

## **Appendices to Build Transfer Agreement**

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**APPENDIX A**  
**Technical Specifications**

The following documents are hereby incorporated into the Agreement as part of Appendix A:

**RFP Appendix A.1 (Wind) Scope of Work**  
**RFP Appendix A.2 (Wind) Definitions**  
**RFP Appendix A.3 (Wind) Work Specifications -**

**APPENDIX B**  
**Project Schedule**

1. The Project Schedule shall meet the following requirements:
  - a) The Project Schedule shall be a time-scaled, critical path method, logic diagram schedule of all engineering/design and equipment procurement for the Project and all material Work activities.
  - b) The Project Schedule shall include allowance for normal delays and difficulties that may be encountered in work of this nature including weather and holidays, etc.
  - c) The Project Schedule shall include all Critical Milestones identified in Appendix M.
  - d) The Project Schedule shall identify Developer's plan of execution for the design, engineering, procurement, equipment and material shipments and deliveries, erection, training, start-up and testing, and acceptance phases of the Work as well as key Permits and Contractor/Subcontractor and PacifiCorp interfaces and requirements necessary for the Work. The Project Schedule must be coded in such a way as to provide individual progress and schedules in accordance with an agreed upon sequence.
  - e) A complete and fully functional electronic version including all functional levels on Microsoft Project or Primavera of the Project Schedule (and any updates thereto) shall be provided to PacifiCorp with the printed copy.
  - f) The Project Schedule shall be updated monthly at a minimum. Contractor shall make the current Project Schedule available to PacifiCorp upon request.

2. Preliminary Project Schedule

The preliminary Project Schedule is attached hereto.

3. Final Project Schedule

Upon approval of the final Project Schedule in accordance with Section 10.1 of the Agreement, the final Project Schedule shall be attached hereto and supersede the preliminary Project Schedule.

## APPENDIX C

### Approved Subcontractors

The following is a list of Approved Subcontractors:

Vendors:

<b>Equipment</b>	<b>Vendor</b>
Wind Turbines:	
Wind Turbine Medium Voltage Transformers:	
Power Collection Construction:	
Main Step Up Transformer:	
Collector Substation Design:	
Collector Substation Construction:	
Transmission Line Design:	
Transmission Line Construction:	

*[See Section 2.4 of the RFP Appendix A.3 for a list of approved equipment suppliers, substation design engineers, construction contractors, interconnection line engineers and construction contractors.]*

Subcontractors:

<b>Foundations</b>
Collection System
Turbine Erection

Substation and transmission line consultants:

Dashiell

Contact: Rob Martin  
12301 Kurland Drive, Suite 400  
Houston, Texas 77034  
713-578-6084  
[mrob.martin@dashiell.com](mailto:mrob.martin@dashiell.com)

Electrical Consultants, Inc.  
Contact: Bruce LaMeres  
660 West 700 South  
Wood Cross, Utah 84087  
801-292-9954  
[bruce.lameres@ecisl.com](mailto:bruce.lameres@ecisl.com)

Power Engineers  
Contact: Don Evans  
9320 SW Barbur Blvd., Suite 200  
Portland, Oregon 97219  
503-244-9321  
[mdevans@powereng.com](mailto:mdevans@powereng.com)

Stanley Consultants, Inc.  
Contact: Ken Moriarty  
8000 S. Chester Street, Suite 500  
Centennial, Colorado 80112  
303-925-8248  
[jmoriartyken@stanleygroup.com](mailto:jmoriartyken@stanleygroup.com)

Substation and transmission line contractors:

Atkinson Power LLC  
Kelley Lange  
(202) 207-4349

Barnard Construction  
Derek C. Tisdell  
(406) 586-1995  
(Utah, Idaho and Wyoming)

Black & McDonald  
Chad Walters  
(801) 569-9219

Brink Constructors Inc  
Zane Brink  
602-342-6966  
(Utah, Idaho and Wyoming)

Cache Valley Electric  
Don Peterson  
(801)978-1988

Christenson Electric  
Jim Hardison  
(503) 419-3350

Edison Power Constructors  
Toby Milkanson  
(602)910-6990

International Line Builders  
Marla Jordan  
503-692-0193  
(Oregon, Washington)

Michels Power  
Landon Kluck  
(360) 236-0472

Newman Construction  
Mark Newman  
(801) 254-3524

PAR Electric Contractors  
(303) 366-0127

Potelco Inc  
Ryan Doud  
253-405-3832

Power Technology Inc  
Matt Crum  
(360) 828-5073

Probst Electric  
Redgie Probst  
435-657-1955  
(Utah, Idaho and Wyoming)

Sturgeon Electric Co.  
(303) 826-8000

Summit Line Construction LLC  
Loren Chandler  
(435)657-0721

Tice Electric Company  
Mike Podkranic  
(503) 872-8248

Wasatch Electric Company  
D. Kent Maughan  
(801) 487-4511

Wilson Construction  
Carmen Reed  
(503) 263-6882

**APPENDIX D**

**Form of Certificate of Mechanical Completion**

This Certificate of Mechanical Completion is provided in accordance with the Build Transfer Agreement by and between PacifiCorp and \_\_\_\_\_ (“Developer”) dated \_\_\_\_\_, 2017 (the “Agreement”).

Capitalized terms used and not otherwise defined herein, shall have the meanings specified in the Agreement.

In accordance with Section 20.1 of the Agreement, Developer hereby certifies that all Mechanical Completion Criteria and all other requirements to achieve Mechanical Completion in the Agreement have been satisfied with respect to [*identify turbine*].

Attached hereto is the required documentation provided in accordance with Section 20.1 and Appendix AA of the Agreement.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acceptance

In accordance with Section 20.1 of the Agreement, PacifiCorp on this \_\_\_ day of \_\_\_\_\_, 20\_\_, hereby indicates its acceptance of the achievement of Mechanical Completion with respect to [*identify turbine*].

PacifiCorp

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPENDIX D**

**Form of Certificate of Substantial Completion**

This Certificate of Substantial Completion is provided in accordance with the Build Transfer Agreement by and between PacifiCorp and \_\_\_\_\_ (“Developer”) dated \_\_\_\_\_, 2017 (the “Agreement”).

Capitalized terms used and not otherwise defined herein, shall have the meanings specified in the Agreement.

In accordance with Section 20.2 of the Agreement, Developer hereby certifies that all Substantial Completion Criteria and all other requirements to achieve Substantial Completion in the Agreement have been satisfied.

Attached hereto is the required documentation provided in accordance with Section 20.2 and Appendix AA of the Agreement.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acceptance

In accordance with Section 20.2 of the Agreement, PacifiCorp on this \_\_\_ day of \_\_\_\_\_, 20\_\_, hereby indicates its acceptance of the achievement of Substantial Completion.

PacifiCorp

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**FORM OF CERTIFICATE OF FINAL ACCEPTANCE**

This Certificate of Final Acceptance is provided in accordance with the Build Transfer Agreement by and between PacifiCorp and \_\_\_\_\_ (“Developer”) dated \_\_\_\_\_, 2017 (the “Agreement”).

Capitalized terms used and not otherwise defined herein shall have the meanings specified in the Agreement.

In accordance with Section 20.9 of the Agreement, Developer hereby certifies that all Final Acceptance Criteria and all other requirements to achieve Final Acceptance in the Agreement have been satisfied.

Attached hereto is the required documentation provided in accordance with Section 20.9 and Appendix AA of the Agreement.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acceptance

In accordance with Section 20.9 of the Agreement, PacifiCorp on this \_\_\_ day of \_\_\_\_\_, 20\_\_, hereby indicates its acceptance of the achievement of Final Acceptance.

PacifiCorp

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **APPENDIX E**

### **Wind Asset Equipment Warranties**

#### **Wind Turbine Warranty**

[Developer to provide the proposed wind turbine warranty duration, terms and conditions.]<sup>1</sup>

#### **Wind Turbine Pad Mounted Transformer (if applicable)**

[Developer to provide the proposed wind turbine pad mounted transformer warranty duration, terms and conditions.]

#### **Step-up Transformer Warranty**

[Developer to provide once the step-up transformer is selected, which shall be from the list of Approved Subcontractors.]

#### **SCADA Monitoring System Warranty**

[Developer to provide the proposed SCADA Monitoring System warranty duration, terms and conditions.]

#### **High Voltage Switch Gear**

[Seller to provide the proposed high voltage switch gear warranty duration, terms and conditions.]

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<sup>1</sup> NTD: If any turbine warranty provided in this Appendix E requires the turbines be maintained by the turbine manufacturer as a condition of such warranty, then Developer will be required to enter into and assign to PacifiCorp at Substantial Completion any such turbine maintenance agreement and the Contract Price and warranties reflected in this Appendix E should reflect the same.

## APPENDIX F

### Manuals

This Appendix F contains the specifications related to the manuals required to be delivered to PacifiCorp under the Agreement. As soon as reasonably practicable, this Appendix shall be updated to attach copies of each manual delivered to PacifiCorp in accordance with the requirements of the Agreement. Hard copy manuals shall be on standard 8-1/2" x 11" paper. Drawings and schedules which are to be bound into the manual shall also be 8-1/2" x 11" or 11" x 17" folded. Each manual shall be assembled and bound in heavy-duty post binders designed for rough usage. Light duty and ring binders are not acceptable. Binder capacity shall not exceed four inches, nor shall material included exceed the designed binder capacity. If the material to be furnished exceeds this capacity rating, multiple volumes shall be furnished. Binders shall be sized to the material to be contained, and capacity should not be more than approximately one-half inch greater than the thickness of material within the binder. All documents, illustrations, specifications, equipment data sheets, drawings, operating and maintenance instructions shall be in the English language. Use of the English system of units on documents is preferred; if the metric system of units is used, the drawing, data sheet, specification or illustration shall clearly indicate that the metric system of units is used. Each manual shall include a Table of Contents, front cover, side label and laminated index tabs and shall be of a consistent format.

The electronic copy of the manuals shall be organized in folders consistent with tabs in the paper manuals. Electronic copies of installation, operation and maintenance manuals shall be organized from the most general information in the top directory to the most specific information in the lowest level folder. The top level folders shall include a document containing a directory of the subfolders describing the contents of each and every subfolder. Electronic copies of installation, operation and maintenance manuals shall be organized by project, system, subsystem, equipment and components. Manufacturers' or vendors' electronic manuals shall be delivered as individual files. Contractor shall not merge or combine manufacturer and vendor provided files containing manuals.

The manuals to be provided shall include:

1. Design Manuals

Design manuals shall contain the following items:

- Drawing List, Drawing and Specification Identification System, Units of Measurement and Formats
- System List and Equipment Numbering System
- List of applicable drawings

- System design requirements
  - System and equipment descriptions
  - Equipment lists itemizing type, performance and technical requirements.
  - Overall performance data
2. Start Up, Operation and Shutdown Manual for the Project, including comprehensive and complete procedures for checkout, startup and testing of the Project and will include as a minimum the following items:
- Facility start-up and shutdown procedures
  - Startup schedule
  - Startup organization chart
  - Administrative procedures
  - Data sheets
  - Test procedures for all tests required for the Facility pursuant to the Primary Construction Contracts, including Substantial Completion and Final Acceptance.
  - Turnover sequences and procedures
  - Safety clearance procedure
  - Work responsibility matrix
3. Installation, Operation, and Maintenance Manuals for the Equipment, including information typically supplied for equipment and/or systems such as the following items:
- System or equipment startup and shutdown procedures
  - Description / design criteria of each item of equipment
  - Nameplate information and shop order numbers for each item of equipment and components thereof
  - Operating procedures and instructions for commissioning, startup, normal operation, shut down, standby and emergency conditions and special safety precautions for individual items of equipment or systems
  - List of any start-up prerequisites

- Normal range of system variables
- Operating limits and hazards for all equipment and systems including alarm and trip set points for all devices
- Testing and checking requirements
- Effect of loss of normal power
- Tolerance of electrical supply frequency variation
- Final performance and design data sheets, specifications and performance curves for all equipment including test data and test curves
- Preventive maintenance schedule and maintenance instructions for equipment including standard and special safety precautions
- Lubrication schedule showing requirements and specifications for lubricants for equipment
- Dismantling and assembly procedures for equipment with associated tests and checks prior to returning equipment to service.
- Detailed assembly drawings to complement assembly procedures mentioned above including parts lists and numbers for replacement ordering.
- Setting and running clearances and tolerances
- Cleaning procedures
- Specifications for any gases, chemicals, solvents or lubricants
- Drawing showing space provided for equipment maintenance for equipment and any fixed facilities for maintenance such as trolley beams, etc.
- Methods for trouble-shooting
- List of maintenance tools furnished with equipment
- Installation instructions, drawings and details
- Vendor drawings as appropriate
- Installation, storage and handling requirements.

The above requirements are a minimum; however, requirements which are clearly not applicable to specific items or components may be deleted, however, any additional information which is necessary for proper operation and care of the equipment shall be included.

## APPENDIX G

### Engineering Documents, Drawings and Other Deliverables

#### 1.0 General

To facilitate PacifiCorp's review in accordance with the terms of this Agreement, the following submission requirements shall be met by Developer.

All transmittals are to clearly indicate PacifiCorp's name, Developer's project number, PacifiCorp's project number and name, how they are being sent, and the reason for the submittal. The transmittal should include a clear, concise description of all documents enclosed. Documentation by drawing number, revision number, and date should be indicated, if applicable. Distributions to other parties are to be shown on the face of the transmittal.

All documents prepared by Developer, Contractor or any of its Subcontractors shall be in English and shall bear the project number and name. Each document shall clearly indicate the applicable status, e.g. Preliminary, for Information, for Review, for Bid, for Construction, For Record Purpose.

Note: The following statuses are given to drawings and are shown on the drawing:

Manufacturer drawings:

- A – Authorized
- E – Exceptions Noted
- R – Returned to manufacturer for correction
- I – Information Only

Engineered drawings:

- T – Transmitted for approval
- C – Issued for construction
- F – For record purpose

All drawings, documents and manufacturer information shall indicate PacifiCorp's name. Developer shall ensure that PacifiCorp is listed as buyer of record with all Subcontractors providing any and all Material or Equipment for the Project.

The measurement system shall be U.S. Customary System, and all drawings and dimensions shall be to scale. Non-scale dimensions (NTS) on drawings will not be permitted on scalable drawings. A scale bar shall be included to permit use following photo-reduction.

All drawings shall be prepared per PacifiCorp's General AutoCAD/Drafting Standards hereafter referenced as (Specification DCAP876). Drawings shall be prepared on PacifiCorp borders. If Developer is unable to provide drawings on said borders, a written itemized request for exemptions must be submitted for review and acceptance by PacifiCorp. If exceptions are agreed to a complete drawing index must be provided using the drawing index template provided with Specification DCAP876 and associated documents.

Developer shall utilize Microstation for drawing development. Upon completion of the Project, all deliverable dgn files will be converted to deliverable AutoCad dwg format. Developer shall provide all drawings and information using PacifiCorp specified attributes. Developer's Subcontractor supplied drawings will be submitted in the same format (pdf) as submitted to Developer.

Acceptable drawing sizes are indicated in Specification DCAP876. Drawings shall be prepared in such a way that photo-reduction to B size shall result in a legible and useable drawing. When drawings larger than B size are submitted, a B size print shall also be submitted.

## **2.0 Design Review By PacifiCorp**

Developer shall provide to PacifiCorp any and all information upon which the design of the Facility is based, including the results of survey, geotechnical and materials investigations, shop drawings, design drawings and manufacturers' data. Engineering calculations shall be available for review by PacifiCorp in Developer's engineering design office.

Developer, Contractor and Subcontractor generated drawings and documents shall be issued to PacifiCorp for review. The final level of drawing and document review, including quantity required, shall be determined at the Project's kickoff meeting. Electronic AutoCAD files of drawings and other documents shall be submitted in addition to the hard copies as a part of the same transmittal and provided on Compact Disc (CD) or other electronic device as may be directed by PacifiCorp. These electronic drawings will be checked by PacifiCorp for compliance to documentation standards.

Except where expressly agreed otherwise by PacifiCorp, the following will apply to document submittals by Developer, Contractor or Subcontractors:

- a. Drawings: At least one copy in "B" size (11" x 17" format) shall be submitted in electronic form ("PDF" or comparable for design and construction drawings only). Final drawings shall be AutoCAD and must not be a newer version than that which is currently being used by PacifiCorp.

- b. Documents: Letter size hardcopies and one electronic copy shall be provided for written text such as letters, specifications, procedures design criteria, manuals, lists, etc. in Microsoft Word and / or Excel format.
- c. Drawings and Documents: Developer shall make reasonable efforts to secure electronically formatted drawings and documents from Contractor and all Subcontractors. When electronic formatting as noted in paragraph (a) and (b) above is not obtainable due to Contractor or Subcontractor policies or procedures then Developer shall have such materials converted and submitted in “tif“ or “pdf” format.
- d. Instruction, Operation, Equipment and all other Manuals: PDF manuals and other multi-page documents shall not exceed 100 MB and shall include a table of contents or index. Any PDF or multi-page document that is larger than 100 MB must be reduced or separated by chapter or tab. Bookmarking all chapters or tabs is preferred. Once the files or documents are placed on a Compact Disc (CD) they should be organized in the order of the hard copy binder or as one PDF (if less than 100 MB).

Contractor and Subcontractor drawings and documentation shall also be submitted in hardcopy and electronic format to PacifiCorp as described above. PacifiCorp may make comments directed to Developer on Contractor and Subcontractor drawings and documents if items are found not to be in compliance with the requirements of this Agreement. Developer shall be obligated to resolve any such compliance issues with Contractor or any Subcontractor in a timely manner and resubmit Contractor and Subcontractor drawings and documents.

### **3.0 Deliverables**

Developer shall submit general specifications covering the type and design of all principal components of the Equipment when specifications have not been provided in the Agreement.

All Materials shall be fully identified by Developer.

Developer shall submit a complete bill of materials and list of all instruments and accessories supplied for each equipment category or specification. Developer shall submit all bills of materials and equipment identification information electronically to PacifiCorp.

Developer shall be responsible for coordination with PacifiCorp for necessary interfaces. At the same time a copy of the interface information shall be submitted to PacifiCorp for review. Developer shall plan for the exchange of information in order to ensure the completion of the whole project meets the schedule requirement of the Agreement.



Developer shall submit detailed procedures for testing, commissioning and putting into operation all equipment and / or systems as required.

PacifiCorp will not necessarily examine all details submitted by Developer and may, at PacifiCorp's option, require submittal to be subject to review or regard them as for information and record purposes.

Developer shall be responsible for any discrepancies, errors, or omissions on the drawings, or other documents, supplied by Developer, Contractor or Subcontractors.

Developer shall complete any and all noted changes to the drawings and data which may be necessary to complete the Agreement requirements.

Any Work commenced prior to PacifiCorp's review of the drawings and /or data shall be at Developer's risk and any necessary design changes to comply with the requirements and objectives of the Agreement shall be made at no additional cost to PacifiCorp or cause delay to the Project Schedule.

