions:

- Cost estimate is based on calendar year 2018 dollars.
- If construction is delayed, the cost estimate will likely need to be adjusted.
- Estimate assumes no exceptional site preparation will be needed.
- Estimate assumes project will be built during normal hours and will not require schedule compression or overtime.

4.2.1. Direct Assignment Facilities Costs. In consideration of the work to be performed by Company, Customer agrees to pay the estimated Direct Assignment Facilities costs of \$504,300 within thirty (30) calendar days after the Effective Date. Customer shall reimburse Company for the actual cost to complete the work. Following completion of the Project, Company shall determine its actual costs for the Direct Assignment Facilities identified in the Scope of Work. Company's actual costs shall include all direct costs plus applicable overheads. If the actual costs are more than the estimated costs, Company will forward a copy of the actual costs to Customer along with an invoice for the additional amount within one hundred twenty (120) calendar days after completion of construction. If the actual costs are less than the estimated costs, Company will forward a copy of the actual costs to Customer along with a refund to cover the overage within one hundred twenty (120) calendar days after completion of construction. Customer will have thirty (30) calendar days after receiving any invoice to make payment in full.

4.2.2. Network Upgrade Costs. Company agrees to pay the estimated Network Upgrade costs of \$5,403,000. Company will commence work following filing of this Agreement at the Commission and receipt of Direct Assignment Facilities Costs from the Customer.

4.3. Authorization of Additional Amounts for Project Costs. In the event that Company determines the Project Costs may exceed \$7,100,000, Company shall notify Customer and request that Customer provide written approval authorizing such additional amounts for Project Costs within thirty (30) days of such notice. Company's obligation to proceed with the Project associated with such additional amounts shall be contingent upon receipt of such approval, along with a prepayment in such additional amount. Customer shall be responsible for such estimated costs, as increased pursuant to such written authorization.

If Customer does not authorize such additional amounts within such thirty (30) day period, this Agreement shall terminate after Company gives Customer written notice and an additional fifteen (15) days to cure. If Customer agrees to the cost increase, a modification to this Agreement will be prepared to indicate the additional funding amount.

**4.4. Payment of Actual Costs.** In consideration of the work to be performed by Company, Customer agrees to pay the total Direct Assigned estimated costs of \$504,300 within thirty (30) calendar days after the Effective Date of this Agreement.

Customer shall reimburse Company for the actual cost to complete the work. Following completion of the Project, Company shall determine its actual costs for the Project identified in the Scope of Work. Company's actual costs shall include all direct costs plus applicable overheads. If the actual costs are more than the estimated costs, Company will forward a copy of the actual costs to Customer along with an invoice for the additional amount within one hundred twenty (120) calendar days after completion of construction. If the actual costs are less than the estimated costs, Company will forward a copy of the actual costs to Customer along with a refund to cover the overage.

Company shall keep accurate and complete accounting records in support of all cost billings and claims in accordance with generally accepted accounting principles. Upon request, Company shall provide accounting records to Customer following completion of Project.

**5. TAXES:**

**5.1. Customer Payments Not Taxable.** The Parties intend that all payments made by Customer to Company for the installation of the Project shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code ("IRC") and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the IRC and any applicable state income tax laws.

**5.2. Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon Company.** Notwithstanding Section 5.1, Customer shall protect, indemnify and hold harmless Company from the cost consequences of any current tax liability imposed against Company as the result of payments made by Customer to Company under this Agreement for the Project, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Company.

Company shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Customer under this Agreement unless (i) Company has determined, in good faith, that the payments or property transfers made by Customer to Company should be reported as income subject to taxation or (ii) any governmental authority directs Company to report payments or property as income subject to taxation. Customer shall reimburse Company for such costs on a fully grossed-up basis, in accordance with Section 5.3, within thirty (30) calendar days of receiving written notification from Company of the amount due, including detail about how the amount was

calculated.

