

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**ADAMS SOLAR CENTER, LLC**

**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and  
not an Intermittent Resource]**

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 21<sup>st</sup> day of August, 2014, is between Adams Solar Center, LLC, "**Seller**" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp**." (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

### RECITALS

A. Seller intends to construct, own, operate and maintain a solar facility for the generation of electric power, including interconnection facilities, located near Madras, Jefferson County, with a Facility Capacity Rating of 10,000 kilowatts (kW) as further described in **Exhibit A** and **Exhibit B ("Facility")**; and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on October 31, 2016 ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on April 30, 2017 ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 20,060,000 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall (choose one) ☒ sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp ☐ sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## **AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

### **SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-built Supplement"** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

1.3 **"Billing Period"** means, unless otherwise agreed to, the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 **"Commercial Operation Date"** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

- 1.4.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;
- 1.4.2 The Facility has completed Start-Up Testing;
- 1.4.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;
- 1.4.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).

- 1.4.5 Seller has complied with the security requirements of Section 10.
- 1.4.6 PacifiCorp has received an executed copy of **Exhibit F**—Seller’s Interconnection Request.
- 1.5 **“Commission”** means the Oregon Public Utilities Commission.
- 1.6 **“Contract Price”** means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1 and 5.2.
- 1.7 **“Contract Year”** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.
- 1.8 **“Credit Requirements”** means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.
- 1.9 **“Default Security”**, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at **Mid-Columbia** (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.
- 1.10 **“Effective Date”** shall have the meaning set forth in Section 2.1.
- 1.11 **“Energy Delivery Schedule”** shall have the meaning set forth in Section 4.5.
- 1.12 **“Environmental Attributes”** shall have the meaning set forth in Section 5.5.
- 1.13 **“Excess Output”** shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.
- 1.14 **“Facility”** shall have the meaning set forth in Recital A.
- 1.15 **“Facility Capacity Rating”** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.
- 1.16 **“FERC”** means the Federal Energy Regulatory Commission, or its successor.



1.17 **“Generation Interconnection Agreement”** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp’s interconnection facilities required to accommodate deliveries of Seller’s Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.18 **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.19 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.20 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.21 **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.22 **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.23 **“Nameplate Capacity Rating”** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.24 **“Net Energy”** means the energy component, in kWh, of Net Output.

1.25 **“Net Output”** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.26 **“Net Replacement Power Costs”** shall have the meaning set forth in Section 11.4.1.

1.27 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.28 **"On-Peak Hours"** means the hours between 6 a.m. Pacific Prevailing Time ("PPT") and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.29 **"Point of Delivery"** means the high side of the Seller's step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.30 **"Prime Rate"** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.31 **"Prudent Electrical Practices"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.32 **"QF"** means **"Qualifying Facility,"** as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.33 **"Replacement Price"** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.34 **"Required Facility Documents"** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.35 **"Schedule 37"** means the Schedule 37 of Pacific Power & Light Company's Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit G**.

1.36 “**Scheduled Commercial Operation Date**” shall have the meaning set forth in Recital C.

1.37 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.38 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.39 “**Termination Date**” shall have the meaning set forth in Section 2.4.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (“**Effective Date**”).

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By May 31, 2015, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on October 30, 2036 [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] (“**Termination Date**”).

## **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

- 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
  - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a limited liability company duly organized and validly existing under the laws of Oregon.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
  - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general

principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.
- 3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:
- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
  - (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.

- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

\_\_\_\_\_ Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or

\_\_\_\_NT\_\_\_\_ Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase all Net Output from the Facility delivered to the Point of Delivery.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 20,060,000 kWh per Contract Year ("**Average Annual Generation**"). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 11,501,000 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-

rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 23,069,000 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

## **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of four pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Firm Market Indexed Avoided Cost Prices (“Firm Electric Market”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

___X___	Fixed Price
_____	Firm Electric Market
_____	Gas Market
_____	Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit G**.

5.2 (Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

___X___	Firm Electric Market
_____	Gas Market
_____	Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller a blended market index price for day-ahead non-firm energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde market

indices as reported by Dow Jones, for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller's Facility.

## **SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six month's prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or



by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

## **SECTION 8: METERING**

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection

agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

## **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## **SECTION 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- ☒ NT Cash Escrow
- ☐ Letter of Credit
- ☐ Senior Lien
- ☐ Step-in Rights
- ☐ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

**[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]**

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4.

Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

(a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

(b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such

notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.

11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.
- 11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

### 11.3 Termination.

- 11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.
- 11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.
- 11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by

subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

- 11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

#### 11.4 Damages.

- 11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

#### 11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

## **SECTION 12: INDEMNIFICATION AND LIABILITY**

### **12.1 Indemnities.**

12.1.1 **Indemnity by Seller.** Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 **Indemnity by PacifiCorp.** PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 **No Dedication.** Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 **No Consequential Damages.** EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.



### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

## **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

- 14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and
- 14.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and
- 14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

## **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

## **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

## **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

## **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

## **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

## **SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

## **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender

as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

## **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

## **SECTION 23: NOTICES**

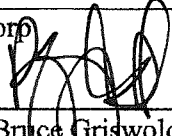
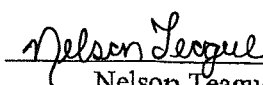
23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	Adams Solar Center, LLC Attn: Andrew Foukal_ 117 4 <sup>th</sup> Street SE, Suite B Charlottesville, VA 22902 Phone: 434-293-7589
<b>All Invoices:</b>	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as address above)
<b>Scheduling:</b>	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	(same as address above)
<b>Payments:</b>	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as address above)
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	(same as address above)

Notices	PacifiCorp	Seller
<b>Credit and Collections:</b>	(same as street address above) Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	(same as address above)
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	(same as address above)

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp By:  Name: <u>Bruce Griswold</u> Title: <u>Director, Short-Term Origination and</u> <u>QF Contracts</u> Date: <u>8/7/2014</u>	Adams Solar Center, LLC By:  Name: <u>Nelson Teague</u> Title: <u>Manager</u> Date: <u>08/12/14</u>
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BWS 7-21-2014

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**

Seller's Facility consists of a 10 MWac solar photovoltaic project including PV panels, inverters, and single axis tracker system. More specifically, the inverter at the Facility is described as:

**Number of Inverters:** 12

**Model:** 12 x SMA 850CPXT, or similar

**Number of Phases:** 3

**Rated Output (kW):** 850

**Rated Output (kVA):** 850

**Rated Voltage (line to line):** 386

**Maximum kW Output:** N/A **Maximum kVA Output:** \_850 kVA

**Minimum kW Output:** 0 kW

**Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:** NA

---

**Facility Capacity Rating:** 10,000 kW.

---

Identify the maximum output of the inverter (s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

---

Transformer: -1.07% , Tracker Motor: -0.07% , Data Acquisition and Aux Loads: -0.1%

---

Values above are percentage loss of Total output and losses are already accounted for in the expected output in Exhibit D-1.

**Location of the Facility:** The Facility is to be constructed in the vicinity of Madras in Jefferson County, Oregon. The location is more particularly described as follows:

GPS 44.666, -121.132

Parcel ID 1013250000101 101326D000100, 1013260000100 and 1013250000500

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): Power Factor requirements will meet Pacific Corp standard interconnection procedures.

A more detailed and updated Exhibit A will be provided per section 6.1.

## **EXHIBIT B**

### **SELLER'S INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
  2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.
- 
1. The interconnection voltage will be at 12.47 kV. The Point of Metering will be on the project site, adjacent to Cherry Ln. (please refer to Exhibit A for the Location of the Facility). The Point of Delivery will be determined through a Transmission Service Request submitted by PacifiCorp upon execution of the Power Purchase Agreement.
  2. Please refer to attached preliminary electrical one-line electrical diagram. Final electrical one-line with final equipment will be updated with the as-built supplement.



## **Distance Between Adams Solar Center And Elbe Solar Center**

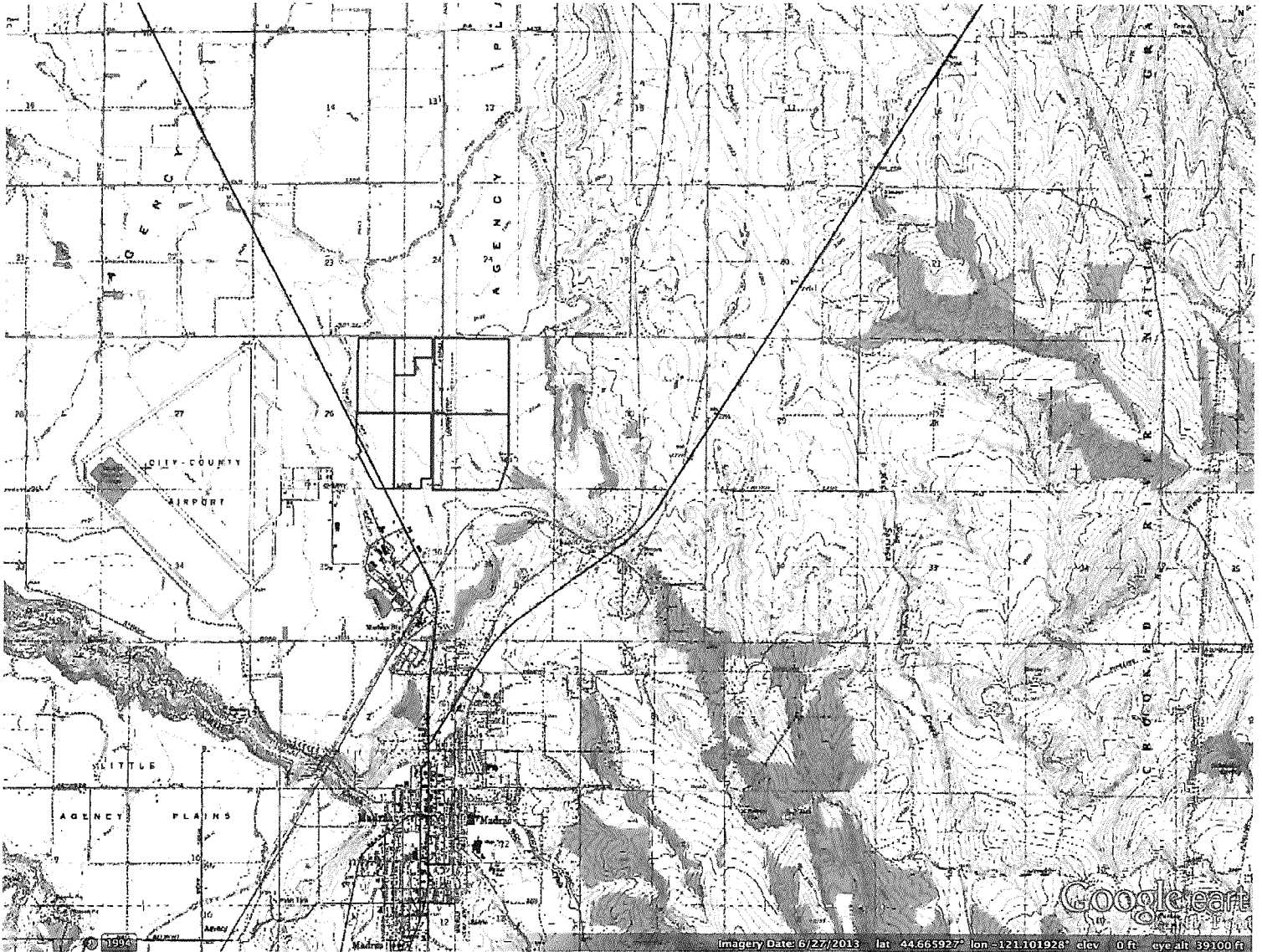


Projects are approx. 5.40 miles apart.





## Adams Solar Center



Location on USGS Map (site outlined in Red)



**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

QF Certification: QF14-391-000

Interconnection Agreement: To be provided May 31, 2015

Fuel Supply Agreement, NA

Retail Electric Service Agreement

Land Lease: Lease Option Agreement with Binder, LLC dated March 3, 2014

Permits: A list of applicable local, county, state, and federal Permits will be provided by Seller prior to Scheduled Initial Delivery Date.

**REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN OR STEP-IN RIGHTS:**

Deed or Lease to Facility Premises

Preliminary Title Report of Premises

Proof of ownership of Facility

Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested

**EXHIBIT D-1**  
**SELLER'S MOTIVE FORCE PLAN**

**A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	628,000
February	850,000
March	1,470,000
April	1,992,000
May	2,417,000
June	2,753,000
July	2,869,000
August	2,566,000
September	1,920,000
October	1,367,000
November	678,000
December	551,000

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account maintenance and Seller's load (if any). The minimum delivery is 11,501,000 kWh based on PVSYST modeling and weather data measurements from the Redmond's Roberts Municipal Airport over 19 years of continuous data collection and analysis.

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate. The maximum delivery is 23,069,000 kWh based on PVSYST modeling and weather data measurements from the Redmond's Roberts Municipal Airport over 19 years of continuous data collection and analysis.

**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION**  
**OF**  
**MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*

*Motive Force Plan and Engineer's Certification of Motive Force Plan attached.*



HelioSage Energy  
117 4<sup>th</sup> Street SE  
Charlottesville, VA 22902

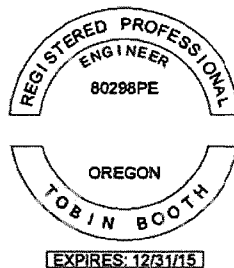
Attention: Jason Fisher

**RE:** Adams Solar Project

A review of the Energy Performance Estimation dated May 2, 2014 for the Adams Solar Project has been completed, it shows a maximum annual delivered energy of 23,069 MWhr and a minimum annual delivered energy of 11,501 MWhr. It is concluded that the methods used to determine the weather file and simulation parameters, and the assumptions used for the PV Array loss factors and System loss factors were all performed using approved industry standards.

Sincerely,

Tobin Booth, PE





## **Adams Solar Project**

Near Madras, OR  
44.6678, -121.1298

### **Energy Performance Estimation**

May 2, 2014

#### Overview:

HelioSage has prepared an energy performance model for this project using PV industry standard practices and tools. The PVsyst energy modeling program was used to create the baseline energy performance report and post-report processing of the hourly data was used to account for losses not modeled in the PVsyst tool. The weather file used as the basis for the energy model was selected after considering the available weather files sources in the region and the project site's unique geography. Probability assumptions around expected annual performance are primarily based on the energy model and the source weather file. Our selections and assumptions for all these areas are outlined below.

#### Plant Ratings and Summary (MW or MWhr)

AC Capacity (Inverter nameplate:	10.0
Net P50 Annual Energy:	20,060
Net P90 Annual Energy:	16,773
Maximum Annual Delivered Energy:	23,069
Minimum Annual Delivered Energy:	11,501

#### Weather Site Analysis:

One of the most significant drivers of PV plant energy modeling results is the selected weather file which forms the basis of the model. When modeling the expected energy of any geographic site, a meteorological weather file must be manually selected that is used by the energy modeling tool to compute the performance of the PV system on an hourly basis over the course of a "typical" year. This model forms the basis of a P50 energy estimation for the PV project. Ideal elements of a weather file include hourly horizontal global and diffuse irradiation, ambient temperature, and average wind velocity. With these values, the modeling tool can very accurately simulate expected energy performance of the PV cells since it is these environmental variables that determine actual power produced by the cells.



Many available weather files in the US are taken directly from measured weather sites such as at major airports. This data is typically based on over 30 years of measured values which is then comparatively selected and formulated into a “Typical Meteorological Year” or TMY file for use in modeling. Increasingly satellite data is being used to either create fully synthetic weather files or to augment ground measured data. These weather file sources are particularly advantageous for project sites located farther away from measured sites, in different local geographies, or when the measured sites available are in question.

For this project, we considered several weather sites located in the region including measured sites and one synthetic site near the project location (based on measured satellite data). The differences in both distance and elevation from the project site to the weather collection location are considered when deciding on a suitable weather file. In other words, the closest weather site to the project is not always the most appropriate one; differences in latitude and elevation are important factors to consider when making final selections.

The weather data file selected for this project is a synthetic data set derived from local ground measurements at the Redmond Roberts Municipal Airport and was obtained from the National Solar Resource Database created by the National Renewable Energy Lab. The TMY3 dataset is based on over 19 years of continuous data collection and analysis.

#### The PVsyst report

Attached in appendix A is a copy of the PVsyst report for this project. This report outlines all the major system inputs and output of the energy performance model. Net energy values delivered for this project will deviate from this report since the PVsyst model is for a subsection of the overall system and some post-PVsyst adjustments are made to account for factors not included in the PVsyst model.

Below is a summary of the average monthly energy generation (MWhrs) for the project:

	MWh		MWh
Jan	628	Jul	2,869
Feb	850	Aug	2,566
Mar	1,470	Sep	1,920
Apr	1,992	Oct	1,367
May	2,417	Nov	678
Jun	2,753	Dec	551
		Year	20,060





### Station Service and Parasitic Losses

The operation of a PV power plant requires very few planned operational losses. Most losses occur in the conversation of DC energy to AC energy, from the PV modules up to the inverter output. From the AC output of the inverter, system losses are generally small, though this is the only area where station loads, including nighttime loads, occur. Below is a summary table of the losses that have been planned for this plant.

Loss	Percentage Loss (of Total)
MV Transformers	-1.07%
HV Transformers (substation)	N/A
Inverter Nighttime Consumption	-0.06%
AC Conductor Voltage Drop	-0.60%
Tracker Motor Operation	-0.07%
Data Acquisition & Aux Loads	-0.10%

### Hourly and Average Daily Values:

Attached in Appendix B is an hourly file (8760 values) representing the P50 expected production of the plant. Additionally, a 12 x 24 profile of energy values is also attached in the Appendix B file. All values in these tables are in megawatts AC and include all expected plant losses up to the point of interconnection.