Developer deliverables supplied to PacifiCorp shall include the following:

- A complete drawing index, in an Excel compatible file format per Specification DCAP876. Index shall include all Developer, Contractor and Subcontractor drawings.
- Diagrams - electrical one-line, electrical three-line, schematic, wiring including relay/control schematics, logic, SCADA and communication block diagrams.
- Physical arrangement and equipment drawings including site grading, equipment arrangement, building arrangement, civil, raceway and power, structure drawings, and underground utilities. The final list of drawings to be provided shall be determined by PacifiCorp after consultation with Developer.
- Drawings of all equipment foundations showing all structure and equipment outline requirements including anchor bolts and foundation loads that are to be used in the design of the foundations.
- Internal panel component arrangement drawings including terminal block size, location, spacing and types.
- Equipment, instrument, device, cable/conduit/raceway, and electrical load lists and schedules.
- Instrument manuals and data sheets (including protective and auxiliary relays, etc).

- Equipment manuals and data sheets.
- Complete system operating manuals.
- All drawings used for construction.
- Design Statements - Overall design concept and detailed design criteria.
- All Subcontractor's drawings, documentation, and manuals including outline drawings.
- All vendor drawings, documentation, and manuals including outline drawings.
- All other consultant drawings, documentation, and manuals including outline drawings.
- Schedules, including the Project Schedule.
- Project procedures manual - procedures for design, review and comment or approvals, procurement, construction, scheduling, progress reports, etc.
- Quality assurance and quality control program manuals.
- Environmental protection manual.
- Construction safety assurance plan.
- Procurement specifications.
- Erection specifications and procedures.
- Material instruction bulletins and cut sheets.
- Developer Permits.
- Progress Reports.
- Meeting minutes and reports.
- Instructions for handling, storage, and pre-operational and operational maintenance of equipment.
- Testing and commissioning plans and reports.
- Site and shop inspection and testing plans and requirements.

- Material safety data sheets for all hazardous materials and equipment.
- Test procedures including site and shop testing plans and requirements.
- Test reports or other required reports.
- Final commissioning and acceptance reports / documents.

#### **4.0 Final Drawings**

Developer shall provide detailed “as built” drawings for the entire Project consisting of, but not limited to, plan and profile sheets, foundation detail drawings, mechanical, electrical, civil, one-line, three-line, schematics, control logic, wiring, raceways, conduits and duct banks. Documents shall be re-drafted as necessary to incorporate final information. Mark-up sketch, referencing, and other field marking techniques are not acceptable as final conformed drawings. Developer shall prepare “For Record Purposes” of the original drawings or data sheets.

During construction, Developer shall update and maintain on file in the field current mark-ups of all drawings and data sheets to represent actual work completed.

Conformed drawings developed by Developer shall be issued as the next sequential revision from previous releases. The revision block shall state “For Record Purposes”. All clouds, revision diamonds, and other interim control markings shall be removed. All information listed as “later” or “hold” shall be completed. The conformed drawings shall be clear and readable in both full size and B size reduction. Developer shall provide new versions of Contractor and Subcontractor drawings if PacifiCorp judges originals to be too damaged, deteriorated, or illegible.

All Contractor’s and Subcontractors’ drawings shall be conformed to reflect actual installed configuration. These Contractor and Subcontractor drawings shall be in sufficient detail to indicate the kind, size, arrangement, weight of each component, and operation of component materials and devices, the external connections, anchorages, and supports required; the dimensions needed for installation, and correlation with other materials and equipment. Final Contractor and Subcontractor drawings shall be bound in the equipment operation and maintenance manuals. One electronic copy for each drawing shall be supplied in AutoCAD format in a version acceptable to PacifiCorp.

#### **Drawing Information:**

All AutoCAD and drawing requirements are per Specification DCAP876. This specification includes, but is not limited to, information on the following:

- PacifiCorp Title Block Information. Borders are provided and required.

- Drawing numbers shall conform to the existing specific plant numbering guidelines. If there are no existing guidelines that apply, PacifiCorp will supply new numbers that can be used.
- Indexes, lists, data sheets, and schedules per Specification DCAP876, or other if approved.
- Drawing revisions.

## 5.0 Lists

All lists, including drawing lists, instrument lists, equipment lists, circuit lists, raceway lists, conduit lists, piping and accessories lists, bills of materials, etc. shall be furnished in an Excel compatible file format per Specification DCAP876, or other as may be approved by PacifiCorp.

### Instrumentation Lists and Data Sheets:

- All instruments shall be given a “Tag Number” composed of two to four alpha characters and a three digit numeric reference per the Instrumentation Society of American standards and existing specific plant procedures.
- The “Tag Number” will be used to reference all instruments on drawings, instrument indexes and data sheets.
- Data sheets for each instrument shall reference vendor, model numbers, conditions of service, construction material, specifications, etc.

### Equipment Lists:

- All equipment shall be given a “Tag Number” identifying the type of equipment, the media that it services and a numeric reference per existing specific plant procedures.
- The “Tag Number” will be used to reference all equipment on drawings, instrument indexes and data sheets.
- Equipment indexes shall reference service location, drawing references, rating, manufactures, data sheet locations, etc.

### Electrical Circuit Schedule:

- All electrical cables shall be given a “Circuit Number” that meets specific plant requirements. Information on the existing system will be provided upon Developer selection.

- Cable Numbering

Cable numbering shall sequentially follow the existing specific plant numbering system. Multi-Conductor Signal Wire:

- Multi-Conductor Signal Wire:

Multi-conductor signal wire color scheme shall match the existing specific plant system.

- The “Circuit Numbers” will be used to reference all equipment on drawings, instrument indexes and data sheets.
- Circuit indexes shall reference service location, drawing references, rating, manufactures, data sheet locations, etc.

Piping Line List:

- All piping shall be given a “Line Number” that shall match the existing specific plant system.
- The “Line Number” will be used to reference all pipes on area/routing drawings, indexes and line lists.
- The line list shall contain line sizes, description of starting and ending location, operating and design location, insulation, drawing references, etc.

## **6.0 Software Requirements**

All Developer deliverables including final drawings, lists, and manuals shall be provided to PacifiCorp in the appropriate file format listed below. This requirement pertains to both Developer and/or original equipment manufacturer (OEM) developed deliverables.

All Developer deliverable lists, provided in database format, shall be designed to be integrated into PacifiCorp’s existing applications. PacifiCorp will provide Developer with formatting information as required.

Developer shall provide electronic submittals in the following software formats:

<b>Software Function</b>	<b>Software Name</b>
Word processing	Microsoft Word
Spreadsheets	Microsoft Excel
Database	Microsoft Access
Design/Construction & Original OEM Drawings	AutoCAD version no newer than that currently being used by PacifiCorp. Drawings in PDF format are only acceptable for design and construction phases of the project. (See specification DCAP876.)
Project Schedules	Microsoft Project 2010 or 2013 or Primavera.
Scannable Material	Adobe Acrobat ".pdf" or ".tif"

#### **7.0 Submission of Drawings and Data**

The documents and drawings for review and comment shall be submitted to PacifiCorp at the address specified in ARTICLE 35 of the Agreement.

Additional copy (or copies) may be directed for submittal to other PacifiCorp Representative(s) as requested.

Drawings / documents shall be updated as the engineering and design progresses to reflect current design(s). Revisions shall be identified per specification DCAP876.

PacifiCorp shall review all documents for conformance with the Agreement and mark or stamp said documents to indicate whether changes or corrections are required. Any and all necessary changes or corrections will be noted on the documents and returned to Developer. Developer shall resubmit the corrected or changed documents, with changes and corrections clearly indicated.

When no further corrections or changes to the drawings submitted by the Developer are required, they shall be marked "Issued for Construction." Developer shall supply one (1) reproducible and one (1) electronic copy for each of the "Issued for Construction" drawings to PacifiCorp for record. PacifiCorp will inform Developer when the final drawings have been received.

Design information may later be included on the certified drawings. The fact that such design information may later be included in the instruction and/or operating manuals does not relieve Developer from compliance with this requirement.

**APPENDIX H**

**Key Personnel**

In accordance with Section 7.13(b) of the Agreement, Developer shall provide the following Key Personnel list for Developer, Contractor and for all Subcontractors performing material portions of the Work.

<b>Individual</b>	<b>Title</b>	<b>Contact Information (Phone and Email)</b>
	Project Executive	
	Project Manager	
	Project Senior Superintendent	
	Project Superintendent	

**APPENDIX I**

**Legal Description of Site**

**[Legal description of the Site to be provided by Developer.]**



**APPENDIX J**

**Release and Waiver of Liens and Claims**

[See attached]

**FORM OF PARTIAL RELEASE AND CERTIFICATE OF PROGRESS PAYMENT**

With reference to that certain Build Transfer Agreement, dated [\_\_\_\_\_] (as amended through the date hereof, the “Agreement”), between PacifiCorp (“Company”) and [\_\_\_\_\_] (“Primary Contractor”).

Primary Contractor hereby certifies, represents and warrants that each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with the Primary Contractor’s work related to the Agreement as of the date hereof.

Primary Contractor further certifies, represents and warrants that it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by it in connection with the Primary Contractor’s work related to the Agreement up to the date hereof.

In consideration of \$[\_\_\_\_\_] as payment for all work related to the Agreement up to the date hereof, Primary Contractor hereby unconditionally remises, releases and forever discharges Company’s premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of Primary Contractor’s work relating to the Agreement as of the date hereof.

The foregoing shall not relieve Primary Contractor of its other obligations arising from its work performed relating to the Agreement, which by their nature survive completion of this portion of the work, including, without limitation, warranties, guarantees and indemnities.

Executed this [\_\_] day of [insert month], [insert year].

**[insert Primary Contractor name]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FORM OF PARTIAL RELEASE AND CERTIFICATE OF PROGRESS PAYMENT**

With reference to that certain Build Transfer Agreement, dated [\_\_\_\_\_] (as amended through the date hereof, the “Agreement”), between PacifiCorp (“Company”) and [\_\_\_\_\_] (“Primary Contractor”) and related to which the undersigned party, [\_\_\_\_\_] (“Contractor”), has performed certain work for Primary Contractor.

Contractor hereby certifies, represents, and warrants that it has received full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used in connection with its work related to the Agreement up to the date hereof.

Contractor further certifies, represents and warrants that each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with Contractor’s work related to the Agreement up to the date hereof.

Contractor further certifies, represents and warrants that it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by it in connection with Contractor’s work related to the Agreement up to the date hereof.

In consideration of \$[\_\_\_\_\_] as payment for all work related to this Agreement up to the date hereof, Contractor hereby unconditionally remises, releases and forever discharges Company’s premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of Contractor’s work relating to the Agreement up to the date hereof.

The foregoing shall not relieve Contractor of its other obligations arising from its work performed relating to the Agreement, which by their nature survive completion of this portion of the work, including, without limitation, warranties, guarantees and indemnities.

Executed this [\_\_] day of [insert month], [insert year].

[insert Contractor name]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FORM OF RELEASE AND CERTIFICATE OF FINAL PAYMENT**

With reference to that certain Build Transfer Agreement, dated [\_\_\_\_\_] (as amended through the date hereof, the “Agreement”), between PacifiCorp (“Company”) and [\_\_\_\_\_] (“Primary Contractor”).

Primary Contractor hereby certifies, represents and warrants that each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with Primary Contractor’s work related to the Agreement.

Primary Contractor further certifies, represents and warrants that it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by it in connection with Primary Contractor’s work related to the Agreement.

In consideration of \$[\_\_\_\_\_] as final payment for all work relating to the Agreement, Primary Contractor hereby unconditionally remises, releases and forever discharges Company’s premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of Primary Contractor’s work relating to the Agreement.

The foregoing shall not relieve Primary Contractor of its other obligations arising from its work performed relating to the Agreement, which by their nature survive completion of the work, including, without limitation, warranties, guarantees and indemnities.

Executed this [\_\_] day of [insert month], [insert year].

**[insert Primary Contractor name]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Upon execution, return this certificate to PacifiCorp’s Representative as noted in the Agreement.

**FORM OF RELEASE AND CERTIFICATE OF FINAL PAYMENT**

With reference to that certain Build Transfer Agreement, dated [\_\_\_\_\_] (as amended through the date hereof, the “Agreement”), between PacifiCorp (“Company”) and [\_\_\_\_\_] (“Primary Contractor”) and related to which the undersigned party, [\_\_\_\_\_] (“Contractor”), has performed certain work for Primary Contractor.

Contractor hereby certifies, represents, and warrants that it has received full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing project and/or used in connection with its work related to the Agreement.

Contractor further certifies, represents and warrants that each of its subcontractors and materialmen has made full payment of all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with Contractor’s work related to the Agreement.

Contractor further certifies, represents and warrants that it has made full payment of all costs, charges and expenses incurred by it or on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by it in connection with Contractor’s work related to the Agreement.

In consideration of \$[\_\_\_\_\_] as final payment for all work relating to the Agreement, Contractor hereby unconditionally remises, releases and forever discharges Company’s premises and property from all claims, liens and obligations of every nature arising out of or in connection with the performance of Contractor’s work relating to the Agreement.

The foregoing shall not relieve Contractor of its other obligations arising from its work performed relating to the Agreement, which by their nature survive completion of the work, including, without limitation, warranties, guarantees and indemnities.

Executed this [\_\_] day of [insert month], [insert year].

[insert Contractor name]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **APPENDIX L**

### **Form of Safety Assurance Plan**

#### **PacifiCorp's Safety Program and Special Conditions**

The following is an amended version of PacifiCorp's Safety Assurance Program as applicable to a new "green-field" generating facility.

#### **APPLICABILITY**

The health, safety and environmental requirements below apply to Developer and all similarly situated parties performing Work at the Site, including Contractor and any Subcontractors. Developer shall ensure compliance with these requirements by Contractor and all of its Subcontractors. Any, and all training required in order for Developer's, Contractor's and its Subcontractor's personnel to comply with these requirements shall be received by those personnel prior to their performance of any Work. All such training shall be at Developer's expense.

#### **SECURITY**

Developer shall be responsible for the security of all Developer-furnished material and equipment, as well as any PacifiCorp-furnished material and equipment received by Developer.

The PacifiCorp project manager or other on-site PacifiCorp project supervisory personnel ("PacifiCorp Supervisor") may require identification of persons entering or leaving PacifiCorp sites or project sites. PacifiCorp may also require searches of vehicles entering or leaving its sites or project sites. PacifiCorp-owned project materials may only be removed from project sites with prior express written approval from the PacifiCorp Supervisor.

Developer shall each day provide the PacifiCorp Supervisor the number of Developer, Contractor and Subcontractor personnel working on the Project and when, where, and what work will occur.

#### **SITE CONTROL**

Developer shall furnish and utilize safety devices and equipment as appropriate to secure the Site and safeguard personnel of Developer, Contractor, Subcontractors, PacifiCorp and members of the public.

Developer shall at all times maintain the Site in the safest condition reasonably possible. At all times, it shall be Developer's duty to correct or arrange to give warning of any hazardous condition. Appropriate precautions and security shall be established by Developer to protect the public from Site hazards and to reduce the Site's potential as an attractive nuisance.

Barriers, barricade tapes and signs shall identify unsafe conditions. Danger area signs and barricades shall be designated by a predominantly red color. Danger area barricade tape shall be red and shall be lettered with either "DANGER" or "DANGER - DO NOT ENTER."

Caution area signs, barricades, and barricade tape shall be designated by a predominantly yellow color. Caution area barricade tape shall be yellow and shall be lettered with "CAUTION."

Barricades and barricade tape and/or flagging shall have properly completed information signs attached in a conspicuous location at each entry point stating the date, reason for the barricade and the person to contact for additional information. Signs, barricades, or other precautionary material shall be removed immediately upon termination of the hazard.

PacifiCorp uses a protective switching and tagging procedure to ensure systems are safe prior to work being performed on them. Developer shall familiarize its personnel and the personnel of Contractor and its Subcontractors with the switching terminology and the switching order processing policy documents, and shall follow all dispatch and grid dispatch procedures appropriate for the work.

In the event of an incident requiring outside assistance, Developer's personnel and any other persons working on the Site shall call 911 (local county dispatch emergency number) in order to receive the appropriate emergency assistance.

All accidents and fires are to be reported to the Dispatcher and to the PacifiCorp Supervisor. The person that reports the emergency must give his name, state the nature of the emergency and the location of the emergency. The Dispatcher and the PacifiCorp Supervisor will log the event and notify PacifiCorp Risk Management.

In the event of a fire, accident, or evacuation emergency, Developer must assemble and account for personnel at the Site. Upon completion of an accurate personnel count, Developer is to report the status of all personnel to the PacifiCorp Supervisor.

### **WEEKLY REPORTING**

Additionally every Wednesday before 1PM Developer shall provide either electronically or via fax a copy of the Developer Safety Report (attached herein below) of any incidents that have occurred since the previous report. If no incidents have occurred a copy of the Developer Safety Report shall be submitted denoting no incidents. This is required whenever Developer has any personnel working on any PacifiCorp property.

In the event of an environmental release, Developer's personnel shall immediately contact the Spill Hotline answering service at (800) 947-7455, which will take the name and phone number of the caller. A Power Delivery Health, Safety and Environment Department employee will return the call. In addition, all environmental incidents shall be reported to the PacifiCorp Supervisor.

### **PERSONAL PROTECTIVE EQUIPMENT REQUIREMENTS**

On all PacifiCorp work sites including pre-bid meetings and job walks. Developer shall ensure that their employees are provided with and wear;

- a. Non-Metallic Hard Hat satisfying ANSI Z89.1-2003 Class E

- b. Safety Glasses with Side Shields, satisfying ANSI Z87.1 -2003
- c. Safety Footwear, satisfying ANSI Z-41/ASTM F2413 with a class 75 rating
- d. Synthetic clothing should not be worn on any PacifiCorp worksite where energized work may be performed

When work is to be performed by Developer on a wind turbine generator, Developer's employees shall wear, at a minimum:

- a. Wind Energy positioning/climbing harness with a back, front and side D rings.
- b. Ladder Safe for appropriate cable or rail system.
- c. Lanyard with a force two fall rating capacity.
- d. Personal Rescue kit or a Multiple Rescue kit readily available in area of worker.

When work is to be performed by Developer on electrical equipment that is or may become energized, at 50 volts or greater, or within the area of a sub-station, Developer's employees shall wear, at a minimum;

- Long sleeve FR Shirts with an ATPV of 8.0 cal/cm<sup>2</sup> for shirt fabrics), with sleeves rolled down and buttoned. Note: Shirts or clothing with a higher ATPV may be required for work on some equipment at those sites where indicated by signage. Consult with PacifiCorp Supervisor to determine applicability of higher levels of protection.

When setting or removing meters from energized meter bases Developer's employees shall utilize Face Shields that satisfy ANSI Z87.1 -2003

### **TOOLS, EQUIPMENT AND SAFETY SUPPLIES**

Except as specifically noted elsewhere in the contract, Developer shall provide all tools, equipment and supplies, including safety supplies, to perform the work in a safe and appropriate manner.

### **SAFETY, HEALTH, ACCIDENT AND DAMAGE PREVENTION**

Prior to start of any work required by this Agreement, Developer shall be responsible for assuring that each of its own employees, together with all employees of Contractor and its Subcontractors, have received proper training and are fully aware of all safety, health, and security regulations pertaining to their work, including but not limited to, employee exposures, confined space hazards, fall protection, tag out/lockout procedures, and hearing conservation regulations.