5.3. Tax Gross-up Amount. Customer's liability for the cost consequences of any current tax liability under this Section 5 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Customer will pay Company, in addition to the amount paid for the Project, an amount equal to (1) the current taxes imposed on Company ("Current Taxes") on the excess of (a) the gross income realized by Company as a result of payments made by Customer to Company under this Agreement (without regard to any payments under this Article) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit Company to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Company's composite federal and state tax rates at the time the payments or property transfers are received and Company will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Company's anticipated tax depreciation deductions as a result of such payments by Company's current weighted average cost of capital. Thus, the formula for calculating Customer's liability to Company pursuant to this Article can be expressed as follows:

*(Current Tax Rate x (Gross Income Amount – Present Value of Tax Depreciation)) / (1 - Current Tax Rate).*

5.4. Contests. In the event any governmental authority determines that Company's receipt of payments or property constitutes income that is subject to taxation, Company shall notify Customer, in writing, within thirty (30) calendar days of receiving notification of such determination by a governmental authority.

5.5. Refund. In the event that (a) a private letter ruling is issued to Company which holds that any amount paid by Customer to Company under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Company in good faith that any amount paid by Customer to Company under the terms of this Agreement is not taxable to Company, (c) any abatement, appeal, protest, or other contest results in a determination that any payments made by Customer to Company are not subject to federal income tax, or (d) if Company receives a refund from any taxing authority for any overpayment of tax attributable to any payment by Customer to Company pursuant to this Agreement, Company shall promptly refund to Customer the following:

- (i) any payment made by Customer under this Section 5 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon;
- (ii) interest on any amounts paid by Customer to Company for such taxes which

Company did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii) from the date payment was made by Customer to the date Company refunds such payment to Customer; and

(iii) with respect to any such taxes paid by Company, any refund or credit Company receives or to which it may be entitled from any governmental authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Company for such overpayment of taxes (including any reduction in interest otherwise payable by Company to any governmental authority resulting from an offset or credit); provided, however, that Company will remit such amount promptly to Customer only after and to the extent that Company has received a tax refund, credit or offset from any governmental authority for any applicable overpayment of income tax related to Company's Project.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for the Project hereunder, in the same position they would have been in had no such tax payments been made.

6. PROJECT SCHEDULE. The Parties have agreed to the Estimated Schedule and Milestones attached as Exhibit C, Estimated Schedule and Milestones, for the completion of the Project. All project schedule milestones shall be best estimates of the time required to complete each Parties task at the time the schedule was developed.

7. STANDARD OF WORK. All work performed pursuant to this Agreement by either Party or their agents shall be performed in a good and workmanlike manner in accordance with Good Utility Practice and with any and all prudent and Applicable Reliability Standards.

8. CHANGES. The Parties may at any time, in writing, mutually agree to changes and/or additions within the general scope of this Agreement or any amendment hereto, direct the omission of or variation in work, or alter the schedule. If such direction results in a material change in the amount or character of the work, an equitable adjustment in estimated costs and other such provisions of this Agreement as may be affected shall be made and this Agreement shall be modified in writing accordingly.

No change shall be binding upon the Parties until a change order is executed by each Party which is in writing and expressly states that it constitutes a change order to this Agreement. The issuance of information, advice, approvals, or instructions verbally or by an exchange of e-mail or in any other manner short of a writing executed by both Parties shall not constitute an authorized change order pursuant to this provision.

All revisions to this Agreement, if originally filed at FERC, will be filed by Company as an amended and restated agreement.

9. INSPECTION. Customer may, at its discretion and expense, inspect Company's construction work of the Project in progress upon reasonable notice and with supervision by

Company. Company may, at its discretion and Customer's expense, inspect Customer's construction work of the Project in progress upon reasonable notice and with supervision by Customer. Customer will provide testing results to Company as specified in the technical specifications.

10. **TESTING**. Before the new facilities required for the Project are energized, such new facilities shall be tested by Company to ensure their safe and reliable operation in accordance with Good Utility Practice, all applicable FERC, NERC and WECC criteria and requirements, and all applicable federal, state, and local law, regulations, and requirements. If testing indicates that modifications are required, Customer shall bear the cost of all such modifications in accordance with Section 4 above, except to the extent that any such modifications are required as a result of Company's or its agents' or its subcontractors' negligence, willful misconduct, or failure to comply with Good Utility Practice.