### Probability Values:

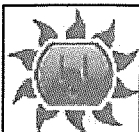
A maximum and minimum number for plant energy production is included in the summary above. These numbers were derived using the following assumptions:

Annual weather variability	8.50%
PV module modeling accuracy	6.50%
Measurement error	7.00%
System Degradation (avg -%/yr)	1.00%



## Appendix A

### The PVsyst report

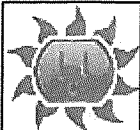


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**Grid-Connected System: Simulation parameters****Project :** OR\_Adams**Geographical Site** Redmond Roberts Field **Country** United States**Situation**  
Time defined as  
Latitude 44.2°N Longitude 121.2°W  
Legal Time Time zone UT-8 Altitude 933 m  
Albedo 0.20**Meteo data:** Redmond Roberts Field TMY - NREL: TMY3 hourly DB (1991-2005)**Simulation variant :** SAT0\_FS395\_SMA-833\_r119\_GCR40\_NBT\_5MWac

Simulation date 01/05/14 15h19

**Simulation parameters****Tracking plane, tilted Axis**  
Rotation Limitations  
Axis Tilt 0°  
Minimum Phi -45°  
Axis Azimuth 0°  
Maximum Phi 45°**Models used** Transposition Perez Diffuse Imported**Horizon** Free Horizon**Near Shadings** According to strings Electrical effect 100 %**PV Array Characteristics****PV module**  
CdTe Model **FS-395**  
Manufacturer First Solar  
Number of PV modules In series 14 modules In parallel 4488 strings  
Total number of PV modules Nb. modules 62832 Unit Nom. Power 95 Wp  
Array global power Nominal (STC) **5969 kWp** At operating cond. 5614 kWp (50°C)  
Array operating characteristics (50°C) U mpp 629 V I mpp 8928 A  
Total area Module area **45239 m²** Cell area 36963 m²**Inverter**  
Model **SMA\_SC800CP-US\_w110-833kW limit**  
Manufacturer SMA  
Characteristics Operating Voltage 568-850 V Unit Nom. Power 833 kW AC  
Inverter pack Nb. of inverters 6 units Total Power 4998 kW AC**PV Array loss factors**Array Soiling Losses Loss Fraction 5.0 %  
Thermal Loss factor U<sub>c</sub> (const) 29.0 W/m²K U<sub>v</sub> (wind) 0.0 W/m²K / m/s  
Wiring Ohmic Loss Global array res. 1.1 mOhm Loss Fraction 1.5 % at STC  
Module Quality Loss Loss Fraction 1.5 %  
Module Mismatch Losses Loss Fraction 1.6 % at MPP  
Incidence effect, ASHRAE parametrization IAM = 1 - bo (1/cos i - 1) bo Param. 0.05



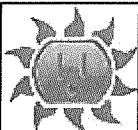
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## Grid-Connected System: Simulation parameters (continued)

### System loss factors

AC loss, transfo to injection	Grid Voltage	13 kV		
	Wires	8507 m 3x700 mm <sup>2</sup>	Loss Fraction	1.0 % at STC
External transformer	Iron loss (24H connexion)	5844 W	Loss Fraction	0.1 % at STC
	Resistive/Inductive losses	0.2 mOhm	Loss Fraction	0.9 % at STC

**User's needs :** Unlimited load (grid)



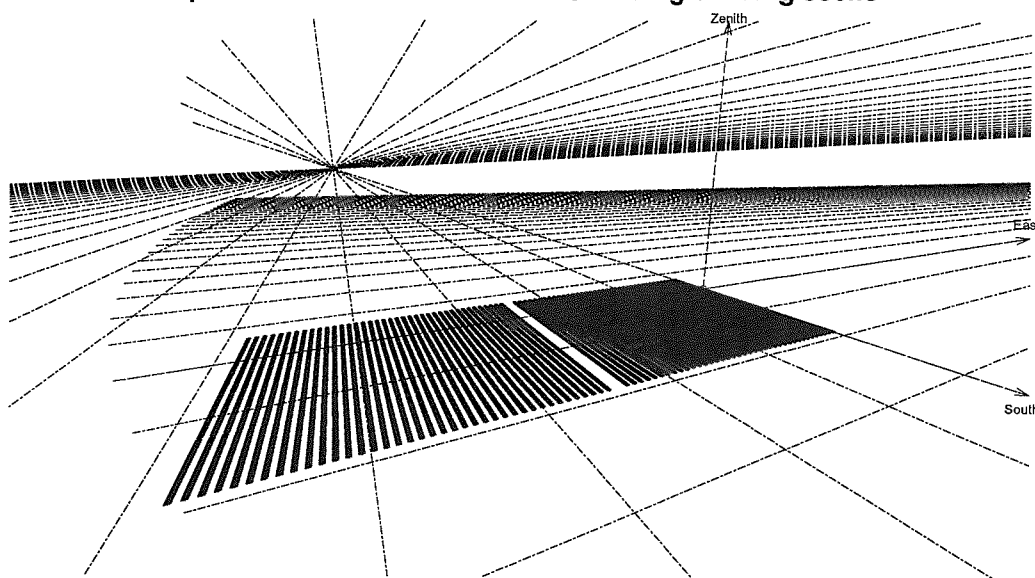
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## Grid-Connected System: Near shading definition

**Project :** OR\_Adams**Simulation variant :** SAT0\_FS395\_SMA-833\_r119\_GCR40\_NBT\_5MWac**Main system parameters**System type **Grid-Connected****Near Shadings**

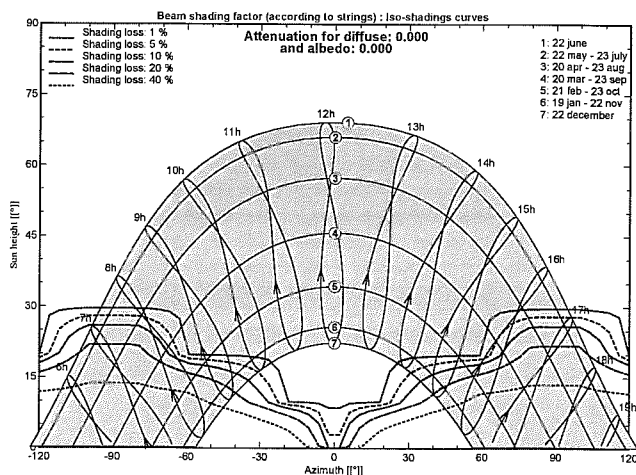
	According to strings	Electrical effect	100 %
PV Field Orientation	tracking, tilted axis, Axis Tilt 0°	Axis Azimuth	0°
PV modules	Model FS-395	Pnom	95 Wp
PV Array	Nb. of modules 62832	Pnom total	<b>5969 kWp</b>
Inverter	SMA_SC800CP-US_w110-833kW limit	Pnom	833 kW ac
Inverter pack	Nb. of units 6.0	Pnom total	<b>4998 kW ac</b>
User's needs	Unlimited load (grid)		

### Perspective of the PV-field and surrounding shading scene



### Iso-shadings diagram

OR\_Elbe





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## Grid-Connected System: Main results

Project : OR\_Adams

Simulation variant : SAT0\_FS395\_SMA-833\_r119\_GCR40\_NBT\_5MWac

## Main system parameters

System type Grid-Connected

## Near Shadings

According to strings

Electrical effect 100 %

PV Field Orientation tracking, tilted axis, Axis Tilt 0°

Axis Azimuth 0°

PV modules Model FS-395

Pnom 95 Wp

PV Array Nb. of modules 62832

Pnom total 5969 kWp

Inverter SMA\_SC800CP-US\_w110-833kW limit Pnom 833 kW ac

Inverter pack Nb. of units 6.0

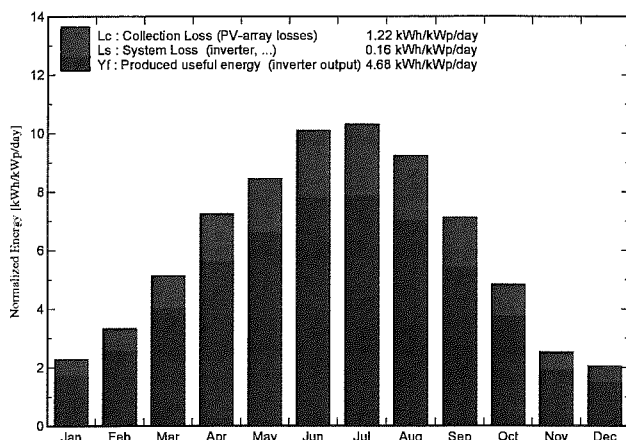
Pnom total 4998 kW ac

User's needs Unlimited load (grid)

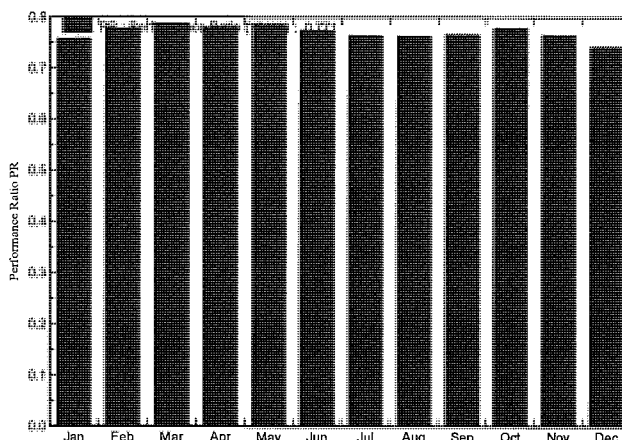
## Main simulation results

System Production Produced Energy 10198 MWh/year Specific prod. 1708 kWh/kWp/year  
Performance Ratio PR 77.1 %

Normalized productions (per installed kWp): Nominal power 5969 kWp



Performance Ratio PR

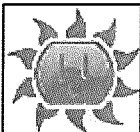


SAT0\_FS395\_SMA-833\_r119\_GCR40\_NBT\_5MWac

## Balances and main results

	GlobHor kWh/m²	T Amb °C	GlobInc kWh/m²	GlobEff kWh/m²	EArray MWh	E_Grid MWh	EffArrR %	EffSysR %
January	50.5	-0.20	70.8	57.6	333	320	10.39	10.00
February	66.0	2.63	93.3	78.2	448	433	10.62	10.25
March	116.3	3.78	159.3	136.1	773	748	10.73	10.38
April	160.0	8.36	217.6	189.5	1047	1012	10.63	10.28
May	196.2	10.27	281.9	231.4	1271	1228	10.72	10.36
June	223.1	16.08	302.9	268.5	1447	1398	10.56	10.20
July	230.5	19.65	319.9	283.4	1508	1458	10.42	10.07
August	202.7	17.45	286.4	251.6	1348	1304	10.40	10.06
September	148.6	14.45	213.6	186.2	1008	976	10.43	10.10
October	102.0	9.12	149.8	128.9	719	695	10.61	10.26
November	52.4	1.82	75.7	62.6	359	345	10.48	10.09
December	42.3	1.23	63.4	50.9	293	281	10.21	9.79
Year	1590.5	8.75	2214.6	1925.0	10554	10198	10.53	10.18

Legends: GlobHor Horizontal global irradiation  
T Amb Ambient Temperature  
GlobInc Global incident in coll. plane  
GlobEff Effective Global, corr. for IAM and shadings  
EArray Effective energy at the output of the array  
E\_Grid Energy injected into grid  
EffArrR Effic. Eout array / rough area  
EffSysR Effic. Eout system / rough area



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## Grid-Connected System: Loss diagram

**Project :** OR\_Adams**Simulation variant :** SAT0\_FS395\_SMA-833\_r119\_GCR40\_NBT\_5MWac**Main system parameters**System type **Grid-Connected****Near Shadings**

PV Field Orientation

According to strings  
tracking, tilted axis, Axis Tilt

0°

Electrical effect 100 %

Axis Azimuth 0°

PV modules

Model FS-395

Pnom 95 Wp

PV Array

Nb. of modules 62832

Pnom total **5969 kWp**

Inverter

SMA\_SC800CP-US\_w110-833kW limit Pnom 833 kW ac

Inverter pack

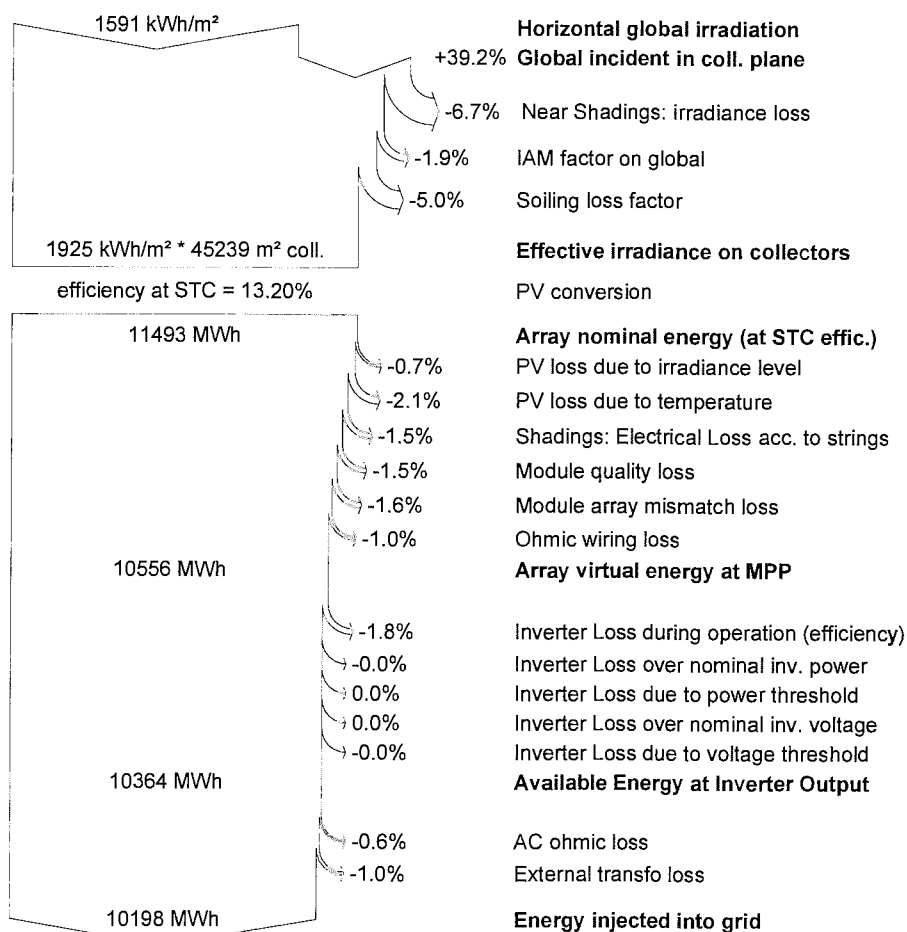
Nb. of units 6.0

Pnom total **4998 kW ac**

User's needs

Unlimited load (grid)

### Loss diagram over the whole year



## **EXHIBIT E**

### **START-UP TESTING**

Start-Up Testing shall consist of the Quality Assurance/Quality Control plans and procedures developed by the EPC Contractor.

Contractor shall submit to Owner a final copy of its quality assurance/quality control (QA/QC) plan for review not later than 45 days after contract execution for Owner review and comment. The QA/QC program shall include, but is not limited to, such procedures and systems as the following:

- Road construction
- Rebar and conduit placement
- Concrete placement and testing
- All wire insulation testing—Megger testing or very low frequency testing
- Mechanical system—trackers, mounting structures, tracker controls
- Factory testing of inverters and transformers by the manufacturer
- PV source open-circuit measurements—VOC at combiner boxes
- Fuse tests
- Termination pull testing
- All visual inspections
- Grounding continuity testing
- Earth-ground resistivity testing
- PV module inspection and manufacturer documentation of factory test per the manufacturer's existing program
- Metering and instrumentation calibration testing
- Step-up transformer field testing
- Inverter phase rotation and matching with utility
- Relay settings/transfer trip/etc. at the point of interconnection to Owner
- Other Contractor-prescribed procedures

All QA/QC testing procedures onsite shall be witnessed and documented by a qualified representative of Contractor. Owner shall observe and witness QA/QC as necessary and at its discretion. A qualified field engineer/QA representative of Contractor shall date and sign documentation indicating completion and acceptance of each onsite QA/QC test procedures.

Following installation, Contractor shall provide a proposed commissioning and startup plan for the Plant.

Contractor shall coordinate with Owner to develop an acceptable commissioning plan that includes a checkout and startup procedure. This work will assure: that systems are activated in a manner that is safe for personnel as well as for the equipment, that Contractor work is complete and according to the contract documents, and that the systems perform as required by the contract documents and are ready to be turned over to Owner. As the construction and installation of the systems nears completion, Contractor shall prepare punch lists and conduct system walk-downs, sub-system and system checkouts, startups, testing, and turnovers.



The final approved Commissioning Procedures shall, at minimum, include the following:

- Safety plan during startup and commissioning
- Review of all QA/QC testing on the DC and AC sides of inverters
- Detailed procedure for PV Plant startup, including switching sequencing
- Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected
- Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.
- Testing the system control and monitoring system to verify that it is performing correctly
- Testing the communication system for offsite monitoring
- Testing the Plant metering and protective relaying in conjunction with the utility during energization procedures
- Detailed procedure for interface and initialization with the grid
- Documentation of successful startup and commissioning procedure
- Written notification submitted by Contractor to Owner that the completion of Commissioning has occurred

Upon successful completion of energizing and startup, the Plant will be considered operable

**EXHIBIT F**  
**Seller Authorization to Release Generation Data to PacifiCorp**

[See attached letter]



**Customer Authorization to Release Generation Data  
Adams Solar Center: Q0555**

March 14, 2014

PacifiCorp Transmission Services  
Attention: Director, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, Oregon 97232

RE: Voluntary Consent Form

Dear PacifiCorp Transmission:

HelioSage, LLC hereby voluntarily authorizes PacifiCorp's transmission business unit to share HelioSage, LLC generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial & Trading group.

HelioSage, LLC acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

**Andrew  
Foukal**

Digitally signed by Andrew Foukal  
DN: cn=Andrew Foukal, o=HelioSage,  
ou, email=afoukal@heliosage.com,  
c=US  
Date: 2014.05.13 14:28:08 -05'00'

Name: Andrew Foukal

Title: Director of Operations

Date: 3/14/14

WISDOM IN SUN

117 4th Street SE, Suite B | Charlottesville, VA 22902 | 434.293.7589 | info@heliosage.com

**EXHIBIT G**  
**SCHEDULE 37 and PRICING SUMMARY TABLE**

Year	On-Peak	Off-Peak
	¢/kWh	¢/kWh
2016	6.04	3.69
2017	6.32	3.91
2018	6.66	4.21
2019	6.99	4.50
2020	6.94	4.41
2021	7.23	4.65
2022	7.67	5.04
2023	7.92	5.24
2024	7.89	5.16
2025	8.09	5.32
2026	8.39	5.57
2027	8.66	5.78
2028	8.88	5.95
2029	9.07	6.09
2030	9.20	6.16
2031, up to but not including November 1, 2031	9.35	6.25
from November 1, 2031 through the Termination Date:	Price specified by Section 5.2 of the Agreement	

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 1

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

For power purchased from Qualifying Facilities with a nameplate capacity of 10,000 kW or less or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 10,000 kW or less. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

**Definitions****Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

**On-Peak Hours or Peak Hours**

On-peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005, the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April and for the period between the last Sunday in October and the first Sunday in November.

**Off-Peak Hours**

All hours other than On-Peak.