Developer shall comply with all safety standards and accident prevention regulations promulgated by federal, state or local authorities having jurisdiction and will take or cause to be taken such additional measures as reasonably necessary to protect the life and health of all employees engaged in the performance of this Agreement and the Work required hereunder. Developer shall be responsible for the manner in which tools and equipment are used including the proper use of safety devices and equipment necessary to safeguard other workmen.

Developer's non-English speaking employees shall receive safety information in their native tongue. Developer shall provide PacifiCorp with the names, job title, work schedule, and language of non-



English speaking employees that will be working at the Facility. Developer shall provide a translator during the plant safety orientation so that each non-English speaking employee shall be able to comprehend the information being presented. Developer shall provide a bilingual employee who shall be responsible for communicating safety information from English to the non-English speaking employees. Developer shall provide a bilingual employee who shall be on plant site in the immediate vicinity of non-English speaking employees at all times to communicate emergency information and instructions. Should the nature of the work require Developer to divide into smaller work groups separating non-English speaking employees from the bilingual employee by more than 1000 ft. distance, additional bilingual employees shall be utilized at a ratio of one per work group. Developer's bilingual employee shall conduct a walk down of the work area with all non-English speaking employees, translating signs explaining hazards and warnings prior to commencing work.

Developer shall at all times conduct all operations under this Agreement in such a manner and with appropriate supervision as to avoid the risk of bodily harm to persons or risk of damage to any property. Developer shall promptly take all precautions which are necessary and adequate against any conditions which involve a risk of bodily harm to persons or a risk of damage to any property. Developer shall continuously inspect all work, materials, and equipment to discover and determine any such conditions and shall be responsible for discovery, determination, and correction of any such conditions.

For work performed in a confined space, as defined by federal and state Law, Developer shall: 1) comply with all OSHA and other permit space requirements; 2) have a formal written program defining in detail Developer's procedures for such compliance; and 3) provide a copy to PacifiCorp of such program prior to performing any such work. Developer shall promptly advise PacifiCorp of any hazards confronted or created in permit or non-permit spaces and shall provide PacifiCorp copies of all tests, permits, and other required documentation resulting from such work.

No scaffold shall be erected, moved, dismantled, or altered except under the supervision of competent persons.

Developer is responsible for ensuring compliance with the requirements set forth in the regulations governing the work. Such responsibility shall apply to both its operations and those of Contractor and Subcontractors. When violations of the safety and health regulations are called to its attention by PacifiCorp, Developer shall immediately correct the condition to which attention has been directed. Such notice, either oral or written, when served on Developer or its representative(s) shall be deemed sufficient.

In the event Developer fails or refuses to promptly comply with the directive issued by PacifiCorp, PacifiCorp may issue an order to suspend all or any part of the work. When satisfactory corrective action is taken, an order to resume work will be issued by PacifiCorp. Developer shall not be entitled to any extension of time, nor to any claim for damage, nor to excess costs by reason of either the directive or the suspension order. Failure of PacifiCorp to order discontinuance of any or all of Developer's operations shall not relieve Developer of its responsibility for the safety of personnel and property.

Developer shall:

- a. Submit a written safety program to PacifiCorp for review prior to start of work under this Agreement.
- b. Provide for weekly five (5) minute “tool box” safety meetings, conducted by its supervisor/foreman and attended by all craft employees on the job site with a copy of the meeting minutes provided to PacifiCorp within three (3) days after the meeting.
- c. Provide a daily job brief covering at a minimum the following:
  - Hazards associated with the job
  - Work procedures involved
  - Special precautions
  - Energy source controls
  - Personal protective equipment requirements
- d. Conduct regularly-scheduled safety meetings for all levels of supervision and workers.
- e. Provide trained personnel as part of site safety team to insure prompt and efficient first aid and medical care for injured employees. Developer shall be responsible for transporting any injured personnel. If ambulance service is required, Developer shall notify the plant control room operator who will make the necessary call.
- f. Developers must have a safety supervisor present on-site at all times work is being performed with authority to prevent or correct unsafe acts and conditions.
  1. Developers with less than 100 employees on-site may use an individual who has job duties in addition to safety if such other job duties do not interfere with the performance of the safety supervision.
  2. Developers with more than 100 employees on-site are required to have a full-time on-site safety supervisor.
- g. Reimburse PacifiCorp for any costs incurred by PacifiCorp resulting from citations for failure of Developer to comply with governing regulatory agencies.
- h. Have the sole responsibility for providing fire protection in its work area and following the PacifiCorp’s Burn Authorization Policy.

Serious accidents and/or fires shall be immediately reported as explained in the orientation. The person that reports the emergency will give their name, state what the emergency is and the location of the emergency. The plant will communicate the emergency to employees and Developer as explained in the orientation. Developer shall notify PacifiCorp’s designated representative of any reported injury or potential illness or fire as soon as practical.

In the event of a fire, accident, or evacuation emergency, Developer is to assemble and account for its personnel as directed by the plant alarm system. Upon completion of the accurate accounting, Developer is to report the status of its personnel to PacifiCorp.

Developer shall maintain an accurate record and shall provide a written report to plant Safety Administrator of all cases of death, fire, occupational diseases, or any injury to employees or the public involved, and property damage by accident, to performance of work under this Agreement within forty-eight (48) hours of such incident.

Developer shall be aware that PacifiCorp has adopted a smoke-free policy. All facilities which include all buildings, trailers (including Developer trailers), enclosed garages, plants, vaults, vehicles and enclosed equipment have been designated as “Non-Smoking” areas. Developer or its employees shall not be allowed to smoke in these designated areas.

All Developers’ employees working at the Site shall wear protective equipment appropriate to the specific work activity and in accordance with plant safety rules. All such equipment shall be furnished by Developer. Protective equipment includes, but is not limited to, hard hats, safety glasses, hearing protection, protective clothing, and safety toe footwear (must be appropriate for the work being performed and must meet ANSI Z41.1, 1967 or the new ASTM F2412 – 05 and F2413 – 05 standard and be non-fabric/non-perforated uppers, oils and acid resistant soles, and be a minimum of Class I/75 and C/75, effective September 1, 1991). Hard hats, safety glasses and safety toe footwear will be worn at all times while on the plant site, except in locker rooms, lunch rooms, and office rooms. Hearing protection will be worn in all posted areas or when otherwise directed by PacifiCorp. Protective clothing, gloves, and respirators will be used as work conditions dictate to assure the safety and health of all personnel.

When work is to be performed by Developer on a wind turbine generator, Developer’s employees shall wear, at a minimum:

- a. Wind Energy positioning/climbing harness with a back, front and side D rings.
- b. Ladder Safe for appropriate cable or rail system.
- c. Lanyard with a force two fall rating capacity.
- d. Personal Rescue kit or a Multiple Rescue kit readily available in area of worker.

Vehicles used to transport employees shall have seats firmly secured and adequate for the number of employees to be carried. Seat belts and anchorages meeting the requirements of 49 CFR Part 571 (Department of Transportation, Federal Motor Safety Standards) shall be installed and used in all motor vehicles. Developer employees will not be allowed to ride in a vehicle without the use of a seat belt.

All vehicles on site will observe the plant speed limit as posted.

All Developer provided equipment and vehicles will be operated with the headlights on. This will increase visibility, thereby enhancing the safety of all employees of PacifiCorp and Developer.

Anytime a vehicle is going to be moved from a parked position, a walk-around inspection is required. As an aid to help Developer employees remember the requirement of a walk-around inspection before moving a parked vehicle, Developer employees will be required to carry in all vehicles a traffic cone. When a vehicle is parked, the driver shall place the cone by the vehicle immediately upon exiting the car. Just prior to leaving the parking spot, the driver will perform a walk-around inspection, and will then retrieve the cone and secure it properly on/in the vehicle.

Metal ladders are prohibited on the Site.

Developer shall leave a job site in as safe a condition as possible. Before leaving a job, it shall be Developer's duty to correct or arrange to give a warning on any condition which is hazardous.

Unsafe conditions shall be identified by barriers, signs or some other suitable method. Danger area signs and barricades shall be designated by predominant red color. Caution area signs and barricades shall be designated by predominant yellow color. Barricades, barricade tape and/or flagging shall have properly completed yellow information tag (supplied by PacifiCorp) attached in a conspicuous location stating date, reason for barrier and person to contact. Signs and barricades shall be removed immediately upon completion of the job requirement.

Developer's work practices shall minimize interference and disruption to Facility maintenance and operation. Developer shall not remove or alter any part of the existing structures, equipment or system without prior knowledge or consent of PacifiCorp. Developer shall, at all times during the performance of the work, be in strict compliance with the Facility's hazardous energy control procedures.

### **SAFETY DATA SHEETS**

Developer shall be familiar with and abide by all provisions of the OSHA "Hazard Communication Standard." Developer shall pay special attention to the following sections of the "Seller Employees" section of the PacifiCorp Hazard Communication Program:

- a. Requirement that suppliers furnish appropriate Safety Data Sheets ("SDS") and appropriate labels of all purchased chemicals.
- b. For materials Developer brings to the jobsite, SDS for those materials must be presented to PacifiCorp for review by PacifiCorp's Facility Safety Administrator and Environmental Engineer prior to commencement of work. All materials must meet all state and federal regulations for containment.
- c. Requirement that Developer and all employees to review the SDS of the appropriate hazardous chemicals, and follow the requirements of the OSHA Hazard Communication Standard.

## **INDUSTRIAL HYGIENE – Personal Air Monitoring for air particulate exposure**

PacifiCorp’s Generation Seller Safety Procedure outlines; “The Seller will conduct appropriate on-site safety and health inspections and industrial hygiene monitoring throughout the duration of the job.” As such Developer is responsible to assure its workers in all work areas per OSHA requirements are provided with safe air to breathe. In work where dust, fumes, gases, etc. are contacted with workers, Developer must do personal air monitoring to determine the condition of air quality in worker’s work area. This air monitoring will assist in determining the proper personal protection equipment and engineering controls to remove or lower air borne contaminants to a safe levels of fly ash-silica, coal-silica, heavy metals, hexavalent chromium, and other known air contaminant as identified in OSHA 1910.1000 subpart Z, Toxic and Hazardous Substances, and Table Z1-Z3.

## **HAZARDOUS MATERIALS AND HAZARDOUS WASTE**

To comply with federal and state regulations concerning hazardous materials and hazardous wastes, Developer using any regulated substances, including but not limited to chemicals, paints, thinners, and solvents, on the Site is responsible for the proper storage, usage, and disposal of the material or waste. Developer shall be responsible to inform PacifiCorp’s Representative of the quality and type of hazardous materials brought on site in writing. This information is to be copied to the plant Environmental Engineer. Developer shall also be responsible for the removal of all wastes and unused materials, whether hazardous or nonhazardous, at the job completion. PacifiCorp shall approve the transportation and disposal of all wastes disposed of by Developer. PacifiCorp’s Representative shall sign and retain all shipping papers for hazardous and toxic substance control act wastes including but not limited to hazardous waste manifests, land disposal restrictions, certificates of disposal. This information will be given to the plant Environmental Engineer. Wastes may not be disposed of at plant landfill unless specifically approved by the PacifiCorp’s Representative and shall be recorded on the plant Daily Landfill Placement Log(s). The logs are to be given to the plant Environmental Engineer.

Developer’s personnel and those of its Subcontractors are required at all times to be familiar with and abide by all provisions of the OSHA Hazard Communication Standard and SARA Title III, Emergency Planning and Community Right-to-know Act (EPCRA) rules.

The application, disposal, utilization or other handling of any lead or lead based material or product (“Lead Work”) shall be performed in strict compliance with all applicable Federal, State and local laws and regulations, including without limitation Federal OSHA Construction Standard For Lead (29 CFR 1926.62). Prior to performing any Lead Work, Developer shall prepare and have in effect a written work plan specifically for such work. Developer shall provide a copy of that work plan to PacifiCorp for review upon request by PacifiCorp, which request may be made at any time or times. Developer shall provide documentation evidencing proof of competency of individuals under Developer’s supervision executing the work plan.

The removal or handling of any devices known or suspected to contain mercury shall be coordinated with PacifiCorp and performed in accordance with PacifiCorp procedures and federal and state regulations. Any devices which Developer removes during the course of work which contain mercury shall be given to PacifiCorp for proper disposal.

Computer wastes (cathode ray tubes, central processing units) or electronic components that contain “mother-board” like components may contain high levels of Resource Conservation and Recovery Act (“RCRA”) regulated wastes. These materials may not be discarded into plant landfills. If these types of waste are generated by Developer, Developer shall ensure that the wastes are properly recycled and/or removed from PacifiCorp property.

Developer shall notify PacifiCorp if suspected asbestos containing material is encountered. Developer shall not disturb in any way the encountered material. If at any time while performing any maintenance or repairs, Developer encounters insulation or gasket material and cannot identify it as non-asbestos, Developer shall have the responsibility of notifying PacifiCorp of a potential asbestos hazard. PacifiCorp will test samples of suspect material. PacifiCorp’s insulating Developer shall contain or remove all asbestos containing material.

### **ENVIRONMENTAL COMPLIANCE**

A PacifiCorp representative shall provide the Developer with a copy of the Environmental RESPECT Policy. Prior to starting any work, Developer shall be responsible for assuring that all of its employees are fully aware of the Environmental RESPECT policy. Developer shall conduct its work in such a manner as to minimize all harmful impacts to the environment, and take all necessary precautions to protect the environment. Developer will be responsible to continuously inspect and monitor the performance of its employees as it relates to environmental stewardship. Environmental issues created by Developer’s operations and/or activities shall be promptly addressed by Developer and reported to the plant Environmental Department, as appropriate.

Developer is responsible for maintaining strict compliance with all federal and state environmental regulations. Many of these regulations have important requirements associated with employee training. Developer has sole responsibility for any employee training required by federal and state regulations. Proof of successful training completion and periodic testing or recertification must be provided upon request by PacifiCorp.

In addition to the applicable federal, state and local requirements, Developer must comply with the following:

- a. Developer shall abide by the plant’s fugitive dust control plan, including but not limited to speed limits, minimizing soil disturbance, application of water to control dust during work activity and proper operation and maintenance of equipment.
- b. Developer shall obtain applicable construction or operating permits prior to constructing activities or operating stationary equipment which:

- 1) Emits greater than five tons per year of any of the following pollutants: particulate matter (PM10), sulfur dioxide (SO2), carbon monoxide (CO), nitrogen oxides (NOx), and volatile organic compounds (VOC);
  - 2) Emits greater than 500 pounds per year of any hazardous air pollutant (HAP), and greater than 2,000 pounds per year for any combination of HAPs;
  - 3) Regulated by any standard or requirement of Section 111 or 112 of the Clean Air Act; and
  - 4) Has the potential to be a major source, as defined in R307-101-2, Utah Annotated Code (UAC) or Wyoming Air Quality Standards and Regulations, Chapter 6, Section 3.
- c. Developer shall notify the PacifiCorp Safety Administrator or plant Environmental Engineer prior to performing any sandblasting activity and abide by the plant's Title V Operating Permit conditions related to sandblasting activities. In the event that Developer performs sandblasting activities, the Developer shall have a certified Method 9 Visible Emission Observer on site and provide Method 9 observations as required by the plant's Title V Operating Permit.
- d. Developer shall obtain a Storm Water Construction Permit for construction activities disturbing greater than one acre. Developer has sole responsibility to perform inspections every fourteen (14) days of the runoff control devices, transfer the Storm Water Permit and the inspection sheets to the PacifiCorp Environmental Engineer within ten (10) days of construction completion. Developer shall seed disturbed ground as required by the Storm Water Construction Permit.
- e. Developer shall secure required permits and request approval by PacifiCorp Environmental Engineer prior to the discharge of any water into the water of the state. Developer shall secure required permits and request approval by PacifiCorp Environmental Engineer prior to dredging or disturbing any waterways on PacifiCorp property.
- f. Developer shall abide by the plant's Spill Prevention Control and Countermeasures requirements and shall:
- 1) Notify the PacifiCorp Environmental Engineer in writing of any equipment or containers that contain 55 gallons or more of petroleum products;
  - 2) Store all containers of petroleum products that are equal to or greater than 55 gallons in PacifiCorp approved secondary containment;
  - 3) Inspect for leaks on any and all Developer provided tanks and drums while on site;
  - 4) Report and clean up all spills in a timely manner in accordance with the plant's Spill Prevention Control and Countermeasures Plan;
  - 5) Immediately report to the plant Environmental Department any spill or leak which enters, or threats to enter, any Water of the State, including ground water; and
  - 6) Ensure all spills and leaks are cleaned in a prompt and timely manner.

## **HEALTH, SAFETY AND ENVIRONMENTAL VIOLATIONS**

All health, safety and environmental violations with respect to work performed by Developer, Contractor and its Subcontractors, must be corrected by Developer. Developer shall be solely liable for all costs, including government-imposed penalties, associated with health, safety, and/or environmental violations attributable to Developer, Contractor or its Subcontractors.

### **SUBCONTRACTORS**

These requirements apply to Contractor and all Subcontractors. It is the responsibility of Developer to inform all such parties regarding the applicable work rules and security, environmental, health, and safety requirements prior to the start of any subcontracted work, and to train such parties if necessary. PacifiCorp will provide copies of these requirements upon request.

### **WORK RULES**

Developer shall at all times maintain strict discipline among its employees, including the employees of Contractor and its Subcontractors. Developer shall comply with Site conditions and work rules established by PacifiCorp and shall cooperate with PacifiCorp in enforcing such rules.

Any employee of Developer or of Contractor or its Subcontractors, who is deemed by PacifiCorp to be incompetent or disorderly or who poses a danger to the safety of the work, shall be immediately removed from Project work upon the request of PacifiCorp and shall not again be employed in the Project work without the written consent of PacifiCorp.

### **CLEANUP**

Developer shall keep the work area, including storage areas used by it, free from accumulation of waste and trash.

Developer is solely responsible for the transport, storage, security, handling, use, removal, disposal, and all other aspects of materials it brings to, causes to have brought to, or receives at the jobsite. Developer shall promptly remove all of its unused material (unless desired by PacifiCorp to be left on site) and all of its generated waste and shall leave none behind at completion of the project. Upon completion of the work, Developer shall leave the work area in a condition satisfactory to PacifiCorp.

In the event of Developer's failure, within a reasonable time, to satisfactorily clean the area, PacifiCorp may, after written notice to Developer, perform the clean-up and removal at Developer's expense.

### **DEVELOPER DRUG AND ALCOHOL POLICY**

Developer shall establish, maintain, and provide proof of a confidential drug and alcohol testing program for all of Developer's employees and Subcontractors assigned to work for any PacifiCorp facility (collectively, the "Developer's Representatives"). This information should be provided to the plant safety administrator.



Developer's Representatives are prohibited from possessing, using, distributing, dispensing, manufacturing, selling or having in their possession or control any drug/banned substance while on any PacifiCorp property.

Developer shall provide for random drug testing that shall include all of Developer's Representatives. Developer may be asked, at any time, to provide documentation that such testing has taken place. Developer will cooperate when asked to drug test for safety violations, suspicious or inappropriate behavior, reports of drug use, or physical signs of drug use. Developer's Representatives selected for random testing shall be accompanied to the testing site by Developer's supervisory personnel as soon as practical on the same day they are selected. The plant Safety Administrator should be notified when a non-negative test has occurred and what actions the Developer supervisor has taken to ensure continued safety on the site.