11. **ACCESS**. Either Party shall grant the other Party reasonable escorted access to the Project consistent with such access rights as are established in prior agreements between the Parties, provided that each party provides reasonable notice and comply with the other Parties safety and security rules.

12. **RIGHT TO STOP WORK**. Customer reserves the right, upon thirty (30) days advance written notice to Company, to require Company at any time to stop all work by Company pursuant to this Agreement, provided that such stop-work order is the result of suspension or termination of the Project. Issuance of any such stop-work order shall terminate this Agreement. Upon issuance of any such stop-work order, Customer shall pay the Project Costs Company has incurred prior to the stoppage of work, including, without limitation, the costs incurred in connection with the cancellation of third-party contracts and any cancellation costs for equipment that is already ordered for the Project.

13. **GOVERNING LAW**. Enforcement or interpretation of this Agreement shall be in the state court of the State of Utah, and all parties hereby submit to the jurisdiction of said court for the stated purpose. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

14. **NO PARTNERSHIP**. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

15. **ASSIGNMENT**. Company may at any time assign its rights and delegate its obligations under this Agreement, in whole or in part, including, without limitation, transferring its rights and obligations under this Agreement to any: (i) affiliate; (ii) successor in interest with respect to the Project, or (iii) corporation or any other business entity in conjunction with a merger, consolidation or other business reorganization to which Company is a party. Affiliate of Company includes any entity in which Berkshire Hathaway, Inc. owns more than a 5% interest, over which Berkshire Hathaway exercises management control. Should such assignment take place, Company will

provide written notice to Customer. Customer shall not assign its rights, nor delegate its obligations, under this agreement without the prior written consent of Company, which shall not be unreasonably withheld, and any attempted transfer in violation of the restriction shall be void.

16. **PROVISIONAL REMEDIES**. Either Party may seek provisional legal remedies, if in such Party's judgment such action is necessary to avoid irreparable damage or preserve the status quo.

17. **ENTIRE CONTRACT**. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and there are no oral or written understandings, representations or commitments of any kind, express or implied, which are not expressly set forth herein.

18. **NOTICES**. Any correspondence regarding this work shall be directed to the appropriate party (or parties) as shown below:

Customer:                    PacifiCorp  
                                  Attn: Director, Energy Supply Management  
                                  825 NE Multnomah St, STE 600  
                                  Portland, OR 97232

Company:                    Vice President, Transmission Services  
                                  825 NE Multnomah St., Suite 1600  
                                  Portland, OR 97232

19. **PAYMENT**. Payments shall be sent to:

US Mail Deliveries:      Company Transmission  
                                  P.O. Box 2757  
                                  Portland, OR 97208

Other Deliveries:          Company Transmission  
                                  Attn: Central Cashiers  
                                  825 NE Multnomah St., Suite 550  
                                  Portland, OR 97232

20. **INDEMNIFICATION**. Customer ("Indemnifying Party") agrees to protect, defend, indemnify and hold harmless the Company, its officers, employees and agents (collectively, the "Indemnified Party") against and from any and all liability, suits, loss, damage, claims, actions, costs and expenses of any nature, including court costs and attorney's fees, even if such actions or claims are completely groundless, growing out of injury to or death of the Indemnifying Party or its subcontractors of any tier, their employees, agents or guests, or any other person or persons, or any and all destruction, loss or damage to property arising in any way in connection with, or related to, the Company's performance of any work or any of its obligations under the Agreement, except as to injury to persons or damage to property on the work site caused by the sole negligence of the Indemnified Party.

Moreover, at the request of the Indemnified Party, the Indemnifying Party shall defend any action, claim or suit asserting a claim that might be covered by this indemnity. The Indemnifying Party shall pay all costs and expenses that may be incurred by the Indemnified Party in enforcing his indemnity and defense agreement, including attorney's fees actually paid by the Indemnified Party.

21. **LIMITATION OF LIABILITY**. Except as otherwise expressly provided in this Agreement, each Party's liability to the other Party for any loss, cost, claim, injury, damage, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as specifically authorized by this Agreement.