**West Side Gas Market Index**

The monthly indexed gas price shall be the average of the price indexes published by Platts in "Inside FERC's Gas Market Report" monthly price report for Northwest Pipeline Corp. Rock Mountains, Northwest Pipeline Corp. Canadian Border, and Rockies/Northwest Stanfield, OR.

**Excess Output**

Excess output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-peak Price as described and calculated under pricing option 5 for all Excess Output.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 2

**Same Site**

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

**Person(s) or Affiliated Person(s)**

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit. A unit of Oregon local government may also be a "passive investor" if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

**Shared Interconnection and Infrastructure**

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

**Dispute Resolution**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract. Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution.

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 3

**Pricing Options****1. Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under either the Firm Market Indexed, the Banded Gas Market Indexed or the Gas Market Indexed Avoided Cost pricing option.

**2. Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2012 through 2015), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Prices are available for a term of up to 20 years.

**3. Banded Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2012 through 2015), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. The gas indexed portion of the avoided cost prices are banded to limit the amount that prices can vary with changes in gas prices. Prices are available for a term of up to 20 years.

**4. Firm Market Indexed Avoided Cost Prices**

Firm market index avoided cost prices are available to Qualifying Facilities that contract to deliver firm power. Monthly on-peak / off-peak prices paid are a blending of Intercontinental Exchange (ICE) Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

**5. Non-firm Market Index Avoided Cost Prices**

Non- Firm market index avoided cost prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 4

**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of three Pricing Options as specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the fixed prices as provided in this tariff. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

**Gas Market Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.696 to get actual gas price in cents/kWh. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Banded Gas Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.696 to get actual gas price in cents/kWh. This price is banded such that the actual gas price shall be no lower than the Gas Market Index Floor nor greater than the Gas Market Index Ceiling as listed in the price section of this tariff. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Firm Market Indexed and Non-firm Market Index Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the market prices calculated at the time of delivery. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

(continued)



**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices**
**Pricing Option 1 – Fixed Avoided cost Prices ¢/kWh**

Deliveries During Calendar Year	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)
2012	3.09	2.32
2013	3.72	2.62
2014	4.13	2.80
2015	4.39	2.99
2016	6.04	3.69
2017	6.32	3.91
2018	6.66	4.21
2019	6.99	4.50
2020	6.94	4.41
2021	7.23	4.65
2022	7.67	5.04
2023	7.92	5.24
2024	7.89	5.16
2025	8.09	5.32
2026	8.39	5.57
2027	8.66	5.78
2028	8.88	5.95
2029	9.07	6.09
2030	9.20	6.16

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 6

**Avoided Cost Prices (Continued)**
**Pricing Option 2 – Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries During Calendar Year	Fixed Prices		Gas Market Index		Forecast West Side Gas Market Index Price (2) \$/MMBtu	Estimated Prices (3)	
	On-Peak	Off-Peak	On-Peak	Off-Peak		On-Peak	Off-Peak
	Energy	Energy	Capacity	Energy		Energy	Energy
	Price	Price	Adder (1)	Adder		Price	Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
			Avoided Firm Capacity Costs / (0.876 * 88.6% * 57%)	Total Avoided Energy Costs - ((e) * 0.696)		(g) + (c)	((e) * 0.696) + (d)
2012	3.09	2.32	Market Based Prices 2012 through 2015				
2013	3.72	2.62					
2014	4.13	2.80					
2015	4.39	2.99					
2016			2.36	0.44	\$4.66	6.042	3.685
2017			2.40	0.47	\$4.95	6.316	3.914
2018			2.45	0.47	\$5.38	6.660	4.212
2019			2.49	0.47	\$5.79	6.988	4.496
2020			2.53	0.47	\$5.66	6.943	4.409
2021			2.58	0.48	\$5.98	7.225	4.645
2022			2.63	0.50	\$6.53	7.667	5.041
2023			2.67	0.52	\$6.78	7.916	5.242
2024			2.72	0.53	\$6.66	7.885	5.163
2025			2.77	0.54	\$6.87	8.093	5.322
2026			2.82	0.55	\$7.21	8.385	5.565
2027			2.87	0.57	\$7.49	8.655	5.781
2028			2.93	0.60	\$7.69	8.877	5.948
2029			2.98	0.62	\$7.85	9.070	6.086
2030			3.04	0.64	\$7.92	9.197	6.156
2031			3.10	0.64	\$8.06	9.348	6.246
2032			3.16	0.65	\$8.21	9.526	6.365
2033			3.22	0.66	\$8.37	9.705	6.484
2034			3.29	0.68	\$8.53	9.902	6.616

(1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2011 IRP.

(2) A heat rate of 0.696 is used to adjust gas prices from \$/MMBtu to ¢/kWh

(3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.

Actual prices will be calculated each month using actual index gas prices.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices (Continued)**
**Pricing Option 3 – Banded Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries  During  Calendar  Year	Fixed Prices		Banded Gas Market Index				Forecast West Side Gas Market Index Price (2)  \$/MMBtu	Estimated Prices (3)	
	On-Peak	Off-Peak	On-Peak	Off-Peak	Gas Market Index			On-Peak	Off-Peak
	Energy	Energy	Capacity	Energy	Floor	Ceiling		Energy	Energy
	Price	Price	Adder (1)	Adder	90%	110%		Price	Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
			Avoided Firm Capacity Costs / (0.876 * 88.6% * 57%)	Total Avoided Energy Costs - ((e) * 0.696)	(g) * 0.696 * 90%	(g) * 0.696 * 110%		(i) + (c)	MIN(MAX( ((g) * 0.696) , (e)) , (f)) + (d)
2012	3.09	2.32							
2013	3.72	2.62	Market Based Prices						
2014	4.13	2.80	2010 through 2013						
2015	4.39	2.99							
2016			2.36	0.44	2.92	3.57	\$4.66	6.04	3.69
2017			2.40	0.47	3.10	3.79	\$4.95	6.32	3.91
2018			2.45	0.47	3.37	4.12	\$5.38	6.66	4.21
2019			2.49	0.47	3.63	4.43	\$5.79	6.99	4.50
2020			2.53	0.47	3.55	4.33	\$5.66	6.94	4.41
2021			2.58	0.48	3.75	4.58	\$5.98	7.23	4.65
2022			2.63	0.50	4.09	5.00	\$6.53	7.67	5.04
2023			2.67	0.52	4.25	5.19	\$6.78	7.92	5.24
2024			2.72	0.53	4.17	5.10	\$6.66	7.89	5.16
2025			2.77	0.54	4.30	5.26	\$6.87	8.09	5.32
2026			2.82	0.55	4.52	5.52	\$7.21	8.39	5.57
2027			2.87	0.57	4.69	5.73	\$7.49	8.66	5.78
2028			2.93	0.60	4.82	5.89	\$7.69	8.88	5.95
2029			2.98	0.62	4.92	6.01	\$7.85	9.07	6.09
2030			3.04	0.64	4.96	6.06	\$7.92	9.20	6.16
2031			3.10	0.64	5.05	6.17	\$8.06	9.35	6.25
2032			3.16	0.65	5.14	6.29	\$8.21	9.53	6.37
2033			3.22	0.66	5.24	6.41	\$8.37	9.71	6.48
2034			3.29	0.68	5.34	6.53	\$8.53	9.90	6.62

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2011 IRP.
- (2) A heat rate of 0.696 is used to adjust gas prices from \$/MMBtu to ¢/kWh
- (3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.  
Actual prices will be calculated each month using actual index gas prices.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 8

**Example of Gas Pricing Options available to the Qualifying Facility**

An example of the two gas pricing options using different assumed gas prices is provided at the end of this tariff.

**Qualifying Facilities Contracting Procedure**

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

**1. Qualifying Facilities up to 10,000 kW**

**APPLICATION:** To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement****A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

(continued)

**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions (i.e., fixed, deadband, gas indexed);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Oregon Public Utilities Commission in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)

**B. Procedures (continued)**

- 5 After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

(continued)

**II. Process for Negotiating Interconnection Agreements (continued)****A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

**B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Example of Gas Pricing Options given Assumed Gas Prices ¢/kWh**

Banded Gas Market Index														
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices			
	On-Peak Capacity Adder	Off-Peak Energy Adder	Gas Market Index		Assumed Gas Price \$/MMBtu	Actual Energy Price	Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price		
			Floor 90%	Ceiling 110%			Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price				
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)		
					(e) x 0.696						(b) + (g)	(a) + (i)		
2016	2.36	0.44	2.92	3.57	\$2.00	1.39	2.92	Floor	3.36	5.72	3.69	6.04		
					\$4.00	2.78	2.92	Floor	3.36	5.72				
					\$5.00	3.48	3.48	Actual	3.92	6.28				
					\$7.00	4.87	3.57	Ceiling	4.01	6.37				
					\$10.00	6.96	3.57	Ceiling	4.01	6.37				

Gas Market Method														
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices			
	On-Peak Capacity Adder	Off-Peak Energy Adder	Fuel Index		Assumed Gas Price \$/MMBtu	Actual Energy Price	Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price		
			Floor 90%	Ceiling 110%			Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price				
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)		
					(e) x 0.696						(b) + (f)	(a) + (i)		
2016	2.36	0.44	Not Relevant		\$2.00	1.39	Not Relevant		1.83	4.19	3.69	6.04		
					\$4.00	2.78			3.22	5.58				
					\$5.00	3.48			3.92	6.28				
					\$7.00	4.87			5.31	7.67				
					\$10.00	6.96			7.40	9.76				



**ADDENDUM A**  
**Jury Trial Waiver**

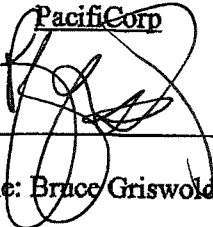
PacifiCorp and Adams Solar Center, LLC ("Adams") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum A to the PPA is entered into by and between PacifiCorp and Adams and is intended to be interpreted and applied to the PPA.

*Whereas*, the Parties for their respective business purposes have an interest in not presenting a dispute to a jury for trial should a dispute arise between the Parties;

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

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

This Addendum A to the PPA is executed and made effective this 7<sup>th</sup> day of August, 2014.

PacifiCorp  
By:   
Name: Bruce Griswold  
Title: Director, Short-Term Origination  
and QF Contracts

Adams Solar Center, LLC

By: Nelson Teague  
Name: Nelson Teague  
Title: Manager

BWS 7-29-2014

## ADDENDUM B

### Transmission Services

PacifiCorp and Adams Solar Center, LLC ("Adams") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum B to the PPA is entered into by and between PacifiCorp and Adams and is intended to be interpreted and applied to the PPA.

*Whereas*, the Parties for their respective business purposes have an interest in exporting excess generation from the Adams Facility when Adams generation exceeds load in the Madras area ("Excess Generation");

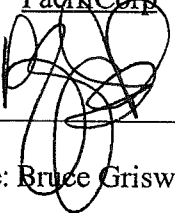
NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

PacifiCorp will contract with Portland General Electric ("PGE") per PGE's Open Access Transmission Tariff ("OATT") to purchase ten (10) megawatts of firm point-to-point ("PTP") transmission in five (5) year increments for the Term to export Excess Generation out of the Madras area from the Adams Facility to Round Butte substation.

PacifiCorp will contract with Bonneville Power Administration ("BPA") per BPA's OATT to purchase ten (10) megawatts of firm PTP transmission in five (5) year increments for the Term to deliver Excess Generation to PacifiCorp from Round Butte substation to the Redmond 115 kV substation.

Adams will pay all costs incurred by PacifiCorp to secure transmission service from both PGE and BPA for exporting Excess Generation. Over the Term as the PGE and BPA OATT prices and/or terms change PacifiCorp will update its transmission wheeling expense and billing to Adams. The transmission wheeling expense will be deducted monthly from the Adams PPA payments (an example of the monthly billing and settlement is contained in Exhibit B-1).

This Addendum B to the PPA is made effective this 7<sup>th</sup> day of August, 2014.

PacifiCorp  
By:   
Name: Bruce Griswold  
Title: Director, Short-Term Origination  
and QF Contracts  
Date: 8/7/2014  
BWS 8-7-2014

Adams Solar Center, LLC  
By: Nelson Teague  
Name: Nelson Teague  
Title: Manager  
Date: 08/12/14

## ADDENDUM B--Ctd

### Exhibit B-1 Monthly Billing and Settlement for PTP Transmission Reimbursement

	A	B	C	D = C - A - B
	PTP Transmission			
Month	PGE(1)	BPA (2)	Generation Payment (3)	Final Settlement for Billing (4)
January	\$5,358.00	\$17,360.00	\$37,422.52	
February	\$5,358.00	\$17,360.00	\$50,651.50	\$14,704.52
March	\$5,358.00	\$17,360.00	\$87,597.30	\$27,933.50
April	\$5,358.00	\$17,360.00	\$118,703.28	\$64,879.30
May	\$5,358.00	\$17,360.00	\$144,029.03	\$95,985.28
June	\$5,358.00	\$17,360.00	\$164,051.27	\$121,311.03
July				\$141,333.27

- (1) PGE bills PacifiCorp on the 1st of each month for the prior month's expense (i.e., billed January 1 for PTP for December). Payment is due on the 20<sup>th</sup>. PGE charges are subject to change and the charges below are for example only per PGE's current OATT.

<u>PGE Charges</u>	<u>\$/KW-Month</u>
Long Term PTP	523.33
Sch, Sys Control, Disp	12.49
Total	535.82

Project Size (KW)	10,000
Monthly Cost	\$5,358

- (2) BPA bills PacifiCorp on the 1st of each month for the prior month's expense (i.e., billed January 1 for PTP for December). Payment is due on the 20<sup>th</sup>. BPA charges are subject to change and the charges below are for example only per BPA's current OATT.

<u>BPA Charges</u>	<u>\$/KW-Month</u>
Long Term PTP	\$1.479
Sch, Sys Control, Disp	\$0.257
Total	\$1.736

Project Size (KW)	10,000
Monthly Cost	\$17,360

- (3) PacifiCorp pays for generation on or before the 30th day after the billing period. PacifiCorp will make a transmission payment to BPA and PGE on the 20th of each month.
- (4) PacifiCorp will subtract the PGE and BPA payment from the payment to Adams for Net Output for the same billing period.

The table above demonstrates the netting of the PGE and BPA PTP wheeling expense against the PPA payment to Seller for generation. For example, February's PPA payment of \$32,064.52 is determined by subtracting the January PTP Transmission of \$5,358.00 and \$17,360.00 from the January Generation Payment of \$37,422.52.

**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**BEAR CREEK SOLAR CENTER, LLC**  
**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and**  
**not an Intermittent Resource]**  
**AND**  
**PACIFICORP**

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 7<sup>th</sup> day of August, 2014, is between Bear Creek Solar Center, LLC, "**Seller**" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp**." (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

### RECITALS

A. Seller intends to construct, own, operate and maintain a solar facility for the generation of electric power, including interconnection facilities, located near Bend, Deschutes County, with a Facility Capacity Rating of 10,000 -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** ("**Facility**"); and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on October 31, 2016 ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on April 30, 2017 ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 20,055,000 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall (choose one) ☒ sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp ☐ sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-built Supplement"** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

1.3 **"Billing Period"** means, unless otherwise agreed to, the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 **"Commercial Operation Date"** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.4.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.4.2 The Facility has completed Start-Up Testing;

1.4.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;

1.4.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).

- 1.4.5 Seller has complied with the security requirements of Section 10.
- 1.4.6 PacifiCorp has received an executed copy of **Exhibit F**—Seller’s Interconnection Request.
- 1.5 **“Commission”** means the Oregon Public Utilities Commission.
- 1.6 **“Contract Price”** means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1 and 5.2.
- 1.7 **“Contract Year”** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.
- 1.8 **“Credit Requirements”** means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.
- 1.9 **“Default Security”**, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at **Mid-Columbia** (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.
- 1.10 **“Effective Date”** shall have the meaning set forth in Section 2.1.
- 1.11 **“Energy Delivery Schedule”** shall have the meaning set forth in Section 4.5.
- 1.12 **“Environmental Attributes”** shall have the meaning set forth in Section 5.5.
- 1.13 **“Excess Output”** shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.
- 1.14 **“Facility”** shall have the meaning set forth in Recital A.
- 1.15 **“Facility Capacity Rating”** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.
- 1.16 **“FERC”** means the Federal Energy Regulatory Commission, or its successor.

1.17 **"Generation Interconnection Agreement"** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp's transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp's interconnection facilities required to accommodate deliveries of Seller's Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.18 **"Letter of Credit"** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of "A" or greater from S&P or "A2" or greater from Moody's, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.19 **"Licensed Professional Engineer"** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.20 **"Material Adverse Change"** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.21 **"Maximum Annual Delivery"** shall have the meaning set forth in Section 4.3.

1.22 **"Minimum Annual Delivery"** shall have the meaning set forth in Section 4.3.

1.23 **"Nameplate Capacity Rating"** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.24 **"Net Energy"** means the energy component, in kWh, of Net Output.

1.25 **"Net Output"** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller's load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.26 **"Net Replacement Power Costs"** shall have the meaning set forth in Section 11.4.1.

1.27 **"Off-Peak Hours"** means all hours of the week that are not On-Peak Hours.



1.28 **"On-Peak Hours"** means the hours between 6 a.m. Pacific Prevailing Time ("PPT") and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.29 **"Point of Delivery"** means the high side of the Seller's step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.30 **"Prime Rate"** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.31 **"Prudent Electrical Practices"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.32 **"QF"** means **"Qualifying Facility,"** as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.33 **"Replacement Price"** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.34 **"Required Facility Documents"** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.35 **"Schedule 37"** means the Schedule 37 of Pacific Power & Light Company's Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit G**.

1.36 **"Scheduled Commercial Operation Date"** shall have the meaning set forth in Recital C.

1.37 **"Scheduled Initial Delivery Date"** shall have the meaning set forth in Recital B.

1.38 **"Start-Up Testing"** means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.39 **"Termination Date"** shall have the meaning set forth in Section 2.4.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (**"Effective Date"**).

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By May 31, 2015, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on October 30, 2036 [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] (**"Termination Date"**).

## **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

- 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
  - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a limited liability company duly organized and validly existing under the laws of Oregon.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
  - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general

principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.
- 3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:
- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
  - (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.

- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

\_\_\_\_\_ Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or

\_\_\_NT\_\_\_ Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase all Net Output from the Facility delivered to the Point of Delivery.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 20,055,000 kWh per Contract Year ("**Average Annual Generation**"). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 11,640,000 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-

rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 23,063,000 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

## **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of four pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Firm Market Indexed Avoided Cost Prices (“Firm Electric Market”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

<u>  X  </u>	Fixed Price
<u>      </u>	Firm Electric Market
<u>      </u>	Gas Market
<u>      </u>	Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit G**.