The tests required pursuant to this program must be conducted by a laboratory certified by the National Institute on Drug Abuse (NIDA). Specimens will be collected and tested for:

- Cannabinoids (marijuana)
- Cocaine
- Opiates (codeine, morphine, heroin, synthetic opiates (i.e., hydrocodone, oxycodone, etc.)
- Amphetamines-methamphetamines
- Phencyclidine (PCP)
- Benzodiazepines (i.e., tranquilizers, Valium, Xanax)
- Barbiturates
- MDMA (Ecstasy)
- Heroin
- Metabolites of all substances listed above

Compound	Screen	Confirming
Ethanol (alcohol)	0.02% percent blood alcohol or equivalent, as indicated by blood, saliva, breathalyzer or similar test.	0.02% percent blood alcohol or equivalent, as indicated by blood, saliva, breathalyzer or similar test.

Drugs may be added or deleted and PacifiCorp reserves the right to test for other controlled substances as necessary. Test results that exceed non-negative levels will constitute immediate removal of the individual from any PacifiCorp plant property for no less than one year and responsibility for a tracking mechanism to confirm that the individual has not returned to any PacifiCorp plant property during that one year period is the obligation of Developer.

Failure of Developer or any of Developer's Representatives to comply with this policy shall be grounds for immediate removal from any PacifiCorp plant property.

In maintaining a drug free workplace, all PacifiCorp plants expect the full cooperation of Developer and any of Developer's Representatives.



## *Contractor Safety Report*

Report is due by **1:00 p.m. each Wednesday**. Please complete form and fax to 503-813-7190 or email to [ContractorSafetyInfo@pacificorp.com](mailto:ContractorSafetyInfo@pacificorp.com). Any questions, contact Aeranee Bennett at 503-813-5517.

**Contractor Name:**

**Report Date:**

**Company Contact Name and Number:**

**There are no new incidents to report.**

### **Incident 1**

Vehicle Incident – Preventable       OSHA Recordable Incident       Near Miss  
 Vehicle Incident – Non-Preventable       Lost Time Incident       Circuit Interruption

**Employee name:**

**Date of incident:**

**Location of incident:**

**Name, title, phone number of person submitting information:**

**Description:**

**Actions taken to ensure incident does not reoccur:**

### **Incident 2**

Vehicle Incident – Preventable       OSHA Recordable Incident       Near Miss  
 Vehicle Incident – Non-Preventable       Lost Time Incident       Circuit Interruption

**Employee name:**

**Date of incident:**

**Location of incident:**

**Name, title, phone number of person submitting information:**

**Description:**

**Actions taken to ensure incident does not reoccur:**

*Use additional sheets for more incidents.*

**APPENDIX M**

**Critical Milestones**

The Critical Milestones identified below are required to ensure the Project achieves Substantial Completion by Guaranteed Substantial Completion Date. This Appendix M identifies the methodology for interpreting the Critical Milestones table below.

The Critical Milestone table contains four (4) columns:

**COLUMN 1: Milestone “Number”**

A reference number for scheduling and logistics plan tracking. This number does not represent priority or sequence.

**COLUMN 2: Milestone “Title”**

This is a brief description of the Milestone requirement.

**COLUMN 3: Expected Completion Day or Date**

This will either be a specific date or a number of days following the Effective Date, as they were defined in the negotiation process prior to signing.

**COLUMN 4: Required in Logistics Plan**

This column is a quick reference for Critical Milestones to be included in a logistics plan or any updates thereto. A “Yes” indicates that it is to be included in a logistics plan and a “No” implies that the Critical Milestone should not be seen on a logistics plan.

<b>CRITICAL MILESTONES CHART Appendix M</b>			
<b>Milestone Number</b>	<b>Milestone Title (Description)</b>	<b>Expected Completion Date</b>	<b>Required in Logistics Plan</b>

## APPENDIX N

### Form of Progress Report

#### 1.0 Progress Report Requirements

Electronic copies of each complete and final Progress Report in accordance with the below requirements and the requirements of Section 10.8 of the Agreement shall be provided in Microsoft Word, Microsoft Excel, Microsoft Project and Adobe Acrobat.

Each Progress Report shall satisfy the following minimum requirements:

- a) Table of Contents – Progress Report
- b) Executive Summary – Current Month  
A synopsis of Project status addressing specific aspects of the Project shall be included in the Progress Report, including a description of construction, engineering (by discipline), procurement (issuance of major purchase orders and subcontracts), shipment/delivery of major items, and expected Mechanical Completion Dates, the Substantial Completion Date and the Final Acceptance Date.
- c) Personnel Safety  
A synopsis of Developer’s safety performance for the preceding month shall be included in the Progress Report, including numbers and types of injuries and lost time accidents.
- d) Environmental Report  
A synopsis of Developer’s environmental compliance for the preceding month shall be included in the Progress Report, including a description of any deviations and reporting from applicable regulations, codes and standards.
- e) Summary of Progress and Status of Project.

Preceding Month -- A synopsis of the Project progress completed as of the preceding month shall be included in the Progress Report. The reporting format shall be based on completion of Critical Milestones and other critical path activities, and construction, engineering (organized by discipline), procurement (issuance of purchase orders), shipment of materials and equipment to the Site, status of material and equipment in storage, training and start-up.

Next Month -- The expected progress for the Project in the next month shall be included in the Progress Report in outline form based on engineering, procurement, shipment, construction and equipment installation and commissioning.

- f) Meeting Status  
A summary with minutes of major meetings for the preceding month shall be included as well as an agenda for next month’s meeting identifying the date,

location, expected attendees and a one or two-sentence summary of anticipated topics of discussion for the next month and schedule for the next month meeting date.

- g) **Priorities/Issues/Concerns**  
Identification and evaluation of Project Problems that are anticipated to require a modification to the Agreement shall be included in the Progress Report.
- h) **Schedule Update**  
Reporting on important items and events, such as purchases and dates of arrival of major Equipment components and the completion of Critical Milestones shall be included in the Progress Report.

The reporting format (hard and electronic copy) shall use Microsoft Project. An updated copy of the Project Schedule shall be attached to the Progress Report with a written analysis of schedule status, including actual versus planned progress as indicated by the initial base line Project Schedule (and any updates thereof), with reference to the Critical Milestones and Project Schedule.

Progress curves measuring actual progress versus planned progress for the total progress as well as for individual bulk quantities such as cable pulled, terminations, duct bank, concrete poured, steel erected, structures erected, conductor installed, etc., shall be included in the Progress Report

- i) **Permit Status**  
Providing a list of Permits shall be included in the Progress Report, including current status and the date each Permit is to be obtained.
- j) **Drawings and Procurement Status**  
The updated engineering drawing list, engineering and procurement schedule, and current status as compared to overall Project Schedule shall be included in the Progress Report. Depending upon volume, this may be submitted on a monthly basis as a separate document.
- k) **Project Financial Status**  
The section shall include the billing, forecast, and accrual breakdowns, for the preceding month, a comparison of the Progress Payment schedule with the actual Progress Payments to date, and financial review of the Project to date for each line segment and the substations.

## APPENDIX O

### Spare Parts and Special Tools

#### 1.0 INTRODUCTION

Developer shall obtain from each supplier a priced listing of recommended spare parts needed for the first five (5) years of operation of the Project. Pricing shall be valid for as long a period (e.g. two to five years) as reasonably available from suppliers. Each listing shall include the manufacturer of each part, a description of each part (including industry standard part number if available), the assembly or Equipment in which each part will be used, and recommended quantities to be stocked. Each listing should also classify the relative criticality of parts based on the manufacturer's experience; and shall list the lead-time required for manufacture and delivery of each part. In each case Developer shall make recommendations to PacifiCorp on specific items and quantities for purchasing spare parts.

All spare parts lists and equipment identification information shall be submitted electronically in Excel format. The spare parts lists shall be submitted no less than one hundred thirty (135) days prior to Substantial Completion.

#### 2.0 SPARE PARTS AND SPECIAL TOOLS

Developer shall supply, at Developer's expense, all spare parts and operating consumables Developer deems necessary for the installation, startup and commissioning of the Facility prior to Final Acceptance. PacifiCorp shall not be liable in any way for Developer's inability to achieve Substantial Completion or Final Acceptance due to lack of any parts or special tools.

##### 2.1. Spare Parts

The list of spare parts submitted shall be completed by Developer and be accompanied by detailed descriptions to identify the spare parts (including the supplier and the address of the supplier) and the specific item or items to which it applies. Developer shall indicate the minimum recommended inventory for routine maintenance at installation, startup, and continuous operation based on manufacturer's recommendations. Developer shall also indicate whether the recommended spare is a stock item or special-order item, the location of the nearest supply point, and approximate lead-time required for shipment.

Any spares supplied by Developer shall be strictly interchangeable with the parts which they are intended to replace and shall be of the same or better quality as the original parts. Each spare shall be clearly marked with the description, purpose, supplier's name, and supplier's part number.

##### 2.1.1. Recommended Spare Parts

The recommended spare parts shall be listed and shall be those considered desirable by Developer.

The recommended spare parts shall include a quotation of the unit price, quantity, description, catalog number, part number, drawing reference(s) etc., for each recommended spare part to completely identify the item and the equipment component for which it is recommended.

PacifiCorp may order all or any of the spare parts at its own discretion. PacifiCorp shall reimburse Developer for any spare parts purchased by Developer.

2.1.2. Spare Parts Purchased at PacifiCorp's Discretion

In the event PacifiCorp directs Developer to purchase any spare parts, such spare parts shall be handled as follows:

- Spare parts shall be clearly identified and marked with the part number.
- Spare parts shall be packaged and shipped in containers appropriate for the parts. Separate containers shall be used for the spare parts for each major piece of Equipment. Where applicable, containers shall be designed and constructed for return shipment of damaged or worn components for repair.
- Spare parts shall be protected from damage due to moisture and dirt accumulation during an extended storage period by use of special coatings, airtight membranes, bags of desiccant, or other means acceptable to PacifiCorp.
- A weatherproofed itemized list of the contents shall be attached to the outside of each container. A similar weatherproof list shall be inside each container.

2.2. Consumable Parts and Materials

Prior to Substantial Completion, Developer shall supply a sufficient quantity of consumable parts and materials as may be required prior to Final Acceptance.

2.3. Tools and Equipment

Any special, non-standard tools and test equipment required to adjust, dismantle, re-assemble, or maintain any Equipment shall be provided by Developer.

Tools and test equipment shall be of suitable quality. All special tools for normal maintenance will be turned over to PacifiCorp no later than Substantial Completion.

Developer shall provide a list and supply to PacifiCorp all special tools. The list shall be detailed to identify the function of the tools and the specific item or items for which it applies.



Tools and test equipment shall be neatly arranged in a box and shall be shipped to the site in a suitable separate container clearly marked with the name of the Equipment for which the tools and test equipment are intended. The separate container shall be shipped along with the Equipment that they will be used on.

Maintenance tools for each piece of Equipment shall be boxed separately and the boxes shall be marked.

## APPENDIX P

### Wind Final Cost Report Requirements

Before Final Acceptance, Developer shall prepare and deliver to PacifiCorp a Final Cost Report. Delivery of a Final Cost Report to PacifiCorp, consistent with the requirements of this Appendix and otherwise in form and substance reasonably satisfactory to PacifiCorp, will be a condition of Final Acceptance.

The Final Cost Report will consist of the total Contract Price and any other costs associated with the Agreement or other Project Documents and incurred by PacifiCorp pursuant hereto or thereto broken down into individual retirement units and allocated on a percentage and total Dollar basis. Individual retirement units include all material, installation labor, engineering, and overheads associated with each major component of the Project.

Set forth below is a preliminary list of typical individual retirement units proposed for the Project, which is included for informational purposes only. No later than three (3) months before Final Acceptance, Developer will submit to PacifiCorp for its review a proposed breakdown of individual retirement units for the Project based on the final design of the Project. No later than one (1) month before Final Acceptance, Developer and PacifiCorp shall mutually agree on a final list of retirement units.

<b>Location Description</b>	<b>SYSTEM</b>	<b>SUBSYSTEM</b>
Common	Buildings	<b>Buildings, O&amp;M Building</b>
Common	Buildings	<b>Buildings, storage sheds, miscellaneous structures</b>
Common	Grounds	<b>Roads, landscaping, paving, fencing, site civil improvements (drainage controls)</b>
Common	Wells	<b>Water Well and pump</b>
Common	Electrical System	<b>Meteorological Tower (each)</b>
Common	Electrical System	<b>Outdoor Lighting and Security System</b>
Turbine	AC Electrical System	<b>Medium-Voltage Transformers (Each), 690V/34.5kV</b>

Turbine	Structures	<b>Complete tower foundations and substructure (Each)</b> including excavation, concrete base, backfill, floor, pilings, drains, etc.
Turbine	AC Electrical System	<b>Wind Turbine Generator (Each)</b> including nacelle, structural towers (all sections), FAA lighting, blades, gearbox assembly, generator, hydraulic pumps and tower controller
Collection Feeder String 1, 2, 3...	AC Electrical System	<b>Medium-Voltage Collection System (For each collection feeder)</b> , from MV Transformers to Collection substation including individual 34.5kV breaker and relays
Common	Controls	<b>Controls</b> , wind turbine controls, SCADA, monitoring system, fiber communications
Common	AC Electrical System	<b>Step-Up Transformer</b> , collection system substation
Common	AC Electrical System	<b>High Side Breaker</b> , collection system substation
Common	AC Electrical System	<b>Capacitory Banks</b>
Common	AC Electrical System	<b>Overhead AC line</b> from high side of step-up transformer to point of interconnection substation, including towers, conductor, OPGW and avian protection devices

## APPENDIX Q-1

### Developer Insurance

Developer shall maintain or cause to be maintained the following types of insurance subject to the general provisions included in Appendix Q-3.

1) Workers' Compensation/Employers' Liability

- a) Developer shall maintain statutory limits for workers' compensation, to the extent required by applicable Laws, during the entire time that any persons are employed by Seller on the Site in connection with the Project.
- b) Developer shall maintain employers' liability insurance in the amount of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

2) Automobile and Aviation Liability insurance

Developer shall maintain or cause to be maintained the following additional insurance in as far as it may be applicable:

- a) Automobile liability insurance with respect to all mechanically propelled vehicles used on public highways or in any circumstances such as to be liable for compulsory motor insurance in accordance with applicable Laws of the state in which such vehicles will operate. The limit of liability shall not be less than \$1,000,000 combined single limit each accident for all owned, non-owned and hired vehicles.
  - b) Aircraft liability insurance, if applicable, with respect to all aircraft owned, non-owned, hired or chartered for use, if any, and hull and aviation liability shall be arranged. The limit of liability shall not be less than \$25,000,000 per occurrence. This requirement can be satisfied by a combination of primary and excess liability policies. Alternatively, Developer shall require that Contractor and any Subcontractors providing such Work to carry and maintain insurance during the course of the Project. Developer may satisfy the aircraft liability insurance requirement through its Contractor or Subcontractor if such Contractor or Subcontractor names PacifiCorp as additional insured.
- 3) Commercial general liability insurance for Developer's legal liability arising out of all the engineering, procurement and construction activities of Developer, Contractor and all Subcontractors with bodily injury (including death) and property damage limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate, provided the annual aggregate will apply separately to claims occurring with respect to the Project. Such insurance shall include, but not be limited to, contractual liability encompassing the indemnity provisions of this Agreement, personal injury, independent sellers, explosion, collapse and underground property damage and sudden accidental pollution liability. Coverage is required to be written on an occurrence form.

- 4) Professional liability insurance covering damages arising out of negligent acts, errors, or omissions committed by Developer in the performance of this Agreement, with a liability limit of not less than \$1,000,000 each claim and annual aggregate. Developer shall maintain this policy for a minimum of two (2) years after completion of the Work or shall arrange for a two (2) year extended discovery (tail) provision if the policy is not renewed. The intent of this policy is to provide coverage for claims arising out of the performance of Work under this Agreement and caused by any error, omission, breach or negligent act for which Developer is held liable. Alternatively, Developer shall require that Contractor, any Subcontractors or licensed design professionals providing such design Work to carry and maintain insurance during the course of the Project. Developer may satisfy the professional liability insurance requirement through its Contractor or licensed design professional Subcontractor, as applicable. Evidence of insurance from Contractor or licensed design professional Subcontractor, as applicable, to PacifiCorp is required prior to acceptance of this requirement.
- 5) Developer's pollution liability arising out of all operations of Developer, Contractor and any Subcontractors due to discharge, dispersal, release, or escape of contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water with bodily injury and property damage limits of not less than \$5,000,000 per occurrence annual aggregate for:
  - (a) bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
  - (b) property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
  - (c) defense including loss adjustment costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;
  - (d) definition of pollution conditions shall include asbestos, lead, and mold so that these risks are covered if caused by the work or operations of Developer, Contractor and any Subcontractor, and the definition of property damage shall include natural resources damage; and
  - (e) coverage is required on an occurrence form.
- 6) Umbrella or excess liability insurance with a limit of \$25,000,000 per occurrence and in the annual aggregate in excess of the limits of insurance provided in paragraphs 1(b), 2(a), and 3 above on a follow form basis. Coverage is required to be written on an occurrence form.
- 7) Insurance providing coverage for Developer's, Contractor's and Subcontractor's owned or leased equipment and tools being used at the Site and not becoming permanent works of the Project.
- 8) All other insurance required by applicable Laws, including domestic and international.

- 9) Transit insurance covering worldwide (all domestic and international air, land, and water) shipments of Project Equipment, including machinery and materials. Developer may satisfy the transit insurance requirement through its equipment and material Subcontractors. Coverage is to be on a broad form basis, including ocean marine cargo plus war, strike, terrorism, riot and civil strife perils and should include warehouse to warehouse coverage including while such property is in temporary storage awaiting transit. Developer's builder's risk other property insurance will provide additional temporary storage if coverage terminates under the transit policy. Coverage shall include loading/unloading, debris removal, and expediting expense. The sum insured with respect to each shipment or temporary storage shall be equal to the replacement value of the largest single shipment or storage location. Transit coverage to attach from the time of leaving the manufacturers'/suppliers' warehouses and run continuously until reaching the final Project Site, including unloading, unless provided by builder's risk coverage.
- (a) The policy shall carry a 50/50 hidden or concealed damage provision, which provision shall also be retained if there is also transit coverage provided under Developer's builder's risk policy.
  - (b) Deductibles shall not be greater than \$50,000 for any one shipment.
  - (c) Developer shall have obtained such transit coverage on or prior to the date on which the exposure to the risk covered by the transit coverage arises. The only permissible cancellation is as follows: (i) cancellation on seven (7) days' notice for war, strikes, civil commotion; (ii) cancellation on forty-eight (48) hours' notice for strikes, riots, and civil commotion preventing passage to or from the United States; and (iii) cancellation on ten (10) days' notice for non-payment of premium.
  - (d) Coverage to continue during storage until builder's risk policy is in force.