22. **FORCE MAJEURE**. A Party shall not be subject to any liability or damages for inability to meet its obligations under this Agreement to the extent that such failure shall be due to causes beyond the control of the Party, including, but not limited to the following: (a) the operation and effect of any new or modified rules, regulations and orders promulgated by FERC, any applicable state public utility commission, any municipality, or any governmental agency of the United States, or subdivision thereof (so long as the claiming party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) any Force Majeure event.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include acts of negligence or intentional wrongdoing by the Party claiming Force Majeure.

The Party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and expeditiously as possible. Except for the obligation to pay amounts owed when due, time periods for performance obligations of either Party herein shall be extended for the period during which Force Majeure was in effect.

23. **SUCCESSORS**. This Agreement will be binding upon the Parties and will inure to the benefit of their respective successors.

24. **SEVERABILITY**. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

25. **WAIVER OF JURY TRIAL**. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER

WAIVES ANY RIGHT TO CONSOLIDATE, OR TO REQUEST THE CONSOLIDATION OF, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

26. MULTIPLE COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

27. CONTRACTORS AND SUBCONTRACTORS. Nothing in this Agreement shall prevent Company or Customer from utilizing the services of any third party contractor or subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that Company and Customer shall require a third party contractor and subcontractor to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such third party contractor and subcontractor.

28. NO THIRD-PARTY BENEFICIARIES. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

29. SURVIVAL. All payment obligations and liabilities incurred before the termination or expiration of this Agreement, will survive its termination or expiration.

30. MODIFICATIONS OR AMENDMENTS. No modification or amendment of any provision of this Agreement shall be effective unless set forth in a written document signed by authorized representative of the Parties.

31. RECITALS. The above stated recitals are incorporated into and made part of this Agreement by this reference to the same extent as if these recitals were set forth in full at this point.

32. WAIVER. Waiver of any right, privilege, claim, obligation, condition, or default shall be in writing and signed by the waiving Party. No waiver by a Party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach, and no waiver by a party of any right under this Agreement shall be construed as a waiver of any other right.

33. DISPUTE RESOLUTION.

33.1. Submission. In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement, such Party (the "disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) calendar days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon

mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in a Federal court under Federal law.

### **33.2. Arbitration Procedures**

Any arbitration initiated under these procedures shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) calendar days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) calendar days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

### **33.3. Arbitration Decisions**

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) calendar days of appointment and shall notify the Parties in writing of such decision and the reasons therefore. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service.

### **33.4. Costs**

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement effective as of the day and year first herein above written.

COMPANY

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Signature

---

Printed Name of Signor

---

Title of Signor

---

Date

CUSTOMER

---

Signature

---

Printed Name of Signor

---

Title of Signor

---

Date

**Exhibit A**  
**Project Estimate**

	<b>Network Upgrade Cost</b>	<b>Direct Assigned Cost</b>
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- Once new OPGW is installed, decommissioning of the Spanish Fork – Lake Mountain microwave link.

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Company will be responsible for:

- Design, procurement, installation, and ownership of a new 138 kV circuit breaker (and associated switches); and
- Development and installation of new relays and settings for the Spanish Fork – Timp transmission line.

**Spanish Fork – Timp transmission line**

Company will be responsible for:

- Rebuilding/reconductoring of approximately 5.23 miles of transmission line from Timp substation to structure 213 (with 1272 ‘Bittern’ conductor);
- Installation of  $\frac{1}{2}$ ” OPGW in the shield wire position from Timp to Spanish Fork substation; and
- Reconfiguring underbuilt distribution circuit along the rebuilt/reconductored transmission line path.

**Exhibit C**  
**Estimated Schedule and Milestones**

The estimated schedule and milestones are driven by the below timeframes which may be adjusted through the course of the Project. If there is a delay in any of the below activities, there will be, at a minimum, a day for day slip in the entire schedule. Any delays in the Project have the potential to affect the entire schedule.

<b>Milestone</b>	<b>Date</b>
Execute Construction Agreement	12/31/2018
Company Engineering & Procurement Commences	2/1/2019
Transmission Provider Permitting and Property Complete	7/1/2019
Transmission Provider Engineering Design Complete	2/1/2020
Construction Begins	4/1/2020
Construction Complete	11/15/2020
Contingent Projects Complete	11/15/2020