5.2 (Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

<u>  X  </u>	Firm Electric Market
<u>      </u>	Gas Market
<u>      </u>	Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller a blended market index price for day-ahead non-firm energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde market

indices as reported by Dow Jones, for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller's Facility.

## **SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six month's prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or

by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

## **SECTION 8: METERING**

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection



agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

## **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## **SECTION 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

NT      Cash Escrow

\_\_\_\_\_ Letter of Credit

\_\_\_\_\_ Senior Lien

\_\_\_\_\_ Step-in Rights

\_\_\_\_\_ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

**[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]**

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4.

Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

(a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

(b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such

notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

- 11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;
- 11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.
- 11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 Notice; Opportunity to Cure.

- 11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.
- 11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

11.3 Termination.

- 11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.
- 11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.
- 11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by

subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

- 11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

#### 11.4 Damages.

- 11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

#### 11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

## **SECTION 12: INDEMNIFICATION AND LIABILITY**

### **12.1 Indemnities.**

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.



## **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

- 14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and
- 14.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and
- 14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

## **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

## **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

## **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

## **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

## **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

## **SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

## **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender

as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

## **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

## **SECTION 23: NOTICES**


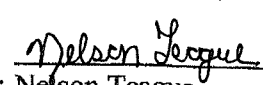
23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	Bear Creek Solar Center, LLC Attn: Andrew Foukal 117 4 <sup>th</sup> Street SE, Suite B Charlottesville, VA 22902 Phone: 434-293-7589
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as address above)
<b>Scheduling:</b>	(same as street address above)  Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	(same as address above)
<b>Payments:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as address above)
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	(same as address above)

Notices	PacifiCorp	Seller
<b>Credit and Collections:</b>	(same as street address above) Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	(same as address above)
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	(same as address above)

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp By:  Name: <u>Bruce Griswold</u> Title: <u>Director, Short-Term Origination and</u> <u>OF Contracts</u> Date: <u>8/7/2014</u>	Bear Creek Solar Center, LLC By:  Name: <u>Nelson Teague</u> Title: <u>Manager</u> Date: <u>08/12/14</u>
---	---

BWS 7-21-2014

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**

Seller's Facility consists of a 10 MW ac solar photovoltaic project including PV panels, inverters, and single axis tracker system. More specifically, the inverter at the Facility is described as:

**Number of Inverters: 12**

**Model: SMA 850CP XT, or similar**

**Number of Phases: 3**

**Rated Output (kW): 850**

**Rated Output (kVA): 850**

**Rated Voltage (line to line):**

**Maximum kW Output: 386**

**Maximum kVA Output: 850 kVA**

**Minimum kW Output: 0**

---

**Facility Capacity Rating: 10,000 kW.**

---

Identify the maximum output of the inverter (s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

---

Transformer: -1.09, Tracker Motor -0.07%, Data Acquisition and Aux Loads -0.10%

---

Values above are percentage loss of Total output and losses are already accounted for in the expected output in Exhibit D-1.

**Location of the Facility:** The Facility is to be constructed in the vicinity of Bend in Deschutes County, Oregon. The location is more particularly described as follows:

GPS: 44.053, -121.236

Parcel: 1712360000500, 1712360001000

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): Power Factor requirements will meet Pacific Corp standard interconnection procedures.

A more detailed and updated Exhibit A will be provided per section 6.1.

## **EXHIBIT B**

### **SELLER'S INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

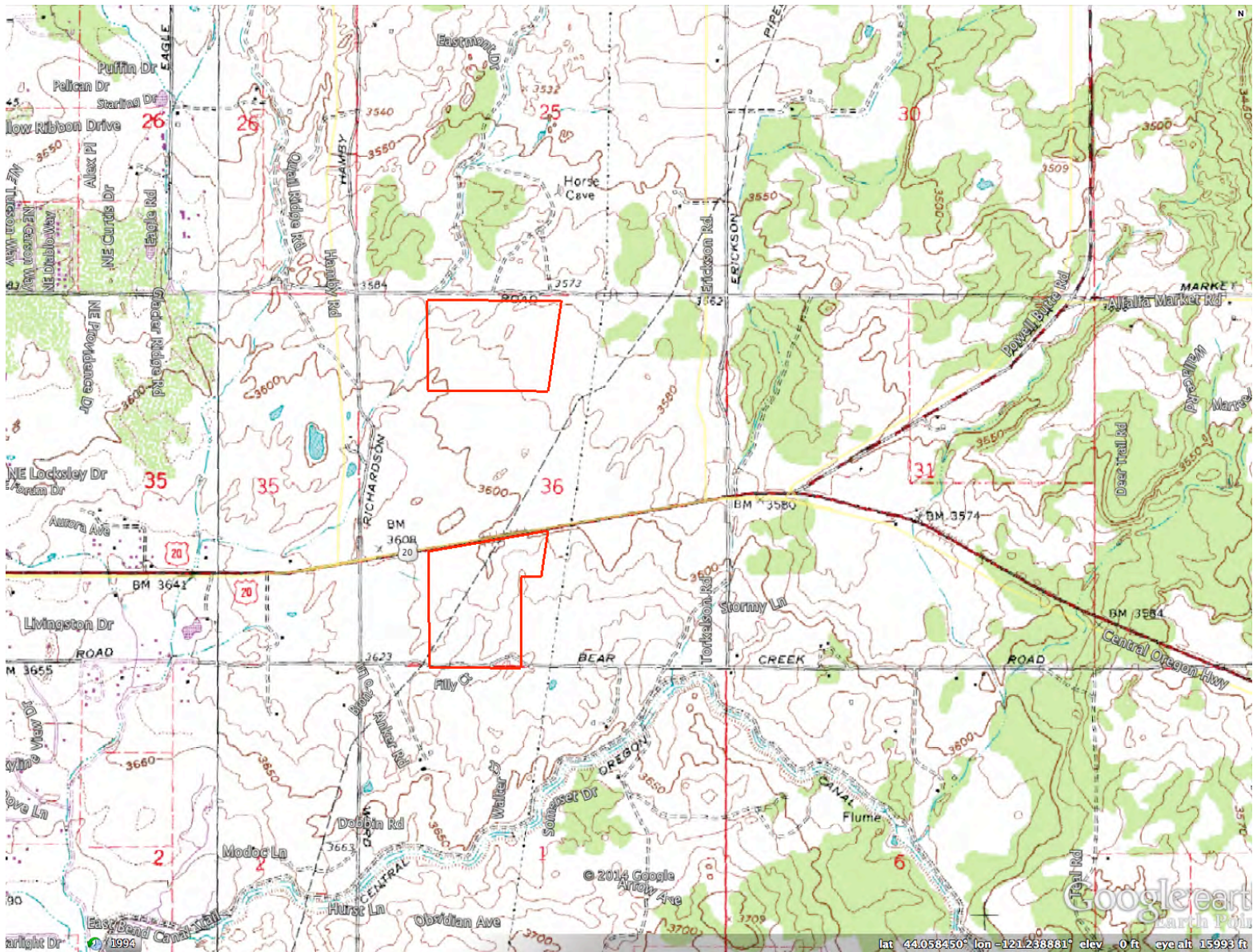
Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.

1. The interconnection voltage will be at 12.47kV. The Point of Metering will be at the Pilot Butte substation, adjacent to Hwy 20 (please refer to Exhibit A for the Location of the Facility). The Point of Delivery will be determined through a Transmission Service Request submitted by PacifiCorp upon execution of the Power Purchase Agreement.
2. Please refer to attached preliminary electrical one-line diagram. Final electrical one-line with final equipment will be updated with the as-built supplement.



## Bear Creek Solar Center



Location on USGS Map (site outlined in Red)

PV SOURCE CIRCUIT  
14 MODULES IN SERIES  
MODULE: FIRST SOLAR FS-395

FUSED STRING WIRING  
HARNESS  
4 STRING HARNESS  
CONFIGURATION

HARNESS COMBINER BOX WITH DC DISCONNECT  
SEE SYSTEM SUMMARY FOR SOURCE CIRCUIT  
INPUT QUANTITIES  
300A, 1000V, NEMA 3R

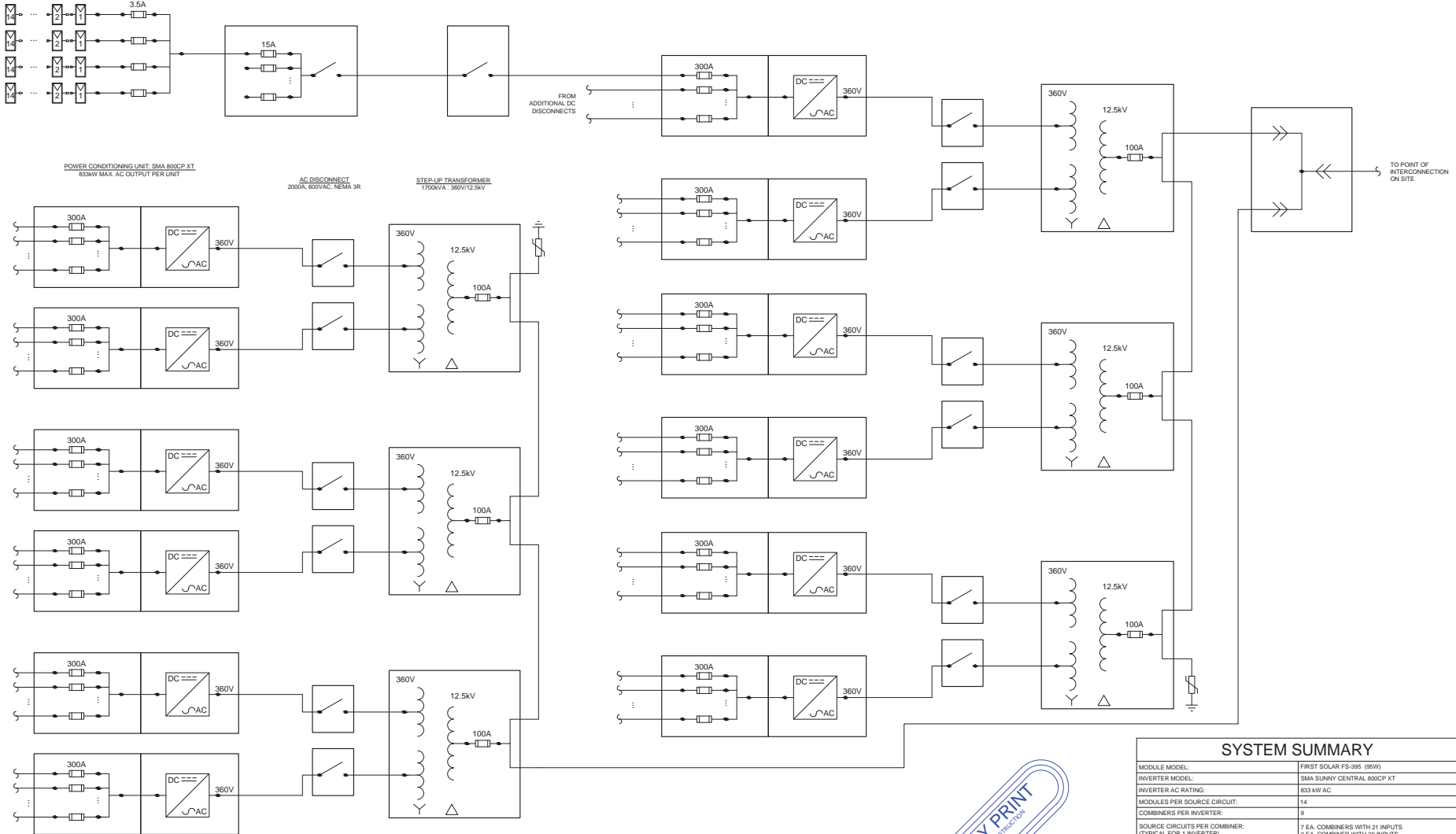
DC DISCONNECT  
300A, 1000V, NEMA 3R

POWER CONDITIONING UNIT: SMA 800CP XT  
833kW MAX. AC OUTPUT PER UNIT

AC DISCONNECT  
2000A, 600VAC, NEMA 3R

STEP-UP TRANSFORMER  
1700kVA, 360V/12.5kV

SECTIONALIZING CABINET  
600A MIN., 12.5kV, NEMA 3R



PRELIMINARY PRINT  
FOR INFORMATIONAL PURPOSES ONLY  
NOT FOR CONSTRUCTION

### SYSTEM SUMMARY

MODULE MODEL:	FIRST SOLAR FS-395 (80W)
INVERTER MODEL:	SMA SUNNY CENTRAL 800CP XT
INVERTER AC RATING:	833 kW AC
MODULES PER SOURCE CIRCUIT:	14
COMBINERS PER INVERTER:	9
SOURCE CIRCUITS PER COMBINER: (TYPICAL FOR 1 INVERTER)	7 EA. COMBINERS WITH 21 INPUTS 2 EA. COMBINER WITH 20 INPUTS
SOURCE CIRCUITS PER INVERTER:	748
DC:AC RATIO:	1.19
TARGET FACILITY RATING:	10.0 MW AC
RACK TYPE:	HORIZONTAL TRACKER
GROUND COVERAGE RATIO (GCR):	0.33 (APPROXIMATE)
AC INTERCONNECTION VOLTAGE:	12.5kV
DC SYSTEM VOLTAGE:	1000V
DESIGN TEMPERATURE: 2% AVG. HIGH	.....
DESIGN TEMPERATURE: EXTREME MINIMUM:	.....
ASHRAE DESIGN TEMPERATURE LOCATION:	REDMOND ROBERTS FIELD



CLIENT:



PRELIMINARY  
NOT FOR CONSTRUCTION

REVISION	DATE	BY	DESCRIPTION
1	08/14/2018	JL	ISSUED FOR PERMIT
2	08/14/2018	JL	ISSUED FOR CONSTRUCTION

PROJECT: HELIOSAGE BEAR CREEK SOLAR CENTER  
DRAWING TITLE: SINGLE LINE DIAGRAM

DRAWING NO. W-808



**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

QF Certification: QF14-340-000

Interconnection Agreement: To be provided May 31, 2015

Fuel Supply Agreement, NA

Land Lease: Lease Option Agreement with Julius Holmquist Revocable Trust dated June 4, 2014.

Permits: A list of applicable local, county, state, and federal permits will be provided by Seller prior to Scheduled Initial Delivery Date.

Retail Electric Service Agreement

**REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN OR STEP-IN RIGHTS:**

Deed or Lease to Facility Premises

Preliminary Title Report of Premises

Proof of ownership of Facility

Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.

**EXHIBIT D-1**  
**SELLER'S MOTIVE FORCE PLAN**

**A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	628,000
February	850,000
March	1,470,000
April	1,991,000
May	2,417,000
June	2,752,000
July	2,868,000
August	2,565,000
September	1,920,000
October	1,367,000
November	678,000
December	550,000

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account maintenance and Seller's load (if any). The minimum delivery is 11,640,000 kWh based on PVSYST modeling and weather data measurements from the Redmond Roberts Field over 19 months of continuous data collection and analysis.

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate. The maximum delivery is 23,063,000 kWh based on PVSYST modeling and weather data measurements from the Redmond Roberts Field over 19 months of continuous data collection and analysis.

**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION**  
**OF**  
**MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*

*Motive Force Plan and Engineer's Certification of Motive Force Plan attached*



HelioSage Energy  
117 4<sup>th</sup> Street SE  
Charlottesville, VA 22902

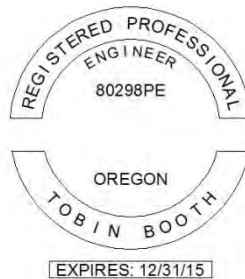
Attention: Jason Fisher

**RE:** Bear Creek Solar Project

A review of the Energy Performance Estimation dated May 15, 2014 for the Bear Creek Solar Project has been completed, it shows a maximum annual delivered energy of 23,063 MWhr and a minimum annual delivered energy of 11,640 MWhr. It is concluded that the methods used to determine the weather file and simulation parameters, and the assumptions used for the PV Array loss factors and System loss factors were all performed using approved industry standards.

Sincerely,

Tobin Booth, PE





## **Bear Creek Solar Project**

**Near Bend, OR  
44.0637, -121.2349**

### **Energy Performance Estimation**

**May 15, 2014**

#### Overview:

HelioSage has prepared an energy performance model for this project using PV industry standard practices and tools. The PVsyst energy modeling program was used to create the baseline energy performance report and post-report processing of the hourly data was used to account for losses not modeled in the PVsyst tool. The weather file used as the basis for the energy model was selected after considering the available weather files sources in the region and the project site's unique geography. Probability assumptions around expected annual performance are primarily based on the energy model and the source weather file. Our selections and assumptions for all these areas are outlined below.

#### Plant Ratings and Summary (MW or MWhr)

AC Capacity (Inverter nameplate:	10.0
Net P50 Annual Energy:	20,055
Net P90 Annual Energy:	16,769
Maximum Annual Delivered Energy:	23,063
Minimum Annual Delivered Energy:	11,640

#### Weather Site Analysis:

One of the most significant drivers of PV plant energy modeling results is the selected weather file which forms the basis of the model. When modeling the expected energy of any geographic site, a meteorological weather file must be manually selected that is used by the energy modeling tool to compute the performance of the PV system on an hourly basis over the course of a "typical" year. This model forms the basis of a P50 energy estimation for the PV project. Ideal elements of a weather file include hourly horizontal global and diffuse irradiation, ambient temperature, and average wind velocity. With these values, the modeling tool can very accurately simulate expected energy performance of the PV cells since it is these environmental variables that determine actual power produced by the cells.



Many available weather files in the US are taken directly from measured weather sites such as at major airports. This data is typically based on over 30 years of measured values which is then comparatively selected and formulated into a “Typical Meteorological Year” or TMY file for use in modeling. Increasingly satellite data is being used to either create fully synthetic weather files or to augment ground measured data. These weather file sources are particularly advantageous for project sites located farther away from measured sites, in different local geographies, or when the measured sites available are in question.

For this project, we considered several weather sites located in the region including measured sites and one synthetic site near the project location (based on measured satellite data). The differences in both distance and elevation from the project site to the weather collection location are considered when deciding on a suitable weather file. In other words, the closest weather site to the project is not always the most appropriate one; differences in latitude and elevation are important factors to consider when making final selections.

The weather data file selected for this project is a synthetic data set derived from local ground measurements at the Redmond Roberts Municipal Airport and was obtained from the National Solar Resource Database created by the National Renewable Energy Lab. The TMY3 dataset is based on over 19 years of continuous data collection and analysis.