Compliance with the transit insurance requirement shown herein, in total or in part, including the requirement for ocean marine cargo coverage applicable to shipments transported by ocean-going vessel, shall be met by Developer, Contractor, its Subcontractors, , or any combination of these parties without duplication of such insurance by Developer. All parties having a financial interest in this property shall be named loss payee or additional insured as their interest may appear.

- 10) Builder's risk insurance including inland marine transit (if not provided by the transit policy), and covering loss or damage to the Project during the construction, testing and commissioning periods and until the Substantial Completion Date covering all property used in the fabrication, assembly, installation, erection or alteration of the Work.

The policy will include the interest of all parties concerned and is to be on an "all risk" basis, or broad form basis, subject to normal and customary policy exclusions, terms and conditions and subject to adequate sub-limits for the following coverages; earthquake, flood, debris removal, demolition and expediting expenses. Coverage shall also provide inland transit and on and off site storage (to the extent storage coverage is not provided under the transit policy) including fabrication/repairs.

- (a) Deductibles shall not be greater than \$250,000 per occurrence.
- (b) Developer shall have obtained such builder's risk coverage on or prior to the date on which the exposure to the risk covered by the builder's risk coverage arises.
- (c) The only permissible cancellation is for non-payment of premium and material change in the risk profile of the Project after coverage commences, upon at least ten (10) days notice.
- (d) Coverage to include 50/50 hidden or concealed damage provision.
- (e) Coverage to include testing coverage and resultant damage from faulty design, materials and workmanship and will include coverage after the transmission line is energized if Substantial Completion has not been achieved.
- (f) Coverage to include damage to existing property of PacifiCorp with a limit of \$20,000,000 each occurrence.
- (g) Coverage to include damage to property after being taken into use, including damage resulting from energizing lines, for that portion of the Work performed by one of the insured parties until the Project reaches Substantial Completion.

PacifiCorp reserves the right to provide the builder's risk insurance.

## **APPENDIX Q-2**

### **PacifiCorp Insurance**

PacifiCorp shall maintain or cause to be maintained the following types of insurance, subject to the general provisions included in Appendix Q-3.

- (1) PacifiCorp shall maintain statutory limits for worker's compensation to the extent required by applicable Laws, during the entire time that any persons are employed by PacifiCorp on the Site in connection with the Project and PacifiCorp shall maintain employer's liability insurance in the amount of \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. PacifiCorp may self insure where permitted by applicable Laws.
- (2) Commercial General Liability insurance for PacifiCorp's legal liability arising out of Project activities, and automobile liability insuring owned, non-owned or hired vehicles of PacifiCorp with a limit of not less than \$25,000,000 per occurrence and in the annual aggregate. PacifiCorp may self-insure where permitted by applicable Laws.
- (3) All other insurance required by applicable Laws.
- (4) PacifiCorp reserves the right to provide the builders risk insurance.



## APPENDIX Q-3

### General Insurance Provisions

- (1) All insurance may be carried through the worldwide insurance programs of PacifiCorp or Developer or their respective Affiliates. Compliance with the transit insurance requirement shown in Appendix Q-1, in total or in part, including the requirement for ocean marine cargo coverage applicable to shipments transported by ocean-going vessel, shall be met by Developer, Contractor, its Subcontractors, or any combination of these parties without duplication of such insurance by Developer. All parties having a financial interest in this property shall be named loss payee or additional insured as their interest may appear.
- (2) All insurance required to be maintained in Appendix Q-1 shall be endorsed to the effect that PacifiCorp, the financing entities (if applicable), Developer, Contractor, any Subcontractors and such other persons as PacifiCorp may specify in writing shall be included as additional insured's thereon except for workers' compensation and professional liability coverage. Third party liability policies shall provide for a cross liability and severability of interest clause. Vendors and others who merely transport, pick up, deliver or carry materials, personnel, parts or equipment, or any other items or persons to or from the Site shall not be considered "Subcontractors" for purposes of insurance coverage. Developer's insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder. Except for Professional liability, waivers of subrogation rights will be provided on all policies listed in Appendices Q-1 and Q-2.
- (3) In the event any insurance described herein (including the limits or deductibles thereof), other than insurance required by applicable Laws, shall not be available on commercially reasonable terms in the commercial insurance market for facilities having a similar risk profile, the Parties shall consent to waive the requirement to maintain such insurance to the extent the maintenance thereof is not so available on such terms, but the Parties shall continue to remain obligated to maintain any such insurance up to the level, if any, at which such insurance can be maintained on commercially reasonable terms in the commercial insurance market for facilities with a similar risk profile.
- (4) Loss payable wording shall be reasonably acceptable to the financing entities, if any.
- (5) Unless specified in Appendix Q, no insurance shall be canceled or reduced with respect to the interest of PacifiCorp, Developer, and financing entities, if any, without thirty (30) days (ten (10) days nonpayment of premium) prior written notice. In the event of cancellation due to nonpayment of premium, the financing entities, if any, shall have the right to make payments in order to keep insurance in force.

- (6) All insurance required to be maintained in accordance with Appendices Q-1 and Q-2 shall be placed with financially sound and reputable insurers having an A.M. Best rating of A-VII or better and with coverage forms acceptable to the Parties.
- (7) Developer, Contractor and its Subcontractor will be responsible to schedule and pay for marine cargo surveys required by the transit insurers for Equipment, machinery and supplies specified under the insurance. If Developer fails to schedule the required survey, Developer will be responsible for any reduction in, or loss of, coverage that results from such failure.
- (8) Developer shall require Contractor and its Subcontractors who perform Work at the Site to carry liability insurance (auto, commercial general liability, excess, aviation, professional and Developer's pollution when applicable) and workers' compensation, employers' liability insurance with limits that are appropriate given the scope of Contractor's and each Subcontractor's portion of the Work. However in the event that Contractor or Subcontractors do not provide the limits of liability shown in Appendix Q-1, Developer shall remain responsible and indemnify PacifiCorp for any claims, lawsuits, losses and expenses, including defense costs that exceed any of its Contractor's or Subcontractor's insurance limits or for uninsured claims or losses.
- (9) All amounts of insurance coverage under this Agreement are required minimums. PacifiCorp and Developer shall each be solely responsible for determining the appropriate amount of insurance, if any, in excess thereof. The required minimum amounts of insurance shall not operate as limits on recoveries available under this Agreement. PacifiCorp and Developer will be responsible for any deductibles and uninsured losses that apply to their insurance requirements as shown in Appendices Q-1 and Q-2.
- (10) Evidence of insurance required hereunder in the form of certificates of insurance shall be furnished by each Party when required to be delivered no later than the date on which coverage is required to be in effect pursuant to this Appendix and the Agreement, as applicable; provided, however, a copy of the transit and builder's risk insurance policies shall be provided by Developer to PacifiCorp not less than thirty (30) days prior to the date on which coverage is required to be in effect. It is hereby understood and agreed that the policy wording to be provided by Developer is confidential and privileged information, and is intended for the use of PacifiCorp in order to satisfy and validate the terms and conditions of this Agreement. Not later than the one-year anniversary of the date of delivery of the certificates of insurance hereunder or the expiration date of the policy if for a term of more than one year, and not later than each one-year anniversary or policy renewal date thereafter, each Party shall deliver copies of the certificate of insurance of the renewal insurance policies.
- (11) The transit and builder's risk insurance carried by Developer shall be primary and not excess to or contributing with any property insurance or self-insurance maintained by PacifiCorp with regard to the Project or PacifiCorp's other property.
- (12) Capitalized terms used in this Appendix Q-3 have the meaning given thereto in the Build Transfer Agreement – Appendix Q

Contract to which this Appendix Q-3 is attached.

**APPENDIX R**  
**Progress Payments**

**1.0 Progress Payments**

Developer shall submit to PacifiCorp for approval, such approval to be in the sole discretion of PacifiCorp, a completed Schedule of Values in accordance with the requirements of Section 2 of this Appendix. The Schedule of Values approved by PacifiCorp (“SOV”) shall be consistent with the expenditure schedule below and will include those SOV Items as determined in accordance with this Appendix R.

Progress Payment Number	Invoice Date	Incremental Progress Payment Amount	Maximum Cumulative Progress Payment Amount
		\$	\$

Notes:

Progress Payments for any particular month will be the dollar value of percent completed Schedule of Values (SOV) item during such month but shall in no event exceed the maximum cumulative Progress Payment amount.

Schedule of Values


## 2.0 Schedule of Values

### General

- (a) Each Progress Payment shall consist of the sum of Dollar amounts associated with completion of a SOV Item prior to submittal of Developer's Invoice.
- (b) The Progress Payments to Developer shall be based on actual completion of SOV items shown in Developer's approved SOV.
- (c) All SOV items included in a Progress Payment shall be supported with suitable documentation so that PacifiCorp can evaluate progress and completion of the SOV item.
- (d) All SOV items included in a Progress Payment shall be consistent with the SOV items identified in the attached SOV table which includes activities for engineering, procurement and construction.

### Schedule of Values

- (a) The Progress Payment Schedule shall be based on the SOVs attached herein and include a detailed list of SOV items and associated Dollar values completed by Developer with respect to each SOV.
- (b) The sum of the Dollar amounts for SOV items shall equal the Contract Price.

### SOV Items

- (a) SOV items consist of measurable and verifiable events or portions of the Work as further described in this subsection.
- (b) Each SOV item shall have a corresponding Dollar value. Completion of the SOV item shall entitle Development to payment for that portion of the Work, subject to the other conditions of the Agreement.
- (c) Dollar amounts associated with a SOV item shall be representative of the cost or value of the Work completed for that SOV item.
- (d) Work performed pursuant to a Change in Work shall be separately stated as SOV items with associated Dollar amounts. Such Change in Work SOV items shall follow the same requirements for SOV items as stated in the Agreement and this Appendix.
- (e) Guidelines for SOV items include the following:

- (A) SOV items shall normally not include costs or value of both (i)
- Build Transfer Agreement – Appendix R

material and equipment, and (ii) installation cost of such material and equipment, in the same SOV item.

- (B) SOV items may include commodities (e.g., feet of piping, cubic yards of concrete, tons of building steel erected, feet of cable pulled, feet of duct bank installed, completed foundations, structures erected, etc.) when such items (i) have been reasonably estimated for both cost and quantity as part of the development of the SOV, (ii) can be reasonably measured by PacifiCorp to determine degree of completion, and (iii) are regularly and fully reported in the Progress Report. Dollar values for SOV items involving commodities may include material and installation costs.
- (C) Overheads, margins, and other indirect costs should be included on a pro rata basis as part of the Dollar amount for an SOV item.
- (D) During the early months, SOV items should consist of activities or events associated with engineering tasks, procurement of equipment and commodities including initial payments, and initial construction activities typical of EPC projects. Examples include: completion of drawings or specifications by discipline or type, placement of key purchase commitments with Subcontractors, mobilization of the construction team to complete value engineering and planning, etc.
- (E) SOV items should be broken out by purchase commitments, functional areas, or other rational basis.

## APPENDIX S

### Form of Parent Guaranty

This GUARANTY ("Guaranty") is made as of the \_\_\_ day of \_\_\_\_\_, 20, by \_\_\_\_\_ ("Guarantor"), to and for the benefit of **PACIFICORP**, an Oregon corporation having a principal office at 825 N.E. Multnomah, Suite 2000, Portland, OR 97232 ("Beneficiary"), with reference to the following.

WHEREAS, \_\_\_\_\_ ("Obligor"), is wholly owned, directly or indirectly, by Guarantor; and

WHEREAS, Obligor and Beneficiary have entered into that certain Build Transfer Agreement, dated as of [MONTH], [DATE], [YEAR] (hereinafter the "Agreement"); and

WHEREAS, to induce Beneficiary to enter into the Agreement, Guarantor executes and delivers to Beneficiary this Guaranty.

NOW, THEREFORE, for and in consideration of the foregoing premises, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor covenants and agrees as follows:

1. Definitions. Unless otherwise defined herein, all capitalized terms used herein which are defined in the Agreement shall have their respective meanings as therein defined. All references to the Agreement contained herein shall be construed to mean the Agreement as amended from time to time. Unless otherwise required by the context in which any term appears in this Guaranty: (a) the singular shall include the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" shall refer to this Guaranty as a whole and not to any particular sections or subsections hereof; (c) the words "including" or "includes" shall be construed to mean without limitation" or "but not limited to" and (d) the word "or" is not necessarily exclusive.

2. Guaranty. Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Beneficiary, its successors and permitted assigns the full and prompt payment and performance when due of all of Obligor's warranties, covenants, indebtedness, duties and agreements contained in the Agreement including, but not limited to, payment obligations under the Agreement. All obligations, representations, warranties, covenants, indebtedness, duties and agreements described above are collectively referred to herein as the "Obligations." If at any time Obligor fails, neglects or refuses to timely or fully perform any of the Obligations as expressly provided in the terms and conditions of the Agreement and Obligor has not (after receipt or written notice and within the applicable cure period): (a) in the case of the failure to perform a payment obligation under the Agreement, made such payment in full; or (b) in the case of a failure to perform any other of the Obligations, commenced and diligently pursued corrective action to the extent required by the Agreement, then upon receipt of written notice from Beneficiary specifying the failure, Guarantor shall promptly pay or perform, or cause to be paid or performed, any such Obligation as required pursuant to the terms and conditions of the Agreement. Notwithstanding anything set forth to the

contrary herein, with respect to any claim, action or proceeding against Guarantor in connection with this Guaranty, Guarantor shall be entitled to assert those rights, remedies and defenses which Obligor would be able to assert if such claim, action or proceeding were to be asserted or instituted against Obligor based upon the Agreement including, but not limited to, any limitations of liability set forth in the Agreement, but provided that in no event shall Guarantor be entitled to assert any defenses that arise by operation of law on account of an Event of Bankruptcy (as defined below) or the bankruptcy or insolvency of the Obligor. Guarantor agrees that this Guaranty is a guaranty of performance including, but not limited to, payment, and not merely a guaranty of collection and shall apply regardless of whether recovery of any or all of the Obligations may be or become discharged or uncollectible in Event of Bankruptcy in which Obligor is the debtor. All payments hereunder shall be made without reduction, whether by set-off or otherwise.

3. Unconditional Guaranty. The obligations of Guarantor hereunder are independent, absolute and unconditional, irrespective of any genuineness, validity, regularity or enforceability of the Obligations and irrespective of any genuineness, validity, regularity or enforceability of the Agreement, or any substitution, release or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor. Without limiting the generality of the foregoing, the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (a) at any time or from time to time, without notice to Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;
- (b) any acts or omissions by Obligor with respect to the Obligations;
- (c) any of the Obligations shall be modified, supplemented or amended in any respect, or any right with respect to the Obligations shall be waived or any other guaranty of any of the Obligations or any security therefore shall be released or exchanged in whole or in part or otherwise dealt with;
- (d) any lien or security interest granted to, or in favor of, Beneficiary as security for any of the Obligations shall fail to be valid or perfected;
- (e) the voluntary or involuntary liquidation, dissolution, sale or other disposition of the assets and liabilities, or the voluntary or involuntary receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or other similar proceeding affecting Obligor, or rejection of the Agreement in any such proceeding, or any action taken by any trustee or receiver in connection therewith (an "Event of Bankruptcy");
- (f) any lack of authorization, in whole or in part, of the Obligations or any term or provision hereof or of the Agreement for any reason, or the rejection or purported rejection thereof in any Event of Bankruptcy;



- (g) whether Beneficiary shall have taken or failed to have taken any steps to collect or enforce any obligation or liability from Obligor or shall have taken any actions to mitigate its damages;
- (h) whether Beneficiary shall have taken or failed to have taken any steps to collect or enforce any guaranty of or to proceed against any security for any Obligation;
- (i) any applicable Law which might in any manner cause or permit to be invoked any alteration in the time, amount or manner of payment or performance of any of the Obligations or the obligations of Guarantor hereunder;
- (j) any merger or consolidation of Obligor or Guarantor into or with any other person or any sale, lease or transfer of all or any of the assets of Obligor or Guarantor to any other person;
- (k) any change in the ownership of any of the voting securities of Obligor or Guarantor;
- (l) to the extent as may be waived by applicable Law, the benefit of all principles or provisions of laws, rules and regulations which may be in conflict with the terms hereof;  
or
- (m) any failure on the part of Guarantor to comply with any applicable Law.

4. Subordination of Subrogation Rights. Guarantor hereby subordinates to all claims, rights and remedies that Beneficiary or any of Beneficiary's permitted assigns may have against Obligor any claim, right or remedy that Guarantor may now have or hereafter acquire against Obligor that arises hereunder or in connection herewith, including any claim, remedy or right of subrogation, reimbursement, indemnity, exoneration, contribution or participation in any claim, remedy or right against Obligor that arises in connection herewith, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise until the Obligations have been paid and performed in full. If any amount shall erroneously be paid to Guarantor on account of such subrogation, reimbursement, indemnity, exoneration, contribution, and similar rights, such amount shall be held in trust for the benefit of Beneficiary and shall forthwith be paid to Beneficiary to be credited against the payment of the Obligations, whether matured or unmatured.

5. Remedies. Guarantor agrees that the Obligations shall be due and payable for purposes of this Guaranty notwithstanding any stay, injunction or other prohibition preventing a declaration of payment as against Obligor.

6. Certain Waivers. Guarantor hereby unconditionally and irrevocably waives, to the extent permitted by applicable law, (i) notice of any of the matters referred to in Section 3 hereof; (ii) all notices which may be required by applicable Law or otherwise, now or hereafter in effect, to preserve any rights against Guarantor hereunder, including, any demand, proof or notice of non-payment of the Obligations except as otherwise required by Section 2 hereof; and (iii) acceptance of this Guaranty, demand, protest, promptness, diligence, presentment, notice of default or

dishonor and any requirement of diligence, notice of intent to accelerate, notice of acceleration and notice of the incurring of the Obligations. Guarantor hereby waives: (a) any right to assert against Beneficiary any defense (legal or equitable), counterclaim, set-off, crossclaim or other claim that Guarantor may now or at any time hereafter have (x) against Obligor or (y) acquired from any other party to which Beneficiary may be liable; (b) any defense arising by reason of any claim or defense based upon an election of remedies by Beneficiary which in any manner impairs, affects, reduces, releases, destroys or extinguishes Guarantor's subrogation rights, rights to proceed against Obligor for reimbursement, or any other rights of the Guarantor to proceed against Obligor or against any other person, property or security and (c) any right to require Beneficiary to marshal, or have recourse to other collateral or surety, before exercising its rights hereunder.

7. Separate Enforcement. The obligations of Guarantor under this Guaranty are independent of and may be enforced separately from the Obligations, in a separate action or actions that may be brought and prosecuted against Guarantor whether or not action is brought against Obligor. Guarantor agrees that payment or performance of any of the Obligations or other acts which toll any statute of limitations applicable to the Obligations or the Agreement shall also toll the statute of limitations applicable to Guarantor's liability under this Guaranty.

8. Representations and Warranties. Guarantor additionally represents and warrants to Beneficiary as follows:

(a) Guarantor is a corporation duly organized, validly existing, authorized to do business and in good standing under the laws of the State of its formation.

(b) Guarantor has the requisite corporate power and authority to own its property and assets, transact the business in which it is engaged and to enter into this Guaranty and carry out its obligations hereunder. The execution, delivery, and performance of this Guaranty have been duly and validly authorized and no other corporate proceedings on the part of Guarantor or its affiliates are necessary to authorize this Guaranty or the transactions contemplated hereby.