#### The PVsyst report

Attached in appendix A is a copy of the PVsyst report for this project. This report outlines all the major system inputs and output of the energy performance model. Net energy values delivered for this project will deviate from this report since some post-PVsyst adjustments are made to account for factors not included in the PVsyst model.

Below is a summary of the average monthly energy generation (MWhrs) for the project:

	MWh		MWh
Jan	628	Jul	2,868
Feb	850	Aug	2,565
Mar	1,470	Sep	1,920
Apr	1,991	Oct	1,367
May	2,417	Nov	678
Jun	2,752	Dec	550
			20,055



### Station Service and Parasitic Losses

The operation of a PV power plant requires very few planned operational losses. Most losses occur in the conversation of DC energy to AC energy, from the PV modules up to the inverter output. From the AC output of the inverter, system losses are generally small, though this is the only area where station loads, including nighttime loads, occur. Below is a summary table of the losses that have been planned for this plant.

Loss	Percentage Loss (of Total)
MV Transformers	-1.09%
HV Transformers (substation)	N/A
Inverter Nighttime Consumption	-0.06%
AC Conductor Voltage Drop	-0.60%
Tracker Motor Operation	-0.07%
Data Acquisition & Aux Loads	-0.10%

### Hourly and Average Daily Values:

Attached in Appendix B is an hourly file (8760 values) representing the P50 expected production of the plant. Additionally, a 12 x 24 profile of energy values is also attached in the Appendix B file. All values in these tables are in megawatts AC and include all expected plant losses up to the point of interconnection.

### Probability Values:

A maximum and minimum number for plant energy production is included in the summary above. These numbers were derived using the following assumptions:

Annual weather variability	8.50%
PV module modeling accuracy	6.50%
Measurement error	7.00%
System Degradation (avg -%/yr)	1.00%



## Appendix A

### The PVsyst report





## Appendix B

Excel file of Hourly production values and 12 x 24 matrix of average daily production.



Project: Bear Creek Solar Project  
Date: 5/15/2014  
Modeled By: JF  
AC Capacity (kW): 10,000  
DC Capacity (kW): 11,940  
PV System Type: Horizontal Tracking System  
Net Plant Energy (kWh): 20,055

Note: Time stamp is the beginning of the time interval. Year stamp should be ignored.  
Note: Energy meter values include onsite consumption for inverter, transformer, data acquisition, and tracker motor operation. Any other station loads to be metered via separate retail meter.

Table of Average Daily System AC Energy (MWh)

Hour	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Year Avg
0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
4	0.0	0.0	0.0	0.0	0.0	0.3	0.1	0.0	0.0	0.0	0.0	0.0	0.0
5	0.0	0.0	0.0	0.4	1.4	2.1	1.7	0.8	0.0	0.0	0.0	0.0	0.5
6	0.0	0.0	0.6	2.6	3.7	4.5	4.4	3.0	1.8	0.2	0.0	0.0	1.7
7	0.0	0.7	2.4	4.7	6.5	6.6	7.3	5.9	4.4	2.4	0.4	0.0	3.4
8	1.1	2.4	4.5	6.5	7.1	8.2	8.3	7.8	6.4	5.0	2.2	1.2	5.1
9	2.5	3.2	5.4	6.9	7.9	8.2	8.4	7.8	6.8	5.2	3.3	2.4	5.7
10	2.9	3.9	5.3	7.2	7.2	8.4	8.6	7.8	6.8	5.0	3.1	2.4	5.7
11	2.9	3.7	5.4	6.8	7.5	8.1	8.3	7.9	6.7	4.8	2.8	2.4	5.6
12	2.8	3.4	5.4	6.4	7.3	8.4	8.3	8.0	6.2	5.0	2.9	2.4	5.5
13	3.1	3.6	5.0	6.3	7.0	8.1	8.3	7.7	6.5	5.2	3.0	2.6	5.5
14	2.9	3.8	5.3	6.3	6.8	7.8	7.6	7.6	6.5	5.3	3.1	2.7	5.5
15	1.8	4.0	4.5	5.4	6.0	7.1	7.3	7.4	6.2	4.7	2.0	1.9	4.9
16	0.5	1.7	2.9	4.2	5.4	6.5	6.6	6.1	4.5	1.5	0.1	0.0	3.3
17	0.0	0.0	1.0	2.3	3.2	4.6	4.7	3.8	1.2	0.0	0.0	0.0	1.7
18	0.0	0.0	0.0	0.5	1.2	2.4	2.3	1.2	0.0	0.0	0.0	0.0	0.6
19	0.0	0.0	0.0	0.0	0.0	0.5	0.5	0.0	0.0	0.0	0.0	0.0	0.1
20	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
21	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
22	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
23	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Daily Total	20.3	30.3	47.4	66.4	78.0	91.7	92.5	82.7	64.0	44.1	22.6	17.7	
Month Total	627.8	849.6	1,470.1	1,991.4	2,416.6	2,752.0	2,868.4	2,565.0	1,919.6	1,366.8	677.6	550.2	

## EXHIBIT E

### START-UP TESTING

Start-Up Testing shall consist of the Quality Assurance/Quality Control plans and procedures developed by the EPC Contractor.

Contractor shall submit to Owner a final copy of its quality assurance/quality control (QA/QC) plan for review not later than 45 days after contract execution for Owner review and comment.

The QA/QC program shall include, but is not limited to, such procedures and systems as the following:

- Road construction
- Rebar and conduit placement
- Concrete placement and testing
- All wire insulation testing—Megger testing or very low frequency testing
- Mechanical system—trackers, mounting structures, tracker controls
- Factory testing of inverters and transformers by the manufacturer
- PV source open-circuit measurements—VOC at combiner boxes
- Fuse tests
- Termination pull testing
- All visual inspections
- Grounding continuity testing
- Earth-ground resistivity testing
- PV module inspection and manufacturer documentation of factory test per the manufacturer's existing program
- Metering and instrumentation calibration testing
- Step-up transformer field testing
- Inverter phase rotation and matching with utility
- Relay settings/transfer trip/etc. at the point of interconnection to Owner
- Other Contractor-prescribed procedures

All QA/QC testing procedures onsite shall be witnessed and documented by a qualified representative of Contractor. Owner shall observe and witness QA/QC as necessary and at its discretion. A qualified field engineer/QA representative of Contractor shall date and sign documentation indicating completion and acceptance of each onsite QA/QC test procedures.

Following installation, Contractor shall provide a proposed commissioning and startup plan for the Plant.

Contractor shall coordinate with Owner to develop an acceptable commissioning plan that includes a checkout and startup procedure. This work will assure: that systems are activated in a manner that is safe for personnel as well as for the equipment, that Contractor work is complete and according to the contract documents, and that the systems perform as required by the contract documents and are ready to be turned over to Owner. As the construction and installation of the systems nears completion, Contractor shall prepare punch lists and conduct system walk-downs, sub-system and system checkouts, startups, testing, and turnovers.

The final approved Commissioning Procedures shall, at minimum, include the following:

- Safety plan during startup and commissioning
- Review of all QA/QC testing on the DC and AC sides of inverters
- Detailed procedure for PV Plant startup, including switching sequencing
- Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected
- Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.
- Testing the system control and monitoring system to verify that it is performing correctly
- Testing the communication system for offsite monitoring

- Testing the Plant metering and protective relaying in conjunction with the utility during energization procedures
- Detailed procedure for interface and initialization with the grid
- Documentation of successful startup and commissioning procedure
- Written notification submitted by Contractor to Owner that the completion of Commissioning has occurred

Upon successful completion of energizing and startup, the Plant will be considered operable.

**EXHIBIT F**  
**Seller Authorization to Release Generation Data to PacifiCorp**

[See attached letter]



# HELIO SAGE

## Customer Authorization to Release Generation Data Bear Creek Solar Center

June 27<sup>th</sup>, 2014

PacifiCorp Transmission Services  
Attention: Director, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, Oregon 97232

RE: Voluntary Consent Form

Dear PacifiCorp Transmission:

HelioSage, LLC hereby voluntarily authorizes PacifiCorp's transmission business unit to share HelioSage, LLC generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial & Trading group.

HelioSage, LLC acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

**Andrew  
Foukal**

Digitally signed by Andrew Foukal  
DN: cn=Andrew Foukal, o=HelioSage,  
ou, email=afoukal@heliosage.com,  
c=US  
Date: 2014.06.27 15:45:21 -05'00'

Name: Andrew Foukal

Title: Director of Operations

Date: 6/14/14

WISDOM IN SUN

**EXHIBIT G**  
**SCHEDULE 37 and PRICING SUMMARY TABLE**

Year	On-Peak	Off-Peak
	¢/kWh	¢/kWh
2016	6.04	3.69
2017	6.32	3.91
2018	6.66	4.21
2019	6.99	4.50
2020	6.94	4.41
2021	7.23	4.65
2022	7.67	5.04
2023	7.92	5.24
2024	7.89	5.16
2025	8.09	5.32
2026	8.39	5.57
2027	8.66	5.78
2028	8.88	5.95
2029	9.07	6.09
2030	9.20	6.16
2031, up to but not including November 1, 2031	9.35	6.25
from November 1, 2031 through the Termination Date:	Price specified by Section 5.2 of the Agreement	

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 2

**Same Site**

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

**Person(s) or Affiliated Person(s)**

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit. A unit of Oregon local government may also be a "passive investor" if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

**Shared Interconnection and Infrastructure**

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

**Dispute Resolution**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract. Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution.

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

(continued)



**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 3

**Pricing Options****1. Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under either the Firm Market Indexed, the Banded Gas Market Indexed or the Gas Market Indexed Avoided Cost pricing option.

**2. Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2012 through 2015), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Prices are available for a term of up to 20 years.

**3. Banded Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2012 through 2015), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. The gas indexed portion of the avoided cost prices are banded to limit the amount that prices can vary with changes in gas prices. Prices are available for a term of up to 20 years.

**4. Firm Market Indexed Avoided Cost Prices**

Firm market index avoided cost prices are available to Qualifying Facilities that contract to deliver firm power. Monthly on-peak / off-peak prices paid are a blending of Intercontinental Exchange (ICE) Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

**5. Non-firm Market Index Avoided Cost Prices**

Non- Firm market index avoided cost prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 4

**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of three Pricing Options as specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the fixed prices as provided in this tariff. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

**Gas Market Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.696 to get actual gas price in cents/kWh. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Banded Gas Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.696 to get actual gas price in cents/kWh. This price is banded such that the actual gas price shall be no lower than the Gas Market Index Floor nor greater than the Gas Market Index Ceiling as listed in the price section of this tariff. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Firm Market Indexed and Non-firm Market Index Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the market prices calculated at the time of delivery. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices**
**Pricing Option 1 – Fixed Avoided cost Prices ¢/kWh**

Deliveries During Calendar Year	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)
2012	3.09	2.32
2013	3.72	2.62
2014	4.13	2.80
2015	4.39	2.99
2016	6.04	3.69
2017	6.32	3.91
2018	6.66	4.21
2019	6.99	4.50
2020	6.94	4.41
2021	7.23	4.65
2022	7.67	5.04
2023	7.92	5.24
2024	7.89	5.16
2025	8.09	5.32
2026	8.39	5.57
2027	8.66	5.78
2028	8.88	5.95
2029	9.07	6.09
2030	9.20	6.16

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices (Continued)**
**Pricing Option 2 – Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries During Calendar Year	Fixed Prices		Gas Market Index		Forecast West Side Gas Market Index Price (2) \$/MMBtu	Estimated Prices (3)	
	On-Peak	Off-Peak	On-Peak	Off-Peak		On-Peak	Off-Peak
	Energy Price	Energy Price	Capacity Adder (1)	Energy Adder		Energy Price	Energy Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
			Avoided Firm Capacity Costs / (0.876 * 88.6% * 57%)	Total Avoided Energy Costs - ((e) * 0.696)		(g) + (c)	((e) * 0.696) + (d)
2012	3.09	2.32	Market Based Prices 2012 through 2015				
2013	3.72	2.62					
2014	4.13	2.80					
2015	4.39	2.99					
2016			2.36	0.44	\$4.66	6.042	3.685
2017			2.40	0.47	\$4.95	6.316	3.914
2018			2.45	0.47	\$5.38	6.660	4.212
2019			2.49	0.47	\$5.79	6.988	4.496
2020			2.53	0.47	\$5.66	6.943	4.409
2021			2.58	0.48	\$5.98	7.225	4.645
2022			2.63	0.50	\$6.53	7.667	5.041
2023			2.67	0.52	\$6.78	7.916	5.242
2024			2.72	0.53	\$6.66	7.885	5.163
2025			2.77	0.54	\$6.87	8.093	5.322
2026			2.82	0.55	\$7.21	8.385	5.565
2027			2.87	0.57	\$7.49	8.655	5.781
2028			2.93	0.60	\$7.69	8.877	5.948
2029			2.98	0.62	\$7.85	9.070	6.086
2030			3.04	0.64	\$7.92	9.197	6.156
2031			3.10	0.64	\$8.06	9.348	6.246
2032			3.16	0.65	\$8.21	9.526	6.365
2033			3.22	0.66	\$8.37	9.705	6.484
2034			3.29	0.68	\$8.53	9.902	6.616

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2011 IRP.  
 (2) A heat rate of 0.696 is used to adjust gas prices from \$/MMBtu to ¢/kWh  
 (3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.  
 Actual prices will be calculated each month using actual index gas prices.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices (Continued)**
**Pricing Option 3 – Banded Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries  During  Calendar  Year	Fixed Prices		Banded Gas Market Index				Forecast  West Side Gas Market Index Price (2)  \$/MMBtu	Estimated Prices (3)	
	On-Peak	Off-Peak	On-Peak	Off-Peak	Gas Market Index			On-Peak	Off-Peak
	Energy	Energy	Capacity	Energy	Floor	Ceiling		Energy	Energy
	Price	Price	Adder (1)	Adder	90%	110%		Price	Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
			Avoided Firm Capacity Costs / (0.876 * 88.6% * 57%)	Total Avoided Energy Costs - ((e) * 0.696)	(g) * 0.696 * 90%	(g) * 0.696 * 110%		(i) + (c)	MIN(MAX( ((g) * 0.696) , (e)) , (f)) + (d)
2012	3.09	2.32							
2013	3.72	2.62							
2014	4.13	2.80							
2015	4.39	2.99							
2016			2.36	0.44	2.92	3.57	\$4.66	6.04	3.69
2017			2.40	0.47	3.10	3.79	\$4.95	6.32	3.91
2018			2.45	0.47	3.37	4.12	\$5.38	6.66	4.21
2019			2.49	0.47	3.63	4.43	\$5.79	6.99	4.50
2020			2.53	0.47	3.55	4.33	\$5.66	6.94	4.41
2021			2.58	0.48	3.75	4.58	\$5.98	7.23	4.65
2022			2.63	0.50	4.09	5.00	\$6.53	7.67	5.04
2023			2.67	0.52	4.25	5.19	\$6.78	7.92	5.24
2024			2.72	0.53	4.17	5.10	\$6.66	7.89	5.16
2025			2.77	0.54	4.30	5.26	\$6.87	8.09	5.32
2026			2.82	0.55	4.52	5.52	\$7.21	8.39	5.57
2027			2.87	0.57	4.69	5.73	\$7.49	8.66	5.78
2028			2.93	0.60	4.82	5.89	\$7.69	8.88	5.95
2029			2.98	0.62	4.92	6.01	\$7.85	9.07	6.09
2030			3.04	0.64	4.96	6.06	\$7.92	9.20	6.16
2031			3.10	0.64	5.05	6.17	\$8.06	9.35	6.25
2032			3.16	0.65	5.14	6.29	\$8.21	9.53	6.37
2033			3.22	0.66	5.24	6.41	\$8.37	9.71	6.48
2034			3.29	0.68	5.34	6.53	\$8.53	9.90	6.62

(1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2011 IRP.

(2) A heat rate of 0.696 is used to adjust gas prices from \$/MMBtu to ¢/kWh

 (3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.  
 Actual prices will be calculated each month using actual index gas prices.

(continued)

P.U.C. OR No. 36

 Issued March 2, 2012  
 William R. Griffith, Vice President, Regulation

 First Revision of Sheet No. 37-7  
 Canceling Original Sheet No. 37-7  
**Effective for service on and after April 11, 2012**  
 Advice No. 12-005

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 8

**Example of Gas Pricing Options available to the Qualifying Facility**

An example of the two gas pricing options using different assumed gas prices is provided at the end of this tariff.

**Qualifying Facilities Contracting Procedure**

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

**1. Qualifying Facilities up to 10,000 kW**

**APPLICATION:** To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement****A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions (i.e., fixed, deadband, gas indexed);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Oregon Public Utilities Commission in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)

**B. Procedures (continued)**

- 5 After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

(continued)



**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**II. Process for Negotiating Interconnection Agreements (continued)****A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

**B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Example of Gas Pricing Options given Assumed Gas Prices ¢/kWh**

Banded Gas Market Index												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Gas Market Index		Assumed Gas Price \$/MMBtu	Actual Energy Price	Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price
			Floor 90%	Ceiling 110%			Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price		
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
					(e) x 0.696				(b) + (g)		(a) + (i)	
2016	2.36	0.44	2.92	3.57	\$2.00	1.39	2.92	Floor	3.36	5.72	3.69	6.04
					\$4.00	2.78	2.92	Floor	3.36	5.72		
					\$5.00	3.48	3.48	Actual	3.92	6.28		
					\$7.00	4.87	3.57	Ceiling	4.01	6.37		
					\$10.00	6.96	3.57	Ceiling	4.01	6.37		

Gas Market Method												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Fuel Index		Assumed Gas Price \$/MMBtu		Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price
			Floor 90%	Ceiling 110%		Actual Energy Price	Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price		
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
					(e) x 0.696			(b) + (i)			(a) + (j)	
2016	2.36	0.44	Not Relevant		\$2.00	1.39	Not Relevant		1.83	4.19	3.69	6.04
					\$4.00	2.78			3.22	5.58		
					\$5.00	3.48			3.92	6.28		
					\$7.00	4.87			5.31	7.67		
					\$10.00	6.96			7.40	9.76		

**ADDENDUM A**  
**Jury Trial Waiver**

PacifiCorp and Bear Creek Solar Center, LLC ("Bear Creek") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum A to the PPA is entered into by and between PacifiCorp and Bear Creek and is intended to be interpreted and applied to the PPA.

*Whereas*, the Parties for their respective business purposes have an interest in not presenting a dispute to a jury for trial should a dispute arise between the Parties;

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

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

This Addendum A to the PPA is executed and made effective this

7<sup>th</sup> day of August 2014.