(c) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body or third party is required for the due execution, delivery and performance by Guarantor of this Guaranty.

(d) This Guaranty, when executed, shall constitute a valid and binding agreement of Guarantor and is enforceable against Guarantor in accordance with the terms of this Guaranty, except as may be limited by bankruptcy or insolvency or by other Laws affecting the rights of creditors generally and except as may be limited by the availability of equitable remedies, and except to the extent that the execution of this Guaranty was induced by fraud, misrepresentation, or fraudulent concealment by or on behalf of the Beneficiary.

(e) As of the date hereof, the execution, delivery, and performance of this Guaranty does not and will not (i) result in a default, breach or violation of the certificate or articles of incorporation or bylaws of Guarantor, or (ii) constitute an event which would permit any person or entity to terminate rights or accelerate the performance or maturity of any

indebtedness or obligation of Guarantor, the effect of which would materially affect Guarantor's ability to meet its obligations under this Guaranty, (iii) constitute an event which would require any consent of a third party or under any agreement to which Guarantor is bound, the absence of which consent would materially and adversely affect Guarantor's ability to meet its obligations under this Guaranty, or (iv) result in any default, breach or violation of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation applicable to Guarantor and which default, breach or violation would materially and adversely affect Guarantor's ability to meet its obligations under this Guaranty.

9. Amendments. No amendment of any provision of this Guaranty shall be effective unless it is in writing and signed by Guarantor, Beneficiary and any permitted assignee of Beneficiary's rights hereunder, and no waiver of any provision of this Guaranty, and no consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by Beneficiary or any permitted assignee of Beneficiary's rights hereunder. No delay on the part of Beneficiary in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any breach, term or condition of this Guaranty by Beneficiary shall constitute a subsequent waiver of the same or any other breach, term or condition. No notice to or demand on Guarantor shall entitle Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Beneficiary to any other or further action in any circumstances without notice or demand. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which Beneficiary would otherwise have.

10. Continuing Guaranty; Successor and Assigns. This Guaranty is a continuing guaranty and (i) shall apply to all Obligations whenever arising, (ii) shall remain in full force and effect until satisfaction in full of all of the Obligations, (iii) shall be binding upon Guarantor and its successors and permitted assigns and (iii) shall inure to the benefit of and be enforceable by Beneficiary and its successors, and assigns permitted under the Agreement. Notwithstanding the foregoing, however, Guarantor may not assign all or any portion of its rights or delegate all or any portion of its duties under this Guaranty without the prior written consent of Beneficiary. Any assignment by Guarantor without the foregoing consent shall be void.

11. Reinstatement. In the event that Beneficiary for any reason (including but not limited to bankruptcy preferences or alleged fraudulent transfers), is required to repay or disgorge any amounts received by it in respect of the Obligations, then the liability of Guarantor under this Guaranty, with respect to such amounts, shall be reinstated.

12. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the state of New York, excluding rules governing conflicts of laws. Guarantor hereby submits, and by its acceptance hereof Beneficiary hereby submits, to the jurisdiction of the courts of the state of New York and to federal courts located within the city of New York

13. WAIVER OF JURY TRIAL. GUARANTOR AND BENEFICIARY HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHT

OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS GUARANTY OR THE AGREEMENT TO WHICH THEY ARE A PARTY OR ANY MATTER ARISING HEREUNDER OR THEREUNDER.

14. Notices. Any notices or other communication to be given hereunder shall be given in writing, sent by (a) personal delivery, (b) internationally recognized expedited delivery service, (c) registered or certified United States mail, postage prepaid, or (d) facsimile (followed by registered or certified United States mail, postage prepaid) as follows:

To Guarantor:

To Beneficiary: PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, OR 97232  
Attention: Credit Manager  
Phone No.: (503) 813-7230

With a copy to: PacifiCorp General Counsel  
825 NE Multnomah, Suite 1800  
Portland, OR 97232  
Phone No.: (503) 813-5029  
Attention: Jeff Erb

or to such other address or to the attention of such other individual as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of receipt at the address and in the manner provided herein, or in the case of facsimile, upon receipt.

15. Severability. In the event that any of the provisions, or portions or applications thereof, of this Guaranty are held to be unenforceable or invalid by any court of competent jurisdiction, Beneficiary and Guarantor shall negotiate an equitable adjustment in such provisions of this Guaranty with a view toward effecting the purpose of this Guaranty, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

16. Duty to Keep Informed. Guarantor assumes the responsibility for being and keeping itself informed of the financial condition of Obligor until the termination of all of the Obligations, and of all other circumstances bearing upon the risk of nonpayment or default under the Obligations which diligent inquiry would reveal, and agrees that Beneficiary shall have not duty to advise Guarantor of information known to it regarding such condition or any such circumstances.

17. Entire Agreement. This Guaranty contains the entire agreement and understanding of Guarantor and Beneficiary with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, of Guarantor and Beneficiary relating to the subject matter hereof. Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on either Guarantor or Beneficiary.

18. No Third Party Beneficiaries. The provisions of this Guaranty shall only be for the benefit of, and enforceable by, Beneficiary and its permitted assigns and shall not inure to the benefit of or be enforceable by any other person or entity.

19. Further Assurances. Guarantor and Beneficiary shall each, at the request of the other, execute and deliver or cause to be executed and delivered such documents and instruments not otherwise specified herein, and take or cause to be taken all such other reasonable actions, as may be necessary or desirable to more fully and effectively carry out the intent and purposes of this Guaranty.

20. Counterparts. This Guaranty may be executed in two or more separate counterparts (including by facsimile transmission), each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

21. Captions. The captions contained in this Guaranty are for convenience and reference only and in no way define, describe extend or limit the scope or intent of this Guaranty or the intent of any provision contained herein.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed this Guaranty as of the date first written above.

Accepted:  
PACIFICORP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPENDIX T**

**Developer Safety Assurance Program**

[Developer to provide a copy of its Safety Assurance Program in accordance with Section 7.11(a) of the Agreement.]

**APPENDIX W**  
**Time and Materials Rates**

1.0 Standard Work Rates.

[Developer's standard work rates to be incorporated herein.]

2.0 Changes to Standard Work Rates.

Developer shall provide PacifiCorp written notice of any changes in the standard work rates described in Section 1.0 above. Effective upon receipt by PacifiCorp of such written notice, Section 1.0 above shall automatically be amended to reflect the changed standard work rates set forth in such written notice. Unless and until Section 1.0 above is amended as provided above, the standard work rates then in effect in Section 1.0 above shall be applicable with respect to any Change Order for which time and materials rates are applicable in accordance with ARTICLE 13 and Appendix BB.

**APPENDIX X**  
**FORM OF ACCEPTABLE LETTER OF CREDIT**

[insert bank name]  
-[insert bank address]

IRREVOCABLE STANDBY LETTER OF CREDIT  
DATE OF ISSUANCE: [\_\_\_\_\_]

**BENEFICIARY:**

PacifiCorp, an Oregon corporation  
825 NE Multnomah  
Portland, OR 97232

Re: Letter of Credit No. [\_\_\_\_\_]

At the request of [insert Developer's legal name] ("Account Party"), [insert bank name] ("Issuing Bank") hereby establishes our irrevocable standby letter of credit ("Letter of Credit") in your favor for the aggregate amount of [\_\_\_\_\_] United States Dollars (\$[\_\_\_\_\_]), available to you at sight upon demand at our counters at [insert bank location] on or before the expiration hereof. Any request by you to draw on this Letter of Credit must be accompanied by this original or a certified copy of the original Letter of Credit, together with a completed certificate in the form attached as Exhibit A to this Letter of Credit, signed by a person purporting to be your officer or authorized agent, having complied with the instructions in brackets therein.

We hereby agree that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

Partial drawings and multiple drawings are permitted hereunder.

The amount available to be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings previously paid through the Issuing Bank under this Letter of Credit.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern.

With respect to Article 14(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed one (1) banking day following the date of its receipt of documents from the Beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the Beneficiary accordingly.

This Letter of Credit shall expire at our above office with the close of business on [insert date that is beyond the statutory period for filing a lien after the contract end date].



In the event of an Act of God, act of terrorism, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiration date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

This Letter of Credit is transferable one or more times, but in each instance only in the full amount available to be drawn under the Letter of Credit at the time of such transfer. Any such transfer may be affected only through ourselves and only upon presentation to us at our above-specified office of a duly executed instrument of transfer in the format attached as Exhibit B to this Letter of Credit, together with the original of this Letter of Credit. Any transferee shall succeed to all of the rights of the transferor hereunder. We shall effect the transfer and advise the parties accordingly. All charges in connection with any transfer of this Letter of Credit are for the Account Party's account.

**[insert bank name]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

The original of this document contains the seal  
of **[insert bank name]**

**EXHIBIT A TO IRREVOCABLE STANDBY LETTER OF CREDIT  
FORM OF LETTER OF CREDIT DRAWING CERTIFICATE**

The undersigned, an authorized officer or agent of PacifiCorp, an Organ corporation (“Beneficiary”), hereby certifies to **[insert bank name]** (“Issuing Bank”), with reference to the Irrevocable Standby Letter of Credit No. [\_\_\_\_\_] (“Letter of Credit”) by the Issuing Bank, that because **[check all that apply]**:

(1) a Developer Default has occurred and is continuing under and as defined in that certain Build Transfer Agreement, dated as of [\_\_\_\_\_] , 2017 (as such contract may be amended, restated or replaced from time to time) (the “Agreement”), between Account Party and Beneficiary, including its successors and assigns, or Developer has failed to pay Beneficiary any amounts due and payable under the Agreement, including, without limitation, amounts respecting liquidated damages;

(2) the Letter of Credit is due to expire within thirty (30) days and Account Party has not delivered a replacement Letter of Credit or other Credit Support (as defined in the Agreement) to Beneficiary in accordance with the requirements of the Agreement; or

(3) the Letter of Credit has ceased to satisfy the requirements for a Letter of Credit under the terms of the Agreement.

Beneficiary is drawing upon the Letter of Credit in an amount equal to \$[\_\_\_\_\_], which amount is not in excess of the remaining undrawn portion of the Letter of Credit as of the date of this certificate.

Capitalized terms not defined herein shall have the meanings given to them in the Letter of Credit.

Name of Beneficiary: PacifiCorp

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B TO IRREVOCABLE STANDBY LETTER OF CREDIT  
FORM OF CERTIFICATE OF TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY**

Date: [\_\_\_\_\_]

**[insert Bank name]**  
**[insert Bank address]**

Subject: Your Letter of Credit No. [\_\_\_\_\_] (“Letter of Credit”)

Ladies and Gentlemen:

For value received, we hereby irrevocably assign and transfer all our rights under the above-captioned Letter of Credit, as heretofore and hereafter amended, extended or increased, to:

\_\_\_\_\_  
**[insert name of transferee]**

\_\_\_\_\_  
**[insert address]**

By this transfer, all of our rights in the Letter of Credit are transferred to the transferee, and the transferee shall have sole rights as “Beneficiary” under the Letter of Credit, including sole rights relating to any amendments, whether increases or extensions or other amendments, and whether now existing or hereafter made. You are hereby irrevocably instructed to advise future amendment(s) of the Letter of Credit to the transferee without our consent or notice to us.

Enclosed is the original Letter of Credit and all the original amendments to the Letter of Credit prior to the date hereof. Please notify the transferee of this transfer and of the terms and conditions of the Letter of Credit as transferred. This transfer will not become effective until the transferee is so notified.

Very truly yours,

**[insert name of transferor]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[insert name of Bank]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[a corporate notary acknowledgement or a certificate of authority with corporate seal is acceptable in lieu of bank guarantee above]

**APPENDIX Y**

**Form of Developer's Invoice**

Date: [\_\_\_\_\_]

Invoice number: [\_\_\_\_\_]

PacifiCorp  
Attention: Project Manager

Gentlemen:

[\_\_\_\_], a [\_\_\_\_\_] (“Developer”), submits this invoice for payment (“Developer’s Invoice”) pursuant to Section 3.4(b)(i) of the Build Transfer Agreement between Developer and PacifiCorp dated as of [\_\_\_\_], 2017 (the “Agreement”). Unless otherwise defined herein, all capitalized terms used in this Developer’s Invoice shall have the meanings specified for such terms in the Agreement.

1. The undersigned is a duly authorized representative of Developer, authorized to execute and deliver this Developer’s Invoice on behalf of Developer.
2. The documents and information contained herein, including all documents and information attached hereto, taken as a whole, is true, correct and complete in all material respects.
3. The Work has been performed in accordance with the requirements of the Agreement and the other Project Documents to which Developer is a party, including the Project Schedule.
4. Each of the Critical Milestones will be achieved by its respective Critical Milestone Completion Date.

Developer is entitled under the terms of the Agreement, including Section 3.3 and Appendix R of the Agreement, to a payment of \$\_\_\_\_\_ for the period ending [\_\_\_\_], 20[\_\_\_], which amount shall be paid as reflected in the table below:

EXAMPLE

	As of Previous Month	For This Month (This Invoice)	Total After this Invoice
Original Contract Price			
Contract Price Paid to Date			
Cumulative Progress Payments to Date			
Total Amount of Retainage withheld by PacifiCorp in the form of Letter of Credit; or Cash Total Retainage			
Actual Amount Paid or to be Paid to Developer			

5. Attached hereto as Attachment 1 are the Partial Release and Waiver of Liens and Claims and the Final Release and Waiver of Liens and Claims (as applicable) prepared by Developer, Contractor and each Subcontractor, as applicable, in accordance with Section 7.23(b) of the Agreement.

6. Except as set forth in Attachment 2 attached hereto and any Change Order Request delivered by Developer to PacifiCorp prior to the date hereof in accordance with this Agreement, Developer is aware of no facts or circumstances that would constitute the basis for a Change, including a change in the Scope of Work, Project Schedule, Progress Payments or Contract Price. Attachment 3 describes in reasonable detail each fact or circumstance that would constitute the basis for a Change, including to the extent reasonably determinable by Developer, the scope of any change in the Scope of Work, Project Schedule, Progress Payments or Contract Price.

IN WITNESS WHEREOF, the undersigned has executed this Developer's Invoice on the date first above written.

By: \_\_\_\_\_

Project Manager

Attachment 1

Release and Waiver of Liens and Claims

Attachment 2

Facts and Circumstances Giving Rise to a Change



## APPENDIX Z

### Glossary of Defined Terms

“Additional Project Documents” means any Contract related to the design, engineering, development, construction, startup, testing, commissioning, completion, ownership and operation of the Project entered into by Developer or PacifiCorp and any other Person during the Time of Completion, including any documents contemplated by this Agreement entered into by Developer or PacifiCorp and any other Person; provided, however, that such Contract shall not constitute an Additional Project Document if: (a) it is entered into by Developer in the ordinary course of business in connection with the procurement of goods or the performance of services related to the Work; (b) can be readily replaced by other Contracts having substantially similar terms and conditions; and (c) has a value of Fifty Thousand Dollars (\$50,000) or less.

“Affiliate” means with respect to any Person, any other Person who, directly or indirectly, Controls such first Person or is Controlled by such first Person or is under common Control with such first Person; provided, however, that with respect to PacifiCorp, the term “Affiliate” does not include Berkshire Hathaway Inc. or any of its affiliates (other than PacifiCorp and any direct or indirect subsidiaries of PacifiCorp), and no provision of this Agreement shall apply to, be binding on, create any liability of or otherwise restrict the activities of Berkshire Hathaway Inc. or any of its affiliates (other than PacifiCorp and any direct or indirect subsidiaries of PacifiCorp).

“Agreement” shall have the meaning set forth in the preamble of this Agreement.

“Approved Subcontractors” means the vendors, suppliers, consultants and contractors identified in Appendix C.

“ASME” means American Society of Mechanical Engineers.

“Assignment and Assumption Agreement” shall have the meaning set forth in Section 2.2(a)(viii).

“Assignment of Easements” shall have the meaning set forth in Section 2.2(a)(ii).

“Assignment of Leases” shall have the meaning set forth in Section 2.2(a)(i).

“Assumed Liabilities” shall have the meaning set forth in Section 2.5(b).

“Authorized Officer” means (a) for Developer, any of [SPECIFY PERSONS/TITLES], and (b) for PacifiCorp, any of [SPECIFY PERSONS/TITLES].

“Bankruptcy Code” means the United States Bankruptcy Code, as in effect from time to time.

“Bankruptcy Laws” shall have the meaning set forth in Section 29.2(c).

“Begin Construction Guidance” means Section 48 of the Code (including Section 48(a)(5), and (6)), Section 45 of the Code (including Section 45(b)(5) and (d)), and Internal Revenue Service Notices 2013-29, 2013-60, 2014-46, 2015-25, 2016-31, and 2017-4), and any amendment, clarification, addition or supplement thereto, or replacement thereof.

“Bill of Sale” shall have the meaning set forth in Section 2.2(a)(vii).

“Business Day” means any day other than a Saturday, Sunday or other day on which banks are authorized or required to be closed in Cheyenne, Wyoming.

“Cash Escrow” means an escrow account established by Developer in a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, whose long-term senior unsecured debt is rated at least “A” by S&P and “A2” by Moody’s, and with assets (net of reserves) of at least \$10,000,000,000. Cash deposited to the escrow account shall earn interest at the rate applicable to money market deposits at the banking institution from time to time, and the interest shall be retained in the escrow account as additional security for Developer’s performance under this Agreement.

“Certificate of Final Acceptance” shall have the meaning set forth in Section 20.9(a).

“Certificate of Substantial Completion” shall have the meaning set forth in Section 20.1(a).

“Change” means any alteration of the Work whether by way of addition, deletion, modification, substitution or omission as instructed by PacifiCorp but shall not include any instruction to the extent that such instruction is issued as a result of any breach by Developer of this Agreement or otherwise to require Developer to fulfill its obligations under this Agreement. Changes shall include changes to Scope of Work, Project Schedule, Progress Payments, and Contract Price. Re-performance of any Work required to rectify or recover Work that is necessary due to Developer’s (or its Contractor’s or any Subcontractor’s) negligence or breach of this Agreement shall not constitute a Change.

“Change in Tax Law” means (a) any change in or amendment to the Code or another federal income tax statute, (b) any change in, or issuance of or promulgation of any proposed, temporary or final Treasury Regulations, (c) any IRS or Treasury Department guidance published or to be published in the Internal Revenue Bulletin and/or Cumulative Bulletin, and any other notice, announcement, revenue ruling, private letter ruling, technical advice memorandum, chief counsel advisory opinion, revenue procedure, or other guidance published by the IRS or the Treasury Department, (d) any decision of the U.S. Tax Court, the U.S. Court of Federal Claims, a U.S. District Court, a U.S. Court of Appeals or the U.S. Supreme Court, in each case, which occurs after the Closing Date.

“Change in Tax Law Losses” means losses incurred by any PacifiCorp Indemnified Party as a result of a Change in Tax Law that relates to: (a) the highest federal income tax rate applicable to corporations or to a corporation’s allocable share of income from a pass-through entity; (b) the amount or timing of depreciation deductions with respect to the Project (or any PTC Facility or

other property in the Project), or the ability of a PacifiCorp Indemnified Party to claim depreciation deductions with respect to the Project (or any PTC Facility or other property in the Project); (c) the amount or timing of the ITC or PTC with respect to the Project (or any PTC Facility or other property in the Project), or the ability of a PacifiCorp Indemnified Party to claim the ITC with respect to the Project (or any PTC Facility or other property in the Project); or (d) [\_\_\_\_\_]. The amount of any Change in Tax Law Losses shall be determined in good faith by PacifiCorp in accordance with the methodology set forth in Appendix V.

“Change Order” means any order identified as a “Change Order” and issued to Developer by PacifiCorp pursuant to Article 13 and Appendix BB, substantially in the form set forth in Exhibit D-1.

“Change Order Notice” means the notice of Change Order issued to Developer by PacifiCorp pursuant to Article 13 and Appendix BB, substantially in the form set forth in Exhibit D-3.

“Change Order Request” means the request of Change Order issued to PacifiCorp by Developer pursuant to Article 13 and Appendix BB, substantially in the form set forth in Exhibit D-2.

“Claim” means any indemnity, demand, demand letter, claim, litigation, cause of action, notice of noncompliance or violation, or other proceeding relating to the Project.

“Closing” shall have the meaning set forth in Section 2.4(a).

“Closing Date” shall have the meaning set forth in Section 2.3(a).

“Code” means the Internal Revenue Code of 1986, as the same may be amended from time to time, including any amendments or any substitute or successor provisions thereto.

“Condemnation Proceeding” shall have the meaning set forth in Section 7.26(a).

“Confidential Information” shall have the meaning set forth in Section 34.1(a).

“Confidentiality Affiliates” shall have the meaning set forth in Section 34.1(a).

“Consents” means all authorizations and approvals required to be obtained by Developer or PacifiCorp, as the case may be, under the Project Documents, including the PacifiCorp Consents and Developer Consents.

“Contract” means any agreement, lease, license (other than a Permit), note, bond, evidence of Indebtedness, mortgage, indenture, security agreement, purchase order, binding bid or other instrument or contract, whether written or oral.

“Contract Price” shall have the meaning set forth in Section 3.1(a).

“Contractor” shall mean the primary contractor engaged by Developer pursuant to the EPC Contract.

“Contractor Drawings and Manuals” means all drawings and information developed by Contractor and Subcontractors and provided to Developer in connection with Contractor’s and any Subcontractor’s obligations under the Primary Construction Contracts, all in accordance with the requirements of the Agreement.

“Contractor Guaranties” means the guarantees provided by or on behalf of Contractor or any Subcontractor pursuant to the Primary Construction Contracts.

“Control” of any Person means the possession, directly or indirectly, of the power either to (a) vote fifty percent (50%) or more of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (b) direct or cause the direction of management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any secured lender of such Person.

“Credit Matrix” means the credit matrix attached as Exhibit C.

“Credit Rating” means, as of any date, the lower of: (a) the most recently published senior, unsecured long-term debt rating (or corporate rating if a debt rating is not available) from S&P or (b) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is not available) from Moody’s. If option (a) and (b) are not available, the Credit Rating will be determined by PacifiCorp through an internal review process utilizing a proprietary credit scoring model developed in conjunction with a third party.

“Credit Support” means the amounts, if any, and subject to Article 6, shown on the Credit Matrix.

“Credit Support Security” means a Guaranty, Letter of Credit or Cash Escrow provided pursuant to Article 6.

“Critical Milestones” means certain Milestones designated in the Project Schedule as milestones that are critical to the ability of the Facility to achieve the Substantial Completion Date by the Guaranteed Substantial Completion Date. The Critical Milestones are set forth in Appendix M.

“Critical Milestone Completion Date” means the completion date by which Developer will achieve the corresponding Critical Milestone. The Critical Milestone Completion Dates are set forth in Appendix M.

“Defect” shall have the meaning set forth in Section 19.1(a).

“Deferred Permits” means, as of any date, all Developer Permits that have not yet been obtained, (a) the procurement of which is not required to have occurred on or before such date by applicable Law or the requirements of any Project Document and (b) as to which Developer has a reasonable expectation that such Developer Permits will be obtained in the ordinary course of business.

“Delay Liquidated Damages” shall have the meaning set forth in Section 24.2.

“Developer” shall have the meaning set forth in the preamble of this Agreement.

“Development Assets” shall mean the Leases, the Easements, the Transferred Permits, any Contracts to be transferred as part of the Development Assets on Closing, and any Improvements, including the Equipment, Materials or any other component of the Facility, at the Site as of the Closing Date.

“Developer Claim” shall have the meaning set forth in Section 32.1(a)(i).

“Developer Consents” shall have the meaning set forth in Section 4.4(b).

“Developer Default” shall have the meaning set forth in Section 29.1.

“Developer’s Equipment” means any of the events specified in Section 12.1.

“Developer-Initiated Change” shall have the meaning set forth in Section 13.2(a).

“Developer’s Knowledge” means the actual knowledge, after due inquiry, of [\_\_\_\_\_].

“Developer Parties” means Developer, Contractor and any Subcontractor and their respective employees and agents.

“Developer Permits” shall have the meaning set forth in Section 4.5(a).

“Developer Regulatory Approval” shall have the meaning set forth in Section 5.4(d).

“Developer’s Representative” shall have the meaning set forth in Section 7.13(a).

“Developer Safety Assurance Program” shall have the meaning set forth in Section 7.11(a).

“Dollars” and the “\$” symbol means the lawful currency of the United States of America.

“Draft Manuals” shall have the meaning set forth in Section 7.9(d).

“Easements” means easements, rights-of-way, licenses, occupancy or encroachment

permits, or similar entitlements which are used, or to be used, for or in the ownership, construction, operation or maintenance of the Facility, interests in which are to be conveyed by Developer to PacifiCorp at the Closing.

“Effective Date” shall have the meaning set forth in the preamble to this Agreement.

“Environmental Attributes” means any and all attributes of the Project (including all Renewable Energy Credits associated with such attributes) that are created or otherwise arise (whether before, on or after the Closing) from the Project’s generation of electricity using solar generation technologies, including any avoided, reduced, displaced or off set emissions of pollutants to the air, soil or water such as sulfur dioxides (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), mercury (Hg), carbon dioxide (CO<sub>2</sub>), any other greenhouse gas (GHG) that contributes to the actual or potential threat of altering the Earth’s climate, and any other pollutant that is now or may in the future be regulated under federal, state or local pollution control laws, regulations or ordinances, including those implemented under the federal Clean Air Act, 42 U.S.C. § 7401 et seq. and any equivalent state laws, or any voluntary rules, guidelines or programs. Forms of Environmental Attributes include any and all environmental air quality credits, green credits, carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (a) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil gas, chemical, or other substance, and (b) attributable to the generation, purchase, sale or use of renewable energy generated by use of renewable generation technologies by the Project, or otherwise attributable to the Project. Environmental Attributes include those currently existing or after-arising under local, state, regional, federal, or international legislation or regulation or voluntary program, including any such legislation, regulation or program administered by the United Nations Framework Convention on Climate Change, the United States Environmental Protection Agency, the State of Oregon or any other Governmental Authority.

“Environmental Law” means any applicable Law that is in effect as of the Effective Date and relates to Regulated Materials, pollution, occupational safety (to the extent such relates to exposure to Regulated Materials), protection of occupational health (to the extent such relates to exposure to Regulated Materials) or the protection of the environment, natural resources, or wildlife, including, without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (“CERCLA”), (b) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (the “Clean Water Act”), (d) the Clean Air Act, 42 U.S.C. § 7401 et seq. (“CAA”), (e) the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. § 5101 et seq., (f) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., (g) the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629, (h) the Oil Pollution Act, 33 U.S.C. § 2701 et seq., (i) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (j) the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j, (k) the Federal Insecticide, Fungicide, & Rodenticide Act, 7 U.S.C. § 136 et seq., (l) the Endangered Species Act, 16 U.S.C. § 1531 et seq., (m) the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., (n) the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 et seq., (o) the National Historic

Preservation Act, 16 U.S.C. §§ 470a et seq., (p) the National Environmental Policy Act, [42 U.S.C. § 4321](#) et seq., (q) state equivalents to items (a) through (p), and (r) applicable guidance issued by implementing agencies, including the Land-Based Wind Energy Guidelines.

“EPC Contract” means the Engineering, Procurement and Construction Contract, to be entered into between Developer and Contractor, in form and substance acceptable to PacifiCorp, in its discretion.

“Equipment” means: (a) the equipment relating to the Project as described in [Appendix A](#), and, where indicated in [Appendix A](#), manufactured or provided by Approved Subcontractors; and (b) the equipment identified in Developer’s RFP Bid Summary Appendix C-2.xlsx, which is incorporated herein by reference.

“Estoppels” shall have the meaning set forth in [Section 2.2\(a\)\(v\)](#).

“Facility” means the renewable energy electric generating facility, to be located on the Site and to be constructed in accordance with this Agreement, as described more fully in [Appendix A](#), including the Equipment and Materials.

“Final Acceptance” means the Facility demonstrates that all of the Final Acceptance Criteria have been satisfied in accordance with the requirements of this Agreement.

“Final Acceptance Criteria” shall have the meaning set forth in [Appendix AA](#).

“Final Acceptance Date” means the date on which Final Acceptance is demonstrated in accordance with the requirements of [Section 20.9](#).

“Final Performance Test Report” shall have the meaning set forth in [Section 18.6\(b\)](#).

“Final Punch List” shall have the meaning set forth in [Section 20.3\(b\)](#).

“Force Majeure” means an event or cause not reasonably anticipated as of Effective Date, which is not within the reasonable control of or caused by the fault or negligence of the party affected thereby, and which the affected party has been unable to remedy, prevent or overcome, despite the use of reasonable care or exercise of diligence consistent with Prudent Industry Practices. To the extent that such event satisfies the requirements set forth in the preceding sentence, Force Majeure includes: acts of God, fire, flood, explosion, civil disturbance, sabotage, terrorism, hurricanes, tornadoes, lightning, earthquakes, war, action or restraint by court order or public or Governmental Authority; provided that none of the following shall constitute Force Majeure: (a) strikes or labor disturbances occurring at the Site or Contractor’s or Subcontractor’s facilities, except to the extent such strikes or labor disturbances at the Site or Contractor’s or Subcontractor’s facilities are directly related to strikes or labor disturbances that are simultaneously disrupting other business operations in the geographic region covered by the WECC; (b) shortages (real or perceived) of labor available for on-site Work; (c) delay or failure by Developer to obtain any Developer Permit, PacifiCorp Regulatory Approval or Developer

Regulatory Approval, other than the delay or failure to obtain Developer Permits, PacifiCorp Regulatory Approvals or Developer Regulatory Approvals occasioned by: (i) revocation, stay, or similar action by a Governmental Authority of a Permit, PacifiCorp Regulatory Approval or Developer Regulatory Approval after issuance thereof by a Governmental Authority; (ii) the failure of a Governmental Authority to comply with rules, procedures or other applicable Law applicable to such Governmental Authority; or (iii) another Force Majeure; (d) economic hardship including lack of money or credit and changes in exchanges rates; (e) utility interruptions; and (f) shipping accidents or unavailability of preferred shipping methods.

“GAAP” means United States generally accepted accounting principles.

“Governmental Authority” means any supranational, federal, state or other political subdivision thereof, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing, in each case, having jurisdiction over Developer, Contractor, any Subcontractor, PacifiCorp, the Project or this Agreement or any other Project Document.

“Guaranteed Substantial Completion Date” means [DATE].

“Guaranty” means that certain Guaranty by and between PacifiCorp and Guarantor, required by PacifiCorp pursuant to Section 6.1, in the form of Appendix S and otherwise in form and substance satisfactory to PacifiCorp, in its discretion.

“Guarantor” means a Person meeting the credit criteria set forth in Section 6.1 that provides a Guaranty to PacifiCorp in form and substance satisfactory to PacifiCorp in its discretion.

“Improvements” means all buildings, structures, fixtures and improvements located on the Site, including the Facility.

“Indemnified Party” shall have the meaning set forth in Section 26.1(c).

“Indemnifying Party” shall have the meaning set forth in Section 26.1(c).

“Indemnity Period” shall have the meaning set forth in Section 26.3.

“Intellectual Property” means all patents, trademarks, copyrights, drawings and all computer software whether or not subject to statutory registration or protection, that are owned, used, filed by or licensed to Developer, Contractor or any Subcontractor in connection with the Work or the Project.

“ITC” means the energy credit pursuant to Section 48 of the Code.

“Judgment” means any judgment, order, award, injunction, writ or decree of any Governmental Authority.



“Key Personnel” means, with respect to Developer, Contractor and any Subcontractor performing a material portion of the Work, a Project Executive, a Project Manager, a Project Senior Superintendent and a Project Superintendent for the Project.

“Late Payment Rate” means an amount equal to the Prime Rate plus 500 basis points, provided that in no event shall the Late Payment Rate exceed the maximum allowable usurious rate permitted by Applicable Law.

“Latent Defect” shall have the meaning set forth in Section 23.10(d).

“Latent Defects Liability Period” shall have the meaning set forth in Section 23.10(a).

“Law” means all laws (including each Environmental Law), statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of any Governmental Authority having the force and effect of law, and as to any Person, the organizational or governing documents of such Person.

“Leases” means all leases for the Real Property.

“Letter of Credit” means an irrevocable standby letter of credit in the form of Appendix X or otherwise in form and substance reasonably acceptable to PacifiCorp, which (a) is issued by a U.S. commercial bank, with such bank having assets (net of reserves) of at least \$10,000,000,000 and a credit rating on its senior unsecured debt of (a) “A2” or higher from Moody’s and (b) “A” or higher from S&P; (b) is transferable by PacifiCorp to any party to which PacifiCorp may assign this Agreement; and (c) shall remain in effect for at least ninety (90) days after the end of the Term.

“Liabilities” means all Claims including those relating to Environmental Laws, demands, damages, losses, liabilities or judgments, including all interest, penalties, fines and other sanctions, and any reasonable costs or expenses in connection therewith, including attorneys’ and consultants’ fees and expenses.

“Lien” means any mortgage, pledge, security interest, encumbrance, option, defect, lien, charge or other similar right of any Person of any kind, including any lien or charge arising by statute or other law.

“Material Adverse Change” means any change in condition after the Closing Date that actually has, or is reasonably likely to have, a significant adverse effect on: (a) the validity or enforceability of this Agreement or any of the other Project Documents; (b) the business, assets, prospects, operations, property or condition (financial or otherwise) of the Project, Developer, Contractor, any Subcontractor or any Guarantor; (c) PacifiCorp’s ability to own, control, or operate the Project (financial or otherwise); (d) the Project’s ability to operate and deliver energy to the System; (e) the performance of or the ability of Developer, Contractor, any Subcontractor or any Guarantor, to perform its respective obligations under the Project Documents to which it is a party; (f) the ability of PacifiCorp to enforce any of its material rights and remedies under the Project

Documents; or (g) Developer fails to meet the requirements of Section 6.1.

“Materials” means the Intellectual Property, equipment, machinery, apparatus, materials, articles and things of all kinds to be provided and incorporated into the Project by Developer, Contractor and the Subcontractors pursuant to this Agreement (including spare parts and tools to be supplied hereunder), other than the Equipment and the Non-PacifiCorp Materials.

“Mechanical Completion” means that a turbine within the Facility demonstrates that all of the Mechanical Completion Criteria for such turbine have been satisfied in accordance with the requirements of this Agreement.

“Mechanical Completion Criteria” shall have the meaning set forth in Appendix AA.

“Mechanical Completion Date” means the date on which Mechanical Completion for each turbine is demonstrated in accordance with the requirements of Section 20.1.

“Merit Shop” shall mean the construction philosophy which encourages open competition and a free-market approach that awards contracts to the lowest cost responsible bidder based solely on merit as determined by Contractor, regardless of labor affiliation.

“Milestone” shall have the meaning set forth in Section 10.1.

“Milestone Completion Dates” shall have the meaning set forth in Section 10.1.

“MW” means megawatt (alternating current basis).

“Non-PacifiCorp Materials” means any equipment, machinery, apparatus, materials, articles and things of all kinds that are not permanently incorporated into the Project.

“Notice of Final Acceptance” shall have the meaning set forth in Section 20.9(b).

“Notice of Request for Progress Payment” shall mean a Notice of Request for Progress Payment in the form set forth in Exhibit A.

“Notice to Proceed” means the Notice to Proceed to be issued in accordance with Section 17.1(a) in the form set forth in Exhibit B.

“Notice of Rejection of Substantial Completion” shall have the meaning set forth in Section 20.1(b).

“Notice of Substantial Completion” shall have the meaning set forth in Section 20.1(b).

“OEM” means the original manufacturer of any Equipment comprising a portion of the Project.

“OEM Certified” means that the Equipment in question is certified by the manufacturer thereof as new and clean, not in need of repair, carrying full manufacturer’s warranties and guarantees applicable to newly-manufactured equipment of that type, and all reliability and design technical notices have been implemented.

“Other Warranty Assignment” shall have the meaning set forth in Section 23.12.

“PacifiCorp” shall have the meaning set forth in the preamble of this Agreement.

“PacifiCorp’s Consents” shall have the meaning set forth in Section 5.4(b).

“PacifiCorp Default” shall have the meaning set forth in Section 29.2.

“PacifiCorp’s Drawings” means all the drawings and information provided by PacifiCorp to Developer under this Agreement or in connection with the RFP issued by PacifiCorp in anticipation of this Agreement, other than any drawings and information provided by or through PacifiCorp Transmission.

“PacifiCorp Indemnified Parties” means PacifiCorp and its Affiliates and their respective directors, officers, employees and agents.

“PacifiCorp-Initiated Change” shall have the meaning set forth in Section 13.2(b).

“PacifiCorp’s Knowledge” means the actual knowledge, after due inquiry, of [\_\_\_\_\_].

“PacifiCorp Obligation” shall have the meaning set forth in Section 10.2.

“PacifiCorp Permits” shall have the meaning set forth in Section 5.5(a).

“PacifiCorp Regulatory Approval” shall have the meaning set forth in Section 5.5(b).

“PacifiCorp Regulatory Approval” shall have the meaning set forth in Section 5.5(b).

“PacifiCorp’s Representative” means the natural Person designated as such by PacifiCorp pursuant to Section 8.3(a).

“PacifiCorp Transmission” means PacifiCorp, an Oregon corporation, acting in its transmission function capacity, and any successor thereto.

“PacifiCorp Transmission Interconnection Agreement” means the interconnection agreement between Developer and PacifiCorp Transmission that is in conformance with the requirements of PacifiCorp’s Open Access Transmission Tariff filed with the Federal Energy Regulatory Commission (or any successor thereto), as the same may be amended.

“Party” and “Parties” shall have the meanings set forth in the preamble of this Agreement.

“Performance Guarantees” means the performance guarantees that are required to be demonstrated during the Performance Tests as a condition to Substantial Completion or otherwise, all as set forth in Appendix AA.

“Performance Liquidated Damages” shall have the meaning set forth in Section 24.4.

“Performance Test” or “Performance Tests” means the performance tests specified in Appendix AA.