PacifiCorp

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

Name: Bruce Griswold

Title: Director, Short-Term Origination  
and QF Contracts

Bear Creek Solar Center, LLC

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

Name: Nelson Teague

Title: Manager

7-29-2014

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**BLY SOLAR CENTER, LLC**

**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and  
not an Intermittent Resource]**

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 24<sup>th</sup> day of July, 2014, is between Bly Solar Center, LLC, "**Seller**" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp**." (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

### RECITALS

A. Seller intends to construct, own, operate and maintain a solar facility for the generation of electric power, including interconnection facilities, located near Bonanza, Klamath County, Oregon with a Facility Capacity Rating of 8,500 kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** ("**Facility**"); and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on October 31, 2016 ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on April 30, 2017 ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 16,311,000 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall (choose one) ☒ sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp ☐ sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## **AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

### **SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-built Supplement"** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

1.3 **"Billing Period"** means, unless otherwise agreed to, the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 **"Commercial Operation Date"** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.4.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.4.2 The Facility has completed Start-Up Testing;

1.4.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;

1.4.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).

- 1.4.5 Seller has complied with the security requirements of Section 10.
- 1.4.6 PacifiCorp has received an executed copy of **Exhibit F**—Seller’s Interconnection Request.
- 1.5 **“Commission”** means the Oregon Public Utilities Commission.
- 1.6 **“Contract Price”** means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1 and 5.2.
- 1.7 **“Contract Year”** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.
- 1.8 **“Credit Requirements”** means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.
- 1.9 **“Default Security”**, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at Mid-Columbia (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.
- 1.10 **“Effective Date”** shall have the meaning set forth in Section 2.1.
- 1.11 **“Energy Delivery Schedule”** shall have the meaning set forth in Section 4.5.
- 1.12 **“Environmental Attributes”** shall have the meaning set forth in Section 5.5.
- 1.13 **“Excess Output”** shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.
- 1.14 **“Facility”** shall have the meaning set forth in Recital A.
- 1.15 **“Facility Capacity Rating”** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.16 **"FERC"** means the Federal Energy Regulatory Commission, or its successor.

1.17 **"Generation Interconnection Agreement"** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp's transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp's interconnection facilities required to accommodate deliveries of Seller's Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.18 **"Letter of Credit"** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of "A" or greater from S&P or "A2" or greater from Moody's, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.19 **"Licensed Professional Engineer"** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.20 **"Material Adverse Change"** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.21 **"Maximum Annual Delivery"** shall have the meaning set forth in Section 4.3.

1.22 **"Minimum Annual Delivery"** shall have the meaning set forth in Section 4.3.

1.23 **"Nameplate Capacity Rating"** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.24 **"Net Energy"** means the energy component, in kWh, of Net Output.

1.25 **"Net Output"** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller's load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.26 **"Net Replacement Power Costs"** shall have the meaning set forth in Section 11.4.1.

1.27 **"Off-Peak Hours"** means all hours of the week that are not On-Peak Hours.



1.28 **"On-Peak Hours"** means the hours between 6 a.m. Pacific Prevailing Time ("PPT") and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.29 **"Point of Delivery"** means the high side of the Seller's step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.30 **"Prime Rate"** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.31 **"Prudent Electrical Practices"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.32 **"QF"** means **"Qualifying Facility,"** as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.33 **"Replacement Price"** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.34 **"Required Facility Documents"** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.35 **"Schedule 37"** means the Schedule 37 of Pacific Power & Light Company's Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW

or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit G**.

1.36 **"Scheduled Commercial Operation Date"** shall have the meaning set forth in Recital C.

1.37 **"Scheduled Initial Delivery Date"** shall have the meaning set forth in Recital B.

1.38 **"Start-Up Testing"** means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.39 **"Termination Date"** shall have the meaning set forth in Section 2.4.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (**"Effective Date"**).

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By May 31, 2015, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on October 30, 2036 (**"Termination Date"**).

## **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

- 3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.
  - 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
  - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a limited liability company duly organized and validly existing under the laws of Oregon.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
  - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights

generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.
- 3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:
- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.

- (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

\_\_\_\_\_ Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or

\_\_\_ NT \_\_\_ Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase all Net Output from the Facility delivered to the Point of Delivery.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 16,311,000 kWh per Contract Year ("**Average Annual Generation**"). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 9,466,000 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 18,755,000 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

## **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of four pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Firm Market Indexed Avoided Cost Prices (“Firm Electric Market”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

<u>  X  </u>	Fixed Price
<u>      </u>	Firm Electric Market
<u>      </u>	Gas Market
<u>      </u>	Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit G**.

5.2 (Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

<u>  X  </u>	Firm Electric Market
<u>      </u>	Gas Market
<u>      </u>	Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller a blended market index price for day-ahead non-firm energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde market indices as reported by Dow Jones, for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller's Facility.

## **SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six month's prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall

have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

## **SECTION 8: METERING**

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of



energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

#### **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### **SECTION 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

  NT   Cash Escrow

       Letter of Credit

- ☐ Senior Lien
- ☐ Step-in Rights
- ☐ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

**[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]**

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

- 10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.
- 10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.
- 10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.
- 10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.
- (a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.
- (b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee

or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

- 10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

- 11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10

and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

#### 11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

#### 11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security,

PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

## **SECTION 12: INDEMNIFICATION AND LIABILITY**

### **12.1 Indemnities.**

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or

to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.



13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

#### **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

- 14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and
- 14.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and
- 14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

#### **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

#### **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction,

operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

## **SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

## **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

## **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

## **SECTION 23: NOTICES**


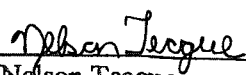
23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	Bly Solar Center, LLC Attn: Andrew Foukal ____ 117 4 <sup>th</sup> Street SE, Suite B Charlottesville, VA 22902 Phone: 434-293-7589
<b>All Invoices:</b>	(same as street address above)	(same as address above)

Notices	PacifiCorp	Seller
	Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	
Scheduling:	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	(same as address above)
Payments:	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as address above)
Wire Transfer:	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	(same as address above)
Credit and Collections:	(same as street address above) Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	(same as address above)
With Additional Notices of an Event of Default or Potential Event of Default to:	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	(same as address above)

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp By:  Name: <u>Bruce Griswold</u> Title: <u>Director, Short-Term Origination and</u> <u>OF Contracts</u> Date: <u>7/24/14</u>	Bly Solar Center, LLC By:  Name: <u>Nelson Teague</u> Title: <u>Manager</u> Date: <u>08/12/14</u>
---	---

BWS 7-14-2014

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**

Seller's Facility consists of a 8.5 MWac solar photovoltaic project including PV panels, inverters, and single axis tracker system. More specifically, the inverter at the Facility is described as:

**Number of Inverters: 10**

**Model:** SMA 850CP XT, or similar

**Number of Phases: 3**

**Rated Output (kW): 850**

**Rated Output (kVA): 850**

**Rated Voltage (line to line): 386**

**Maximum kW Output: 850 Maximum kVA Output: 850kVA**

**Minimum kW Output: 0**

---

**Facility Capacity Rating: 8,500 kW.**

---

Identify the maximum output of the inverter (s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

---

Transformer: -1.07% , Tracker Motor:-0.07%, Data Acquisition and Aux Loads: -0.1%

---

Values above are percentage loss of Total output and losses are already accounted for in the expected output in Exhibit D-1.

**Location of the Facility:** The Facility is to be constructed in the vicinity of Bly in Klamath County, Oregon. The location is more particularly described as follows:

GPS 42.379312, -121.018481

Parcel ID: R-3714-01100-00100-000

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): Power Factor requirements will meet PacifiCorp standard interconnection procedures.

A more detailed and updated Exhibit A will be provided per section 6.1.

## **EXHIBIT B**

### **SELLER'S INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.

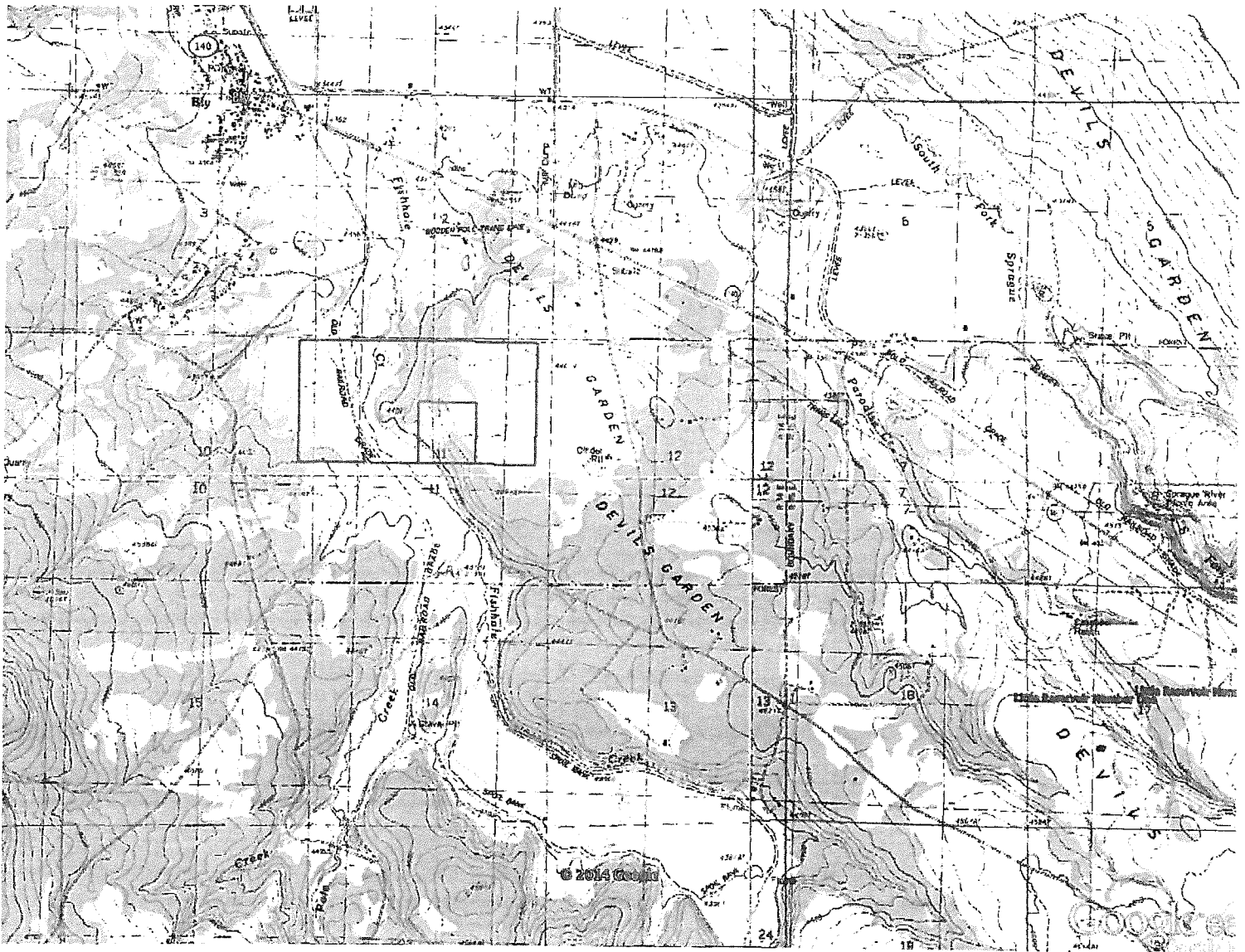
1. The interconnection voltage will be at 69kV. The Point of Metering will be adjacent to the Fish Hole Substation (please refer to Exhibit A for the Location of the Facility). The Point of Delivery will be determined through a Transmission Service Request submitted by PacifiCorp upon execution of the Power Purchase Agreement.

2. Please refer to attached preliminary electrical one-line electrical diagram. Final electrical one-line with final equipment will be updated with the as-built supplement.

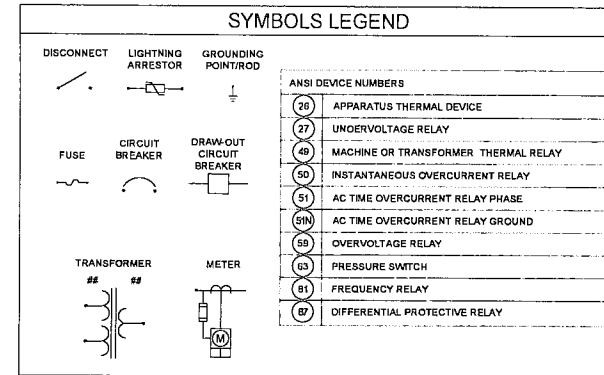
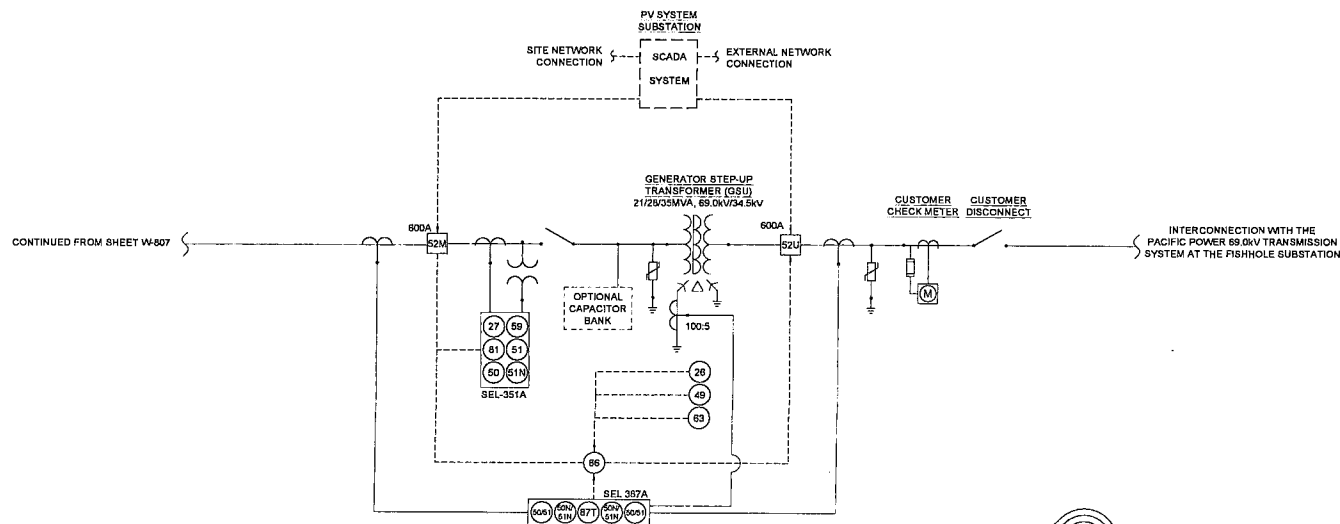


HELIO SAGE  
SOLAR ENERGY SOLUTIONS

## Bly Solar Center



Location on USGS Map (site outlined in Red)



**PRELIMINARY PRINT**  
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Page 15 of 15



14 SOURCE CIRCUIT  
14 MODULES IN SERIES  
MODULE FIRST SOLAR FS-395

FUSED STRING WIRING  
HARNESS  
4 STRINGS HARNESS  
CONFIGURATION

HARNESS COMBINER BOX WITH DC DISCONNECT  
SEE SYSTEM SUMMARY FOR SOURCE CIRCUIT  
INPUT QUANTITIES  
300A, 1200V, NEMA 3R

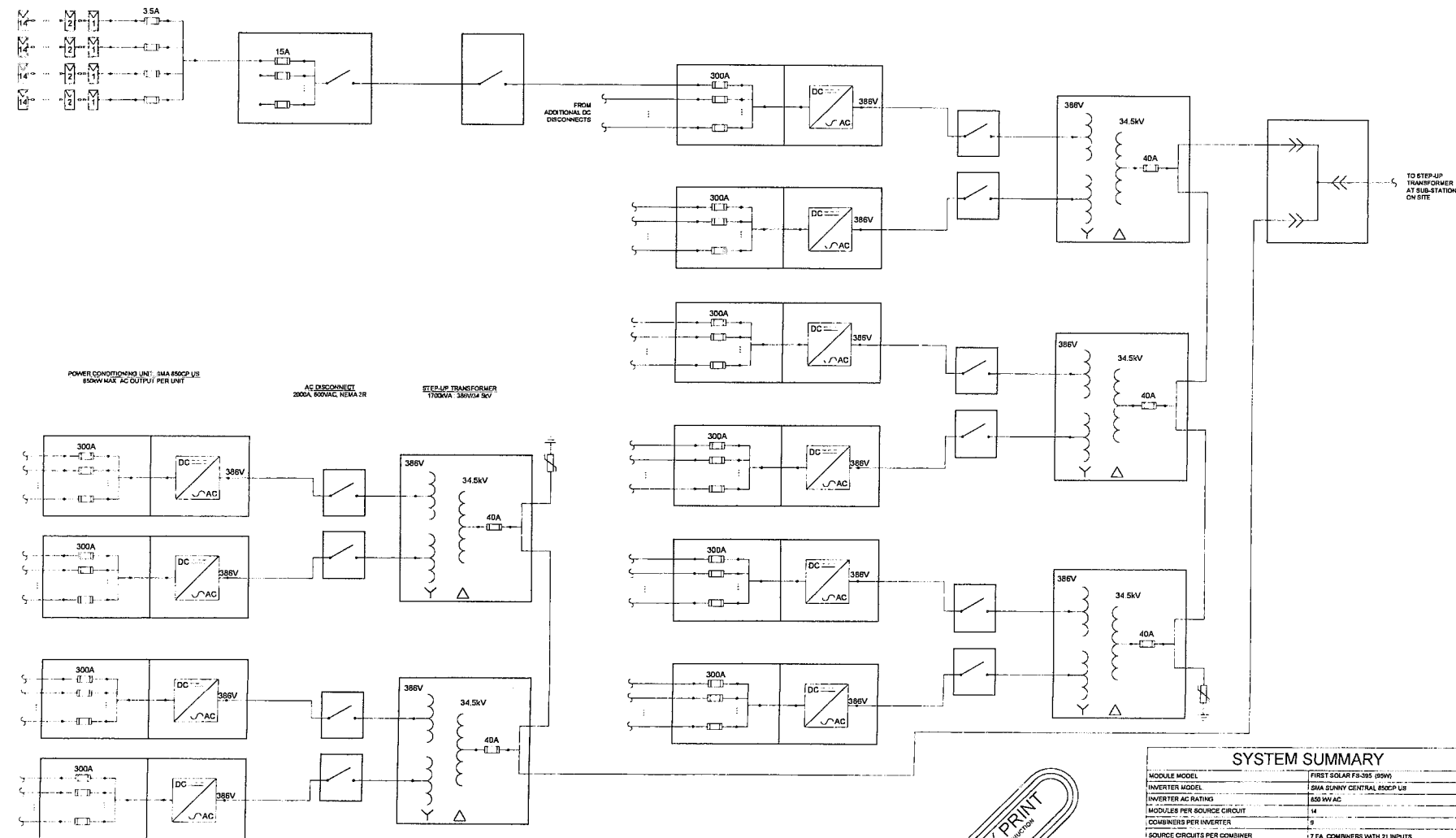
DC DISCONNECT  
300A, 1000V, NEMA 3R

POWER CONDITIONING UNIT, SMA 850CP-US  
850W MAX AC OUTPUT PER UNIT

AC DISCONNECT  
2000A, 600VAC, NEMA 3R

STEP-UP TRANSFORMER  
1700VA, 34.5KV, 380V/34.5KV

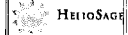
SECTIONALIZING CABINET  
600A, 34.5KV, NEMA 3R



# SYSTEM SUMMARY

MODULE MODEL	FIRST SOLAR FS-395 (95W)
INVERTER MODEL	SMA SUNNY CENTRAL 850CP-US
INVERTER AC RATING	850 kW AC
MODULES PER SOURCE CIRCUIT	14
COMBINERS PER INVERTER	8
SOURCE CIRCUITS PER COMBINER (TYPICAL FOR 1 INVERTER)	7 EA. COMBINERS WITH 21 INPUTS 2 EA. COMBINER WITH 22 INPUTS
SOURCE CIRCUITS PER INVERTER	704
DC AC RATIO	1.19
TARGET FACILITY RATING	8.5 MW AC
RACK TYPE	HORIZONTAL TRACKER
GROUND COVERAGE RATIO (GCR)	0.32 (APPROXIMATE)
AC INTERCONNECTION VOLTAGE	600V
DC SYSTEM VOLTAGE	1500V
DESIGN TEMPERATURE, 2% AVG. HIGH	31°C
DESIGN TEMPERATURE, EXTREME MINIMUM	-21°C
ASHRAE DESIGN TEMPERATURE LOCATION	LAKEVIEW (AVWS)

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**PRELIMINARY**  
NOT FOR CONSTRUCTION

REVISION	DATE	BY	CHKD	APPD
1	10/1/2010	J. L. L.		
2	10/1/2010	J. L. L.		
3	10/1/2010	J. L. L.		
4	10/1/2010	J. L. L.		
5	10/1/2010	J. L. L.		
6	10/1/2010	J. L. L.		
7	10/1/2010	J. L. L.		
8	10/1/2010	J. L. L.		
9	10/1/2010	J. L. L.		
10	10/1/2010	J. L. L.		