“Permitted Liens” means [\_\_\_\_\_].

“Permit” means any authorization, approval, consent, waiver, exception, variance, order, publication, license, filing, registration, ruling, permit, tariff, certification, exemption and other action, requirement by or with, and notice to and declarations of or with, any Governmental Authority.

“Person” means any natural person, corporation, general or limited partnership, limited liability company, firm, joint venture, estate, association, trust, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

“Pre-Closing Taxes” means Taxes of Developer, or with respect to the Project, for any Pre-Closing Tax Period. Taxes for a Straddle Period shall be allocated to the Pre-Closing Tax Period (a) ratably based on the number of days in the Straddle Period that are in the Pre-Closing Tax Period if they are imposed on a periodic basis and (b) based on an interim closing of the books if they are based upon or related to income or receipts.

“Pre-Closing Tax Period” means a taxable period or a portion thereof that ends on or before the Closing Date.

“Preliminary Performance Test Report” shall have the meaning set forth in Section 18.6(a).

“Primary Construction Contracts” means the EPC Contract, any contract or agreement between Contractor and any Subcontractor, and all agreements and documents referenced therein.

“Prime Rate” means the rate per annum (rounded upwards to the nearest 1/100th of 1% per annum) equal to the rate of interest which JP Morgan Chase in New York, New York or its successor announces from time to time as its “prime lending rate” or equivalent rate or if such rate is not available, another rate published as the “prime rate” as agreed by PacifiCorp and Developer, with each change in such rate to be effective on the day on which such change is effective.

“Progress Payment Date” means the date on which a Progress Payment becomes due as set forth in Section 3.1(a).

“Progress Payments” means the applicable amounts set forth in Appendix R.

“Progress Report” shall have the meaning set forth in Section 10.8(a).

“Project” means (i) the Facility, (ii) the Site, and (iii) those certain tangible and intangible rights and assets required to own and operate the Facility that are acquired by PacifiCorp pursuant to the Project Documents, all in accordance with the Project Documents, the Developer Permits, the PacifiCorp Permits applicable Law and Prudent Industry Practices.

“Project Documents” means once executed and in full force and effect, this Agreement, the Primary Construction Contracts, [the Turbine Maintenance Agreement]<sup>2</sup>, [the O&M Agreement]<sup>3</sup>, the PacifiCorp Interconnection Agreement, the Consents, the Bill of Sale, the Assignment of Lease, the Assignment of Easements, the Assignment and Assumption Agreement, the Estoppels, the Other Warranty Assignment, the Turbine Warranty Assignment, and any Additional Project Document.

“Project Party” means each of Developer, Contractor, any Subcontractor, and the Guarantor.

“Project Problem” shall have the meaning set forth in Section 10.8(b)(i).

“Project Schedule” shall have the meaning set forth in Section 10.1.

“Prudent Industry Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry in the geographic region covered by the WECC, or its successor for wind powered electric generation facilities which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result in a cost-efficient manner consistent with good business practices and reliability criteria, safety considerations and expediency. Prudent Industry 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 industry practices, methods or acts for gas-fired combined cycle electric generating facilities in the geographic region covered by the WECC.

“PTC” means the renewable energy production tax credit pursuant to Section 45 of the Code.

“PTC Facility” means “facility” within the meaning of Code Section 45(d)(1) and Internal Revenue Service Revenue Ruling 94-31.

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<sup>2</sup> NTD: If any turbine warranty provided in Appendix E will require that the turbines be maintained by the turbine manufacturer as a condition of such warranty, then Developer will be required to enter into and assign to PacifiCorp at Substantial Completion any such turbine maintenance agreement.

<sup>3</sup> NTD: To be included if Developer is offering an O&M Agreement as part of the Project.

“Punchlist Holdback Amount” shall have the meaning set forth in Section 20.3(b).

“Purchase Price” shall have the meaning set forth in Section 2.3(a).

“Purchase Price Allocation” shall have the meaning set forth in Section 21.3.

“Real Property” means all real property and interests in real property required in connection with the Project.

“Regulated Materials” means any substance, material, or waste which is now or hereafter becomes listed, defined, or regulated in any manner by any United States federal, state or local law and includes any oil, petroleum, petroleum products and polychlorinated biphenyls.

“Release” means, with respect to any Regulated Materials, any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of any such Regulated Materials.

“Remediation” includes any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Regulated Material, any actions to prevent, cure or mitigate any Release of any Regulated Material, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Regulated Material.

“Renewable Energy Credits” means any credit, certificate, renewable energy certificate, allowance or similar right that is related to the Environmental Attributes of the Project, whether arising pursuant to applicable Law, certification, markets, trading, offset, private transaction, renewable portfolio standards, voluntary programs or otherwise.

“Renewable Energy Incentives” means the ITC, the PTC, accelerated depreciation (including bonus depreciation), and [list all current state-level abatements, credits, certificates, etc.].

“Reports” means one or more Phase I environmental assessment reports, environmental impact studies, geotechnical reports, interconnection system impact studies, and [\_\_\_\_\_], in each case, with respect to the Project and the Site.

“Requested Progress Payment” shall have the meaning set forth in Exhibit A.

“Required Change” shall have the meaning set forth in Section 13.2(c).

“RFP” shall have the meaning set forth in the recitals of this Agreement.

“Scope of Work” shall have meaning set forth in Appendix A.

“Significant Defect” means a single or recurring Defect which occurs at any time within two (2) years of the Substantial Completion Date which results in the cessation of operation of the Facility or will not, unless corrected, allow PacifiCorp to operate the Facility within parameters required to comply with applicable Law for a period of either three (3) consecutive days or an aggregate of five (5) days in the case of a recurring Defect.

“Site” means the premises on which the Project is to be located, together with the Easements, the legal description of all of which is set forth on Appendix I.

“Straddle Period” means a taxable period that includes but does not end on the Closing Date.

“Subcontractor” means any Person (including vendors, suppliers, contractors and consultants), other than Contractor, retained by Developer to perform a part of Developer’s obligations under any Project Document.

“Substantial Completion” means the Facility demonstrates that all of the Substantial Completion Criteria has been satisfied in accordance with the requirements of this Agreement.

“Substantial Completion Criteria” shall have the meaning set forth in Appendix AA.

“Substantial Completion Date” means the date on which Substantial Completion is demonstrated in accordance with the requirements of Section 20.2.

“Supplier” means any supplier of Equipment or Materials to the Project which has a right to place a Lien on the Project.

“Surplus Items” shall have the meaning set forth in Section 20.8.

“System” means the electric transmission sub-station and distribution facilities owned, operated or maintained by PacifiCorp Transmission, which shall include, after construction and installation of the Project, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to complete the Project, all as set forth in the PacifiCorp Transmission Interconnection Agreement.

“Tax” or “Taxes” means any and all taxes, charges, fees, levies, tariffs, duties, liabilities, impositions or other assessments in the nature of a tax (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any tax authority or other Governmental Authority, including income, gross receipts, profits, excise, real or personal property, environmental, sales, use, value-added, ad valorem, withholding, social security, retirement, employment, unemployment, customs duties, worker’s compensation, occupation, service, license, net worth, capital stock, payroll, franchise, gains, stamp, transfer and recording taxes, and shall include any liability for the Taxes of any other person or entity under Treasury Regulations Section 1.1502-6 (or similar provisions of state or local law), or as a transferee or successor, by contract or otherwise.

“Target Closing Date” shall have the meaning set forth in Section 2.9.

“Tax Returns” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any such document prepared on a consolidated, combined or unitary basis and also including any schedule or attachment thereto, and including any amendment thereof.

“Technical Specification” means the specification for the Work set forth in Appendix A and Appendix AA, and any modifications thereof made pursuant to the terms of this Agreement.

“Transfer Tax” shall have the meaning set forth in Section 21.2.

“Time for Completion” means the period between the Effective Date and the Substantial Completion Date.

“Title Company” means [NAME OF TITLE COMPANY], or such other title insurance company acceptable to PacifiCorp, in its discretion.

“Title Policy” means a title insurance policy issued by Title Company at Developer’s expense (except as set forth herein) insuring PacifiCorp’s leasehold rights in the Real Property, including the Easements as appurtenant easements, and the Improvements, that (a) is in form and substance and contains such requirements, modifications and endorsements as PacifiCorp may reasonably approve, (b) contains such additional affirmative coverage and endorsements (at PacifiCorp’s cost and expense) as PacifiCorp may reasonably request, (c) is in such amount as PacifiCorp may negotiate with the Title Company, (d) insures that PacifiCorp is the sole holder of all leasehold rights, title and interests with respect to the Real Property, subject to Permitted Liens, (e) names PacifiCorp as the insured, (f) is issued as of the Closing Date by the Title Company, (g) shows as exceptions only the Permitted Liens, and (h) does not contain the standard pre-printed exceptions that appear in the related title insurance commitment, which shall be deleted based on such affidavits and certifications signed or obtained by Developer and acceptable to the Title Company.

“Transferred Permits” means Developer Permits with respect to the Project (other than the Deferred Permits) which are to be assigned by Developer to PacifiCorp at the Closing.

“Treasury Regulations” means the final and temporary regulations promulgated under the Code, as amended.

“Turbine Warranty Assignment” shall have the meaning set forth in Section 23.12.

“Unidentified Project Problem” shall have the meaning set forth in Section 10.8(c).

“USTs” shall have the meaning set forth in Section 4.9(b).

“Warranty” shall have the meaning set forth in Section 23.1.



“Warranty Period” shall have the meaning set forth in Section 23.2.

“WECC” means the Western Electricity Coordinating Council.

“Witness Point Events” shall have the meaning set forth in Section 14.3(a).

“Witness Point Schedule” shall have the meaning set forth in Section 14.3(a).

“Work” means the Equipment and Materials to be supplied and the entire works and services to be performed, or caused to be performed, by Developer under this Agreement, together with any modifications thereto in accordance with the terms hereof.

“Year” means a calendar year.

## APPENDIX AA

### **Mechanical Completion, Substantial Completion, Final Acceptance, Performance Guarantees and Performance Tests**

#### **A. Mechanical Completion Criteria**

The following enumerated requirements are the conditions precedent to the achievement of Mechanical Completion for each turbine (the “**Mechanical Completion Criteria**”):

1. The foundation of the turbine is complete in accordance with the Technical Specification and requirements of the applicable Project Documents.
2. The turbine is assembled, erected and installed so as to be demonstrably completed in accordance with the Technical Specification and the requirements of the applicable Project Documents.
3. All materials and equipment that are part of the Work and associated with such turbine have been installed in accordance with the Technical Specifications and verified in accordance with the applicable installation checklists and assembly manuals.
4. Developer has prepared and submitted a list of punch list items with respect to such turbine or other component.
5. The turbine has been energized and is ready to commence commissioning.
6. The electric works circuit line to which the turbine is connected is completed in accordance with the Technical Specification and the requirements of the applicable Project Documents.
7. The turbine vendor acknowledges that all Work necessary to achieve Mechanical Completion of the turbine and for the turbine Vendor to commence commissioning of the turbine has been successfully completed.

#### **B. Substantial Completion Criteria**

The following enumerated requirements are the conditions precedent to the achievement of Substantial Completion (the “**Substantial Completion Criteria**”):

1. All turbines that are a part of the Project have achieved Mechanical Completion.
2. At least five (5) Business Days prior to the Substantial Completion Date, Developer and PacifiCorp shall have agreed to the Final Punch List.
3. Subject to any items on the Final Punch List, all Work, including all activities described in the Scope of Work, has been properly constructed, installed, tested, and is mechanically, electrically and structurally sound and free from defects, each in complete conformance with the Technical Specifications and other requirements of the Agreement.

4. Subject to any items on the Final Punch List, all turbines and their associated equipment and materials can be used safely (without hazard or damage to themselves, the Project or any other property and without injury to any person) and are capable of being operated in a reliable manner as a single Project to their full performance capabilities set forth in the specifications and in accordance with the Technical Specifications and other requirements of the Agreement.
5. The Reliability Test described in RFP Appendix A.3, Section 14.32.3 (6) has been successfully completed.
6. The Performance Tests, if so directed by the PacifiCorp, described herein have been successfully completed.
7. Spare Parts have been procured, as directed by PacifiCorp, and delivered to the Site in accordance with Section 7.19 of the Agreement.
8. Subject to any items on the Final Punch List, all construction debris, rubbish, foreign material and equipment have been removed from the Site and all roads, temporary construction pads and laydown areas have been repaired and restored in accordance with the Technical Specifications and other applicable requirements of the Agreement and Developer shall have removed from the Site all Surplus Items in accordance with Section 20.7 of the Agreement.
9. Subject to any items on the Final Punch List, all Spare Parts lists, Special Tools and documents that are to be delivered to PacifiCorp by Developer on or before the Substantial Completion Date pursuant to the Agreement have, in fact, been delivered to PacifiCorp.
10. PacifiCorp has received the Draft Manuals from Developer at least sixty (60) days prior to the Substantial Completion Date.
11. PacifiCorp shall have received the operation and maintenance and other manuals in accordance with the requirements of the Agreement.
12. Developer has provided all applicable and required training in accordance with Section 7.10 of the Agreement, Appendix A and the Technical Specifications.
13. Developer has fulfilled all of the requirements of Appendix O.
14. All Milestones that are to be completed on or before the Substantial Completion Date pursuant to the Project Schedule have, in fact, been completed.
15. Developer has paid all liquidated damages invoiced through the date of delivery to PacifiCorp of the Notice of Substantial Completion.
16. Developer has assigned to PacifiCorp all Equipment and other warranties in accordance with the Agreement.
17. Developer has delivered all lien waivers required pursuant to the Agreement.

### C. Final Acceptance Criteria

The following enumerated requirements are the conditions precedent to the achievement of Final Acceptance (the “**Final Acceptance Criteria**”):

1. Substantial Completion has been achieved.
2. Developer has performed all Work such that the Project may be operated as a fully-integrated wind-powered electricity generating facility, all required tests have been successfully completed and any defects have been corrected, and all equipment is capable of being operated in a safe and proper manner in accordance with the Technical Specifications and other requirements of the Agreement.
3. The Contractor Drawings and Manuals accurately reflect the Facility as constructed and at least five (5) final hard copies and one (1) digital copy of such final Contractor Drawings and Manuals were delivered to PacifiCorp within sixty (60) days after the Substantial Completion Date, including any addenda thereto required pursuant to Section 7.9(f) of the Agreement.
4. The Facility is capable of being operated in a safe, normal, reliable and continuous manner in accordance with applicable Laws and Permits (excluding for this purpose all variances or waivers of any Permits) and the Project Documents at all operating conditions and modes specified in the Scope of Work.
5. All items on the Final Punch List have been completed to PacifiCorp’s reasonable satisfaction, or PacifiCorp, in its sole discretion, has withheld any remaining amounts of the Contract Price to complete any items on the Final Punch List not completed by Developer in accordance with the terms hereof.
6. Developer has provided PacifiCorp with all Permits or, where applicable, copies of Permits.
7. Any and all Liens in respect to the Facility, the Project Documents, the Equipment, the Materials, the Site or any fixtures, personal property or other equipment or materials included in the Work created by, through or under, or as a result of any act or omission of, Developer, Contractor or any Subcontractor or any other Persons providing labor or materials in connection with the Work shall have been released or bonded in form reasonably satisfactory to PacifiCorp.
8. Developer shall have paid all liquidated damages and any other amounts due under the Agreement and other Project Documents, if any.
9. All of Developer’s supplies, construction trailers and equipment, personnel (including Contractor and Subcontractors), and rubbish have been removed from the Site.
10. All of Developer’s cleanup, restoration and related obligations have been completed.
11. A Final Cost Report has been delivered to PacifiCorp in accordance with Appendix P and in a form and substance satisfactory to PacifiCorp.

12. PacifiCorp shall have received the operation and maintenance and other manuals in accordance with the requirements of the Agreement.
13. All Developer documents that are to be delivered to PacifiCorp by Developer pursuant to the Agreement have, in fact, been delivered to PacifiCorp, including, but not limited to, as-built drawings, final Contractor Drawings and Manuals, and lien waivers and final release and waiver of claims.
14. Developer has fully performed all of its duties and obligations under the Agreement required to be performed as of the date of Final Acceptance.

#### **D. Performance Guarantee and Testing**

Developer guarantees that when first tested in accordance with the Performance Tests below that the project will achieve ninety-eight percent (98%) of the nominal calculated Project annual energy yield computed on the basis of the calculated power curve from the Power Curve Test, the Power Curve Guarantee provided by the wind turbine supplier and the project site representative wind speed distribution. Performance Liquidated Damages will be determined to be equal to the net present value assessed over the 10-year PTC period of the grossed-up pre-tax value of the PTC (on a dollars per megawatt-hour basis) times the amount of expected annual energy losses due to the Project not meeting the Power Curve guarantee after adjusting for the two percent (2%) nominal calculated project annual energy yield margin.

#### **E. Power Curve Tests**

To demonstrate that the Performance Guarantee has been satisfied, PacifiCorp may elect at its own expense to cause the nominated units to be tested in accordance with IEC 614 00-12-1 by a qualified testing authority acceptable to Developer (such acceptance not to be unreasonably withheld or delayed) and a wind turbine testing protocol agreed to by PacifiCorp and Developer. The initial Performance Test must commence within one hundred and twenty (180) days after completion of the last turbine and PacifiCorp shall give Developer at least thirty (30) days' notice prior to commencing any such Performance Test. If the Performance Test has not commenced within this time for reasons not attributable to Developer, then the Performance Test shall be waived and the Site shall be deemed to have achieved the Performance Guarantee. Developer shall be afforded an opportunity to perform inspections and maintenance prior to the Performance Test, at Developer's sole expense and that PacifiCorp can observe; provided that such inspections and maintenance shall not delay the scheduled Performance Tests. The Performance Guarantee shall be met when the Performance Test result meets the Performance Guarantee. In no event will Developer be responsible for the cost of the Site operation or operating personnel required to conduct any Performance Test or re-test. The data collection for each nominated unit shall continue until the conditions set forth in the test procedure have been met. The test result shall be reported to Developer within ten (10) Business Days from the completion of the Performance test for Developer's review.

If a terrain assessment carried out by a qualified testing authority indicates that the Site meets IEC criteria such that no Site calibration is required, then requirements for Site calibration may be waived by mutual agreement of the Parties.

**APPENDIX BB**  
**Change Order Costing**<sup>4</sup>

1.0 General

If there is a Change Order, as contemplated in ARTICLE 13 of the Agreement and Developer and PacifiCorp mutually agree that it is impractical to adjust the Contract Price on a lump sum basis or fail to agree upon such a lump sum adjustment, then the Parties shall agree to a cost adjustment for the change on a time and materials basis pursuant to Section 2.0 below.

2.0 Time and Materials Adjustment

The time and material rates set forth in Appendix W shall be used for Change Orders for which a lump sum adjustment has not been agreed to by PacifiCorp and Developer. In addition to the rates set forth in Appendix W, all other direct costs resulting from such Change Order less any savings or cost not incurred plus/minus as required, will be provided at cost.

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<sup>4</sup> NTD: This Agreement is included in the Table of Contents but is not included in the main body of the Agreement – discuss. Is there any reason that any essential information cannot be included in Article 13 where the provisions on Charge Order are contained?