HELIOSAGE  
BLY SOLAR CENTER  
SINGLE LINE DIAGRAM  
W-807

**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

QF Certification: QF14-473-000

Interconnection Agreement: To be provided May 31, 2015

Fuel Supply Agreement, NA

Land Lease: Lease Option Agreement with David & Theresa Cowan executed April 1, 2014.

Retail Electric Service Agreement

Permits: A list of applicable local, county, state, and federal Permits will be provided by Seller prior to Scheduled Initial Delivery Date.

**REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN OR STEP-IN RIGHTS:**

Deed or Lease to Facility Premises

Preliminary Title Report of Premises

Proof of ownership of Facility

Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.

**EXHIBIT D-1  
SELLER'S MOTIVE FORCE PLAN**

**A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	483,000
February	724,000
March	1,086,000
April	1,610,000
May	1,981,000
June	2,332,000
July	2,329,000
August	2,118,000
September	1,608,000
October	1,173,000
November	487,000
December	380,000

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account maintenance and Seller's load (if any). The minimum delivery is 9,466,000 kWh based on PVSYST modeling and weather data measurements from the Medford Rogue Valley International Airport over 19 years of continuous data collection and analysis.

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate. The maximum delivery is 18,755,000 kWh based on PVSYST modeling and weather data measurements from the Medford Rogue Valley International Airport over 19 years of continuous data collection and analysis.

**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION**  
**OF**  
**MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*

*Motive Force Plan and Engineer's Certification of Motive Force Plan attached*



HelioSage Energy  
117 4<sup>th</sup> Street SE  
Charlottesville, VA 22902

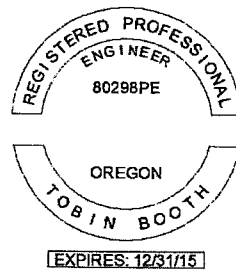
Attention: Jason Fisher

**RE:** Bly Solar Project

A review of the Energy Performance Estimation dated May 6, 2014 for the Bly Solar Project has been completed, it shows a maximum annual delivered energy of 18,755 MWhr and a minimum annual delivered energy of 9,466 MWhr. It is concluded that the methods used to determine the weather file and simulation parameters, and the assumptions used for the PV Array loss factors and System loss factors were all performed using approved industry standards.

Sincerely,

Tobin Booth, PE





## **Bly Solar Project**

Near Bly, OR

42.37986, -121.0254

## **Energy Performance Estimation**

May 6, 2014

### Overview:

HelioSage has prepared an energy performance model for this project using PV industry standard practices and tools. The PVsyst energy modeling program was used to create the baseline energy performance report and post-report processing of the hourly data was used to account for losses not modeled in the PVsyst tool. The weather file used as the basis for the energy model was selected after considering the available weather files sources in the region and the project site's unique geography. Probability assumptions around expected annual performance are primarily based on the energy model and the source weather file. Our selections and assumptions for all these areas are outlined below.

### Plant Ratings and Summary (MW or MWhr)

AC Capacity (Inverter nameplate:	8.5
Net P50 Annual Energy:	16,309
Net P90 Annual Energy:	13,636
Maximum Annual Delivered Energy:	18,755
Minimum Annual Delivered Energy:	9,466

### Weather Site Analysis:

One of the most significant drivers of PV plant energy modeling results is the selected weather file which forms the basis of the model. When modeling the expected energy of any geographic site, a meteorological weather file must be manually selected that is used by the energy modeling tool to compute the performance of the PV system on an hourly basis over the course of a "typical" year. This model forms the basis of a P50 energy estimation for the PV project. Ideal elements of a weather file include hourly horizontal global and diffuse irradiation, ambient temperature, and average wind velocity. With these values, the modeling tool can very accurately simulate expected energy performance of the PV cells since it is these environmental variables that determine actual power produced by the cells.



Many available weather files in the US are taken directly from measured weather sites such as at major airports. This data is typically based on over 30 years of measured values which is then comparatively selected and formulated into a “Typical Meteorological Year” or TMY file for use in modeling. Increasingly satellite data is being used to either create fully synthetic weather files or to augment ground measured data. These weather file sources are particularly advantageous for project sites located farther away from measured sites, in different local geographies, or when the measured sites available are in question.

For this project, we considered several weather sites located in the region including measured sites and one synthetic site near the project location (based on measured satellite data). The differences in both distance and elevation from the project site to the weather collection location are considered when deciding on a suitable weather file. In other words, the closest weather site to the project is not always the most appropriate one; differences in latitude and elevation are important factors to consider when making final selections.

The weather data file selected for this project is a synthetic data set derived from local ground measurements at the Medford Rogue Valley Intl Airport and was obtained from the National Solar Resource Database created by the National Renewable Energy Lab. The TMY3 dataset is based on over 19 years of continuous data collection and analysis.

#### The PVsyst report

Attached in appendix A is a copy of the PVsyst report for this project. This report outlines all the major system inputs and output of the energy performance model. Net energy values delivered for this project will deviate from this report since the PVsyst model is for a subsection of the overall system and some post-PVsyst adjustments are made to account for factors not included in the PVsyst model.

Below is a summary of the average monthly energy generation (MWhrs) for the project:

	MWh		MWh
Jan	483	Jul	2,329
Feb	724	Aug	2,118
Mar	1,086	Sep	1,608
Apr	1,610	Oct	1,173
May	1,981	Nov	487
Jun	2,332	Dec	380
		Year	16,309



### Station Service and Parasitic Losses

The operation of a PV power plant requires very few planned operational losses. Most losses occur in the conversation of DC energy to AC energy, from the PV modules up to the inverter output. From the AC output of the inverter, system losses are generally small, though this is the only area where station loads, including nighttime loads, occur. Below is a summary table of the losses that have been planned for this plant.

Loss	Percentage Loss (of Total)
MV Transformers	-1.07%
HV Transformers (substation)	N/A
Inverter Nighttime Consumption	-0.06%
AC Conductor Voltage Drop	-0.60%
Tracker Motor Operation	-0.07%
Data Acquisition & Aux Loads	-0.10%

### Hourly and Average Daily Values:

Attached in Appendix B is an hourly file (8760 values) representing the P50 expected production of the plant. Additionally, a 12 x 24 profile of energy values is also attached in the Appendix B file. All values in these tables are in megawatts AC and include all expected plant losses up to the point of interconnection.

### Probability Values:

A maximum and minimum number for plant energy production is included in the summary above. These numbers were derived using the following assumptions:

Annual weather variability	8.50%
PV module modeling accuracy	6.50%
Measurement error	7.00%
System Degradation (avg -%/yr)	1.00%





## Appendix A

### The PVsyst report



117 4th Street SE, Suite B - 22902 - Charlottesville, VA - USA

## Grid-Connected System: Simulation parameters

Project : **OR\_Bly**Geographical location: **Medford Rogue Valley Intl Ap [ashland - Uo]**Country **United States**

Situation

Latitude 42.2°N  
Legal Time Time zone UT-8Longitude 122.7°W  
Altitude 595 m

Time defined as

Monthly albedo values

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
Albedo	0.34	0.29	0.25	0.25	0.20	0.20	0.20	0.20	0.20	0.20	0.27	0.36

Meteo data: **Medford Rogue Valley Intl Ap [ashland - Uo]** TMY - NREL: TMY3 hourly DB (1991-2005)Simulation variant : **SAT0\_FS395\_SMA-850\_r119\_GCR40\_NBT\_8.5MWac**

Simulation date 06/05/14 16h53

## Simulation parameters

Tracking plane, tilted Axis

Rotation Limitations

Axis Tilt 0°  
Minimum Phi -45°Axis Azimuth 0°  
Maximum Phi 45°

Models used

Transposition Hay Diffuse Imported

Horizon

Free Horizon

Near Shadings

According to strings Electrical effect 100 %

## PV Array Characteristics

PV module

CdTe Model **FS-395**  
Manufacturer First Solar  
In series 14 modules  
Nb. modules 106848  
Nominal (STC) **10151 kWp**  
U mpp 629 V  
Module area **76931 m²**In parallel 7632 strings  
Unit Nom. Power 95 Wp  
At operating cond. 9547 kWp (50°C)  
I mpp 15183 A  
Cell area 62857 m²

Inverter

Model **Sunny Central 850CP XT**  
Manufacturer SMA  
Operating Voltage 568-850 V  
Nb. of inverters 10 unitsCharacteristics  
Inverter packUnit Nom. Power 850 kW AC  
Total Power 8500 kW AC

## PV Array loss factors

Array Soiling Losses

Thermal Loss factor

Wiring Ohmic Loss

Module Quality Loss

Module Mismatch Losses

Incidence effect, ASHRAE parametrization

Uc (const)	29.0 W/m²K	Loss Fraction	5.0 %
Global array res.	0.66 mOhm	Uv (wind)	0.0 W/m²K / m/s
		Loss Fraction	1.5 % at STC
		Loss Fraction	1.5 %
		Loss Fraction	1.6 % at MPP
IAM = 1 - bo (1/cos i - 1)		bo Param.	0.05



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## Grid-Connected System: Simulation parameters (continued)

### System loss factors

AC loss, transfo to injection

Grid Voltage 13 kV

Wires 7499 m 3x700 mm<sup>2</sup> Loss Fraction 1.5 % at STC

External transformer

Iron loss (24H connexion) 9945 W

Loss Fraction 0.1 % at STC

Resistive/Inductive losses 0.1 mOhm

Loss Fraction 0.9 % at STC

### User's needs :

Unlimited load (grid)



117 4th Street SE, Suite B - 22902 - Charlottesville, VA - USA

## Grid-Connected System: Near shading definition

**Project :** OR\_Bly**Simulation variant :** SAT0\_FS395\_SMA-850\_r119\_GCR40\_NBT\_8.5MWac**Main system parameters**System type **Grid-Connected****Near Shadings**

PV Field Orientation

According to strings  
tracking, tilted axis, Axis Tilt

0°

Electrical effect

100 %

PV modules

Model

FS-395

Axis Azimuth

0°

PV Array

Nb. of modules

106848

Pnom

95 Wp

Inverter

Model

Sunny Central 850CP XT

Pnom total

**10151 kWp**

Inverter pack

Nb. of units

10.0

Pnom

850 kW ac

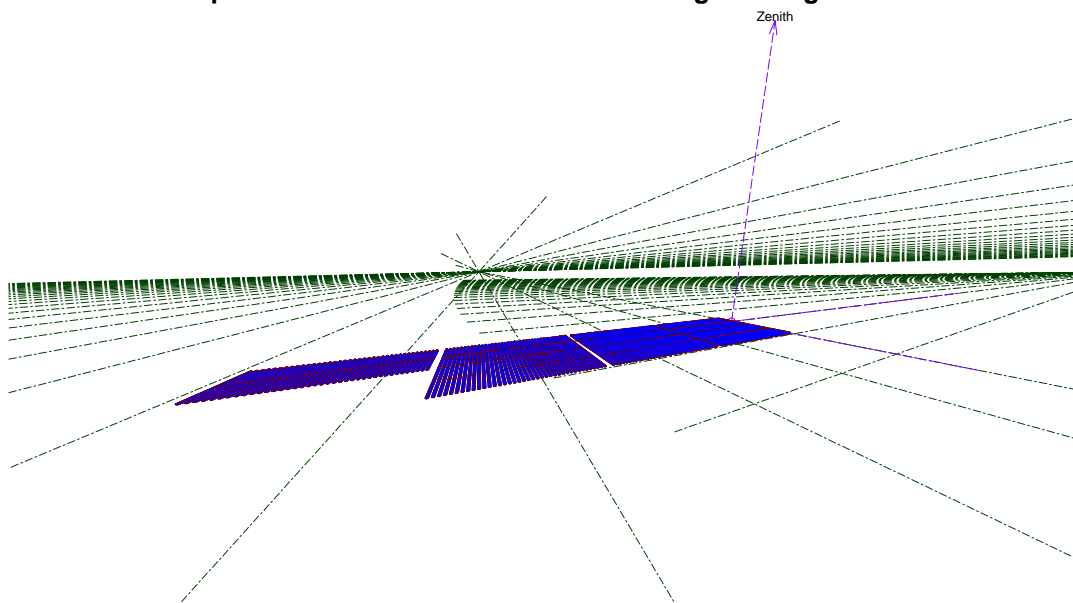
User's needs

Unlimited load (grid)

Pnom total

**8500 kW ac**

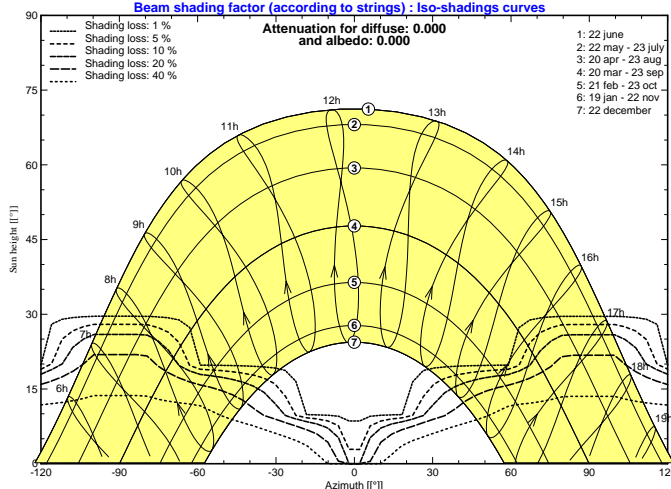
## Perspective of the PV-field and surrounding shading scene



## Iso-shadings diagram

OR\_Bly

Beam shading factor (according to strings) : Iso-shadings curves





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## Grid-Connected System: Main results

Project : OR\_Bly

Simulation variant : SAT0\_FS395\_SMA-850\_r119\_GCR40\_NBT\_8.5MWac

## Main system parameters

System type **Grid-Connected**

## Near Shadings

According to strings

Electrical effect 100 %

PV Field Orientation

tracking, tilted axis, Axis Tilt

0° Axis Azimuth 0°

PV modules

Model FS-395

Pnom 95 Wp

PV Array

Nb. of modules 106848

Pnom total **10151 kWp**

Inverter

Model Sunny Central 850CP XT

Pnom 850 kW ac

Inverter pack

Nb. of units 10.0

Pnom total **8500 kW ac**

User's needs

Unlimited load (grid)

## Main simulation results

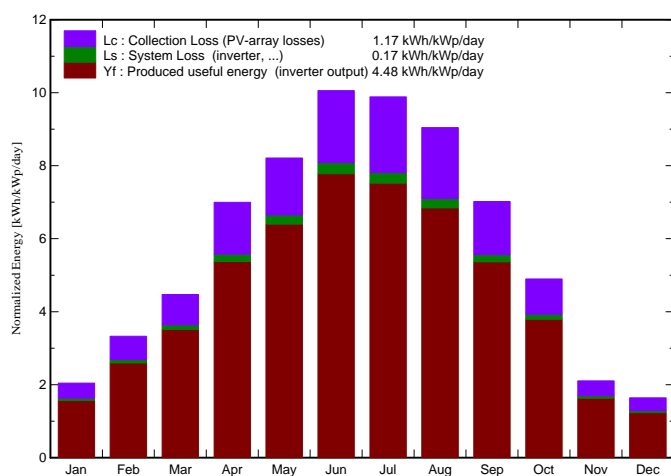
System Production

**Produced Energy 16589 MWh/year**

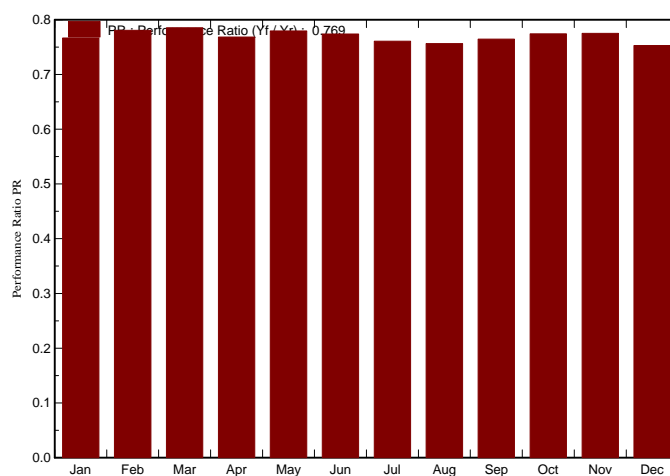
Specific prod. 1634 kWh/kWp/year

Performance Ratio PR 76.9 %

Normalized productions (per installed kWp): Nominal power 10151 kWp



Performance Ratio PR



SAT0\_FS395\_SMA-850\_r119\_GCR40\_NBT\_8.5MWac

Balances and main results

	GlobHor kWh/m²	T Amb °C	GlobInc kWh/m²	GlobEff kWh/m²	EArray MWh	E_Grid MWh	EffArrR %	EffSysR %
January	50.7	3.11	63.3	52.7	513	492	10.53	10.11
February	71.4	6.11	93.1	79.1	765	738	10.68	10.30
March	109.8	7.72	138.6	119.7	1145	1105	10.74	10.36
April	154.5	10.72	209.9	181.7	1698	1637	10.52	10.14
May	200.4	13.22	254.5	226.5	2093	2014	10.69	10.29
June	228.3	19.10	301.7	270.3	2462	2370	10.61	10.21
July	225.4	22.50	306.4	272.6	2458	2367	10.43	10.04
August	204.5	20.88	280.4	247.5	2235	2153	10.36	9.98
September	150.0	17.63	210.6	184.6	1694	1635	10.46	10.09
October	107.1	13.05	151.9	131.1	1236	1193	10.58	10.21
November	53.0	5.56	63.1	53.5	517	497	10.65	10.23
December	39.0	3.59	50.8	41.8	406	388	10.39	9.94
Year	1594.2	11.96	2124.3	1861.3	17222	16589	10.54	10.15

Legends:

- GlobHor: Horizontal global irradiation
- T Amb: Ambient Temperature
- GlobInc: Global incident in coll. plane
- GlobEff: Effective Global, corr. for IAM and shadings
- EArray: Effective energy at the output of the array
- E\_Grid: Energy injected into grid
- EffArrR: Effic. Eout array / rough area
- EffSysR: Effic. Eout system / rough area



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## Grid-Connected System: Loss diagram

**Project :** OR\_Bly**Simulation variant :** SAT0\_FS395\_SMA-850\_r119\_GCR40\_NBT\_8.5MWac**Main system parameters**System type **Grid-Connected****Near Shadings**

PV Field Orientation

PV modules

PV Array

Inverter

Inverter pack

User's needs

According to strings

tracking, tilted axis, Axis Tilt

Model FS-395

Nb. of modules 106848

Model Sunny Central 850CP XT

Nb. of units 10.0

Unlimited load (grid)

Electrical effect 100 %

Axis Azimuth 0°

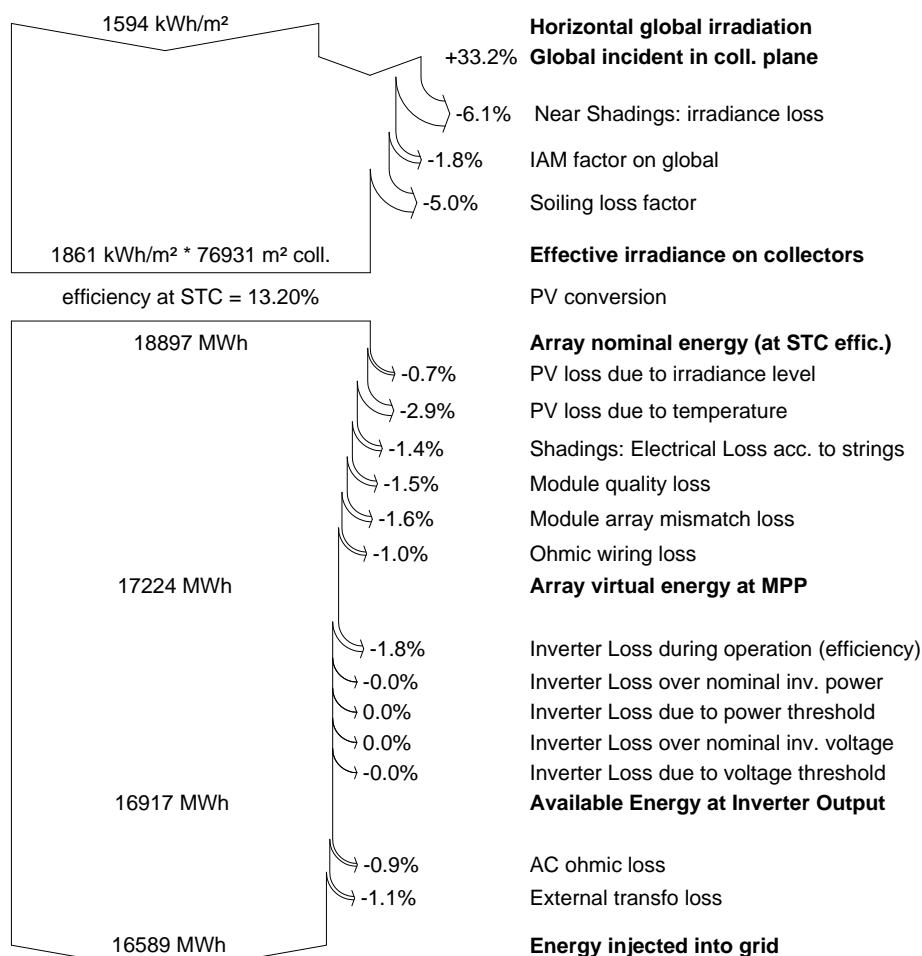
Pnom 95 Wp

Pnom total **10151 kWp**

Pnom 850 kW ac

Pnom total **8500 kW ac**

### Loss diagram over the whole year



## EXHIBIT E

### START-UP TESTING

Start-Up Testing shall consist of the Quality Assurance/Quality Control plans and procedures developed by the EPC Contractor.

Contractor shall submit to Owner a final copy of its quality assurance/quality control (QA/QC) plan for review not later than 45 days after contract execution for Owner review and comment.

The QA/QC program shall include, but is not limited to, such procedures and systems as the following:

- Road construction
- Rebar and conduit placement
- Concrete placement and testing
- All wire insulation testing—Megger testing or very low frequency testing
- Mechanical system—trackers, mounting structures, tracker controls
- Factory testing of inverters and transformers by the manufacturer
- PV source open-circuit measurements—VOC at combiner boxes
- Fuse tests
- Termination pull testing
- All visual inspections
- Grounding continuity testing
- Earth-ground resistivity testing
- PV module inspection and manufacturer documentation of factory test per the manufacturer's existing program
- Metering and instrumentation calibration testing
- Step-up transformer field testing
- Inverter phase rotation and matching with utility
- Relay settings/transfer trip/etc. at the point of interconnection to Owner
- Other Contractor-prescribed procedures

All QA/QC testing procedures onsite shall be witnessed and documented by a qualified representative of Contractor. Owner shall observe and witness QA/QC as necessary and at its discretion. A qualified field engineer/QA representative of Contractor shall date and sign documentation indicating completion and acceptance of each onsite QA/QC test procedures.

Following installation, Contractor shall provide a proposed commissioning and startup plan for the Plant.

Contractor shall coordinate with Owner to develop an acceptable commissioning plan that includes a checkout and startup procedure. This work will assure: that systems are activated in a manner that is safe for personnel as well as for the equipment, that Contractor work is complete and according to the contract documents, and that the systems perform as required by the contract documents and are ready to be turned over to Owner. As the construction and

installation of the systems nears completion, Contractor shall prepare punch lists and conduct system walk-downs, sub-system and system checkouts, startups, testing, and turnovers.

The final approved Commissioning Procedures shall, at minimum, include the following:

- Safety plan during startup and commissioning
- Review of all QA/QC testing on the DC and AC sides of inverters
- Detailed procedure for PV Plant startup, including switching sequencing
- Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected
- Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.
- Testing the system control and monitoring system to verify that it is performing correctly
- Testing the communication system for offsite monitoring
- Testing the Plant metering and protective relaying in conjunction with the utility during energization procedures
- Detailed procedure for interface and initialization with the grid
- Documentation of successful startup and commissioning procedure
- Written notification submitted by Contractor to Owner that the completion of Commissioning has occurred

Upon successful completion of energizing and startup, the Plant will be considered operable.



**EXHIBIT F**  
**Seller Authorization to Release Generation Data to PacifiCorp**

[See attached letter]



# HELIO SAGE

## Customer Authorization to Release Generation Data Bly Solar Center

June 10, 2014

PacifiCorp Transmission Services  
Attention: Director, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, Oregon 97232

RE: Voluntary Consent Form

Dear PacifiCorp Transmission:

HelioSage, LLC hereby voluntarily authorizes PacifiCorp's transmission business unit to share HelioSage, LLC generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial & Trading group.

HelioSage, LLC acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

**Andrew Foukal**

Digitally signed by Andrew Foukal  
DN: cn=Andrew Foukal, o=HelioSage, ou,  
email=afoukal@heliosage.com, c=US  
Date: 2014.06.10 17:56:46 -05'00'

Name: Andrew Foukal

Title: Director of Operations

Date: 6/10/14

WISDOM IN SUN

**EXHIBIT G**  
**SCHEDULE 37 and PRICING SUMMARY TABLE**

Year	On-Peak	Off-Peak
	¢/kWh	¢/kWh
2016	6.04	3.69
2017	6.32	3.91
2018	6.66	4.21
2019	6.99	4.50
2020	6.94	4.41
2021	7.23	4.65
2022	7.67	5.04
2023	7.92	5.24
2024	7.89	5.16
2025	8.09	5.32
2026	8.39	5.57
2027	8.66	5.78
2028	8.88	5.95
2029	9.07	6.09
2030	9.20	6.16
2031, up to but not including November 1, 2031	9.35	6.25
from November 1, 2031 through the Termination Date:	Price specified by Section 5.2 of the Agreement	

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 1

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

For power purchased from Qualifying Facilities with a nameplate capacity of 10,000 kW or less or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 10,000 kW or less. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

**Definitions****Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

**On-Peak Hours or Peak Hours**

On-peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005, the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April and for the period between the last Sunday in October and the first Sunday in November.

**Off-Peak Hours**

All hours other than On-Peak.

**West Side Gas Market Index**

The monthly indexed gas price shall be the average of the price indexes published by Platts in "Inside FERC's Gas Market Report" monthly price report for Northwest Pipeline Corp. Rock Mountains, Northwest Pipeline Corp. Canadian Border, and Rockies/Northwest Stanfield, OR.

**Excess Output**

Excess output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-peak Price as described and calculated under pricing option 5 for all Excess Output.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 2

**Same Site**

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

**Person(s) or Affiliated Person(s)**

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit. A unit of Oregon local government may also be a "passive investor" if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

**Shared Interconnection and Infrastructure**

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

**Dispute Resolution**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract. Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution.

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

(continued)

**Pricing Options****1. Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under either the Firm Market Indexed, the Banded Gas Market Indexed or the Gas Market Indexed Avoided Cost pricing option.

**2. Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2012 through 2015), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Prices are available for a term of up to 20 years.

**3. Banded Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2012 through 2015), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. The gas indexed portion of the avoided cost prices are banded to limit the amount that prices can vary with changes in gas prices. Prices are available for a term of up to 20 years.

**4. Firm Market Indexed Avoided Cost Prices**

Firm market index avoided cost prices are available to Qualifying Facilities that contract to deliver firm power. Monthly on-peak / off-peak prices paid are a blending of Intercontinental Exchange (ICE) Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

**5. Non-firm Market Index Avoided Cost Prices**

Non- Firm market index avoided cost prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 4

**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of three Pricing Options as specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the fixed prices as provided in this tariff. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

**Gas Market Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.696 to get actual gas price in cents/kWh. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Banded Gas Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.696 to get actual gas price in cents/kWh. This price is banded such that the actual gas price shall be no lower than the Gas Market Index Floor nor greater than the Gas Market Index Ceiling as listed in the price section of this tariff. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Firm Market Indexed and Non-firm Market Index Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the market prices calculated at the time of delivery. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices**
**Pricing Option 1 – Fixed Avoided cost Prices ¢/kWh**

Deliveries During Calendar Year	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)
2012	3.09	2.32
2013	3.72	2.62
2014	4.13	2.80
2015	4.39	2.99
2016	6.04	3.69
2017	6.32	3.91
2018	6.66	4.21
2019	6.99	4.50
2020	6.94	4.41
2021	7.23	4.65
2022	7.67	5.04
2023	7.92	5.24
2024	7.89	5.16
2025	8.09	5.32
2026	8.39	5.57
2027	8.66	5.78
2028	8.88	5.95
2029	9.07	6.09
2030	9.20	6.16

(continued)



**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices (Continued)**
**Pricing Option 2 – Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries During Calendar Year	Fixed Prices		Gas Market Index		Forecast	Estimated Prices (3)	
	On-Peak	Off-Peak	On-Peak	Off-Peak	West Side Gas Market Index Price (2)	On-Peak	Off-Peak
	Energy	Energy	Capacity	Energy		Energy	Energy
	Price	Price	Adder (1)	Adder	\$/MMBtu	Price	Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
			Avoided Firm Capacity Costs / (0.876 * 88.6% * 57%)	Total Avoided Energy Costs - ((e) * 0.696)		(g) + (c)	((e) * 0.696) + (d)
2012	3.09	2.32	Market Based Prices 2012 through 2015				
2013	3.72	2.62					
2014	4.13	2.80					
2015	4.39	2.99					
2016			2.36	0.44	\$4.66	6.042	3.685
2017			2.40	0.47	\$4.95	6.316	3.914
2018			2.45	0.47	\$5.38	6.660	4.212
2019			2.49	0.47	\$5.79	6.988	4.496
2020			2.53	0.47	\$5.66	6.943	4.409
2021			2.58	0.48	\$5.98	7.225	4.645
2022			2.63	0.50	\$6.53	7.667	5.041
2023			2.67	0.52	\$6.78	7.916	5.242
2024			2.72	0.53	\$6.66	7.885	5.163
2025			2.77	0.54	\$6.87	8.093	5.322
2026			2.82	0.55	\$7.21	8.385	5.565
2027			2.87	0.57	\$7.49	8.655	5.781
2028			2.93	0.60	\$7.69	8.877	5.948
2029			2.98	0.62	\$7.85	9.070	6.086
2030			3.04	0.64	\$7.92	9.197	6.156
2031			3.10	0.64	\$8.06	9.348	6.246
2032			3.16	0.65	\$8.21	9.526	6.365
2033			3.22	0.66	\$8.37	9.705	6.484
2034			3.29	0.68	\$8.53	9.902	6.616

(1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2011 IRP.

(2) A heat rate of 0.696 is used to adjust gas prices from \$/MMBtu to ¢/kWh

(3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.

Actual prices will be calculated each month using actual index gas prices.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices (Continued)**
**Pricing Option 3 – Banded Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries  During  Calendar  Year	Fixed Prices		Banded Gas Market Index				Forecast West Side Gas Market Index Price (2)	Estimated Prices (3)	
	On-Peak	Off-Peak	On-Peak	Off-Peak	Gas Market Index			On-Peak	Off-Peak
	Energy	Energy	Capacity	Energy	Floor	Ceiling	Energy	Energy	
	Price	Price	Adder (1)	Adder	90%	110%	Price	Price	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
			Avoided Firm Capacity Costs / (0.876 * 88.6% * 57%)	Total Avoided Energy Costs - ((e) * 0.696)	(g) * 0.696 * 90%	(g) * 0.696 * 110%		(i) + (c)	MIN(MAX( ((g) * 0.696) , (e)) , (f) + (d)
2012	3.09	2.32	Market Based Prices 2010 through 2013						
2013	3.72	2.62							
2014	4.13	2.80							
2015	4.39	2.99							
2016			2.36	0.44	2.92	3.57	\$4.66	6.04	3.69
2017			2.40	0.47	3.10	3.79	\$4.95	6.32	3.91
2018			2.45	0.47	3.37	4.12	\$5.38	6.66	4.21
2019			2.49	0.47	3.63	4.43	\$5.79	6.99	4.50
2020			2.53	0.47	3.55	4.33	\$5.66	6.94	4.41
2021			2.58	0.48	3.75	4.58	\$5.98	7.23	4.65
2022			2.63	0.50	4.09	5.00	\$6.53	7.67	5.04
2023			2.67	0.52	4.25	5.19	\$6.78	7.92	5.24
2024			2.72	0.53	4.17	5.10	\$6.66	7.89	5.16
2025			2.77	0.54	4.30	5.26	\$6.87	8.09	5.32
2026			2.82	0.55	4.52	5.52	\$7.21	8.39	5.57
2027			2.87	0.57	4.69	5.73	\$7.49	8.66	5.78
2028			2.93	0.60	4.82	5.89	\$7.69	8.88	5.95
2029			2.98	0.62	4.92	6.01	\$7.85	9.07	6.09
2030			3.04	0.64	4.96	6.06	\$7.92	9.20	6.16
2031			3.10	0.64	5.05	6.17	\$8.06	9.35	6.25
2032			3.16	0.65	5.14	6.29	\$8.21	9.53	6.37
2033			3.22	0.66	5.24	6.41	\$8.37	9.71	6.48
2034			3.29	0.68	5.34	6.53	\$8.53	9.90	6.62

(1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2011 IRP.

(2) A heat rate of 0.696 is used to adjust gas prices from \$/MMBtu to ¢/kWh

(3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.

Actual prices will be calculated each month using actual index gas prices.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Example of Gas Pricing Options available to the Qualifying Facility**

An example of the two gas pricing options using different assumed gas prices is provided at the end of this tariff.

**Qualifying Facilities Contracting Procedure**

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

**1. Qualifying Facilities up to 10,000 kW**

**APPLICATION:** To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement****A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions (i.e., fixed, deadband, gas indexed);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Oregon Public Utilities Commission in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**B. Procedures (continued)**

- 5 After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**II. Process for Negotiating Interconnection Agreements (continued)****A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

**B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Example of Gas Pricing Options given Assumed Gas Prices ¢/kWh**

Banded Gas Market Index												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Gas Market Index		Assumed Gas Price \$/MMBtu		Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price
			Floor 90%	Ceiling 110%		Actual Energy Price	Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price		
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
					(e) x 0.696				(b) + (g)		(a) + (i)	
2016	2.36	0.44	2.92	3.57	\$2.00	1.39	2.92	Floor	3.36	5.72	3.69	6.04
					\$4.00	2.78	2.92	Floor	3.36	5.72		
					\$5.00	3.48	3.48	Actual	3.92	6.28		
					\$7.00	4.87	3.57	Ceiling	4.01	6.37		
					\$10.00	6.96	3.57	Ceiling	4.01	6.37		

Gas Market Method												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Fuel Index		Assumed Gas Price \$/MMBtu		Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price
	(a)	(b)	Floor 90%	Ceiling 110%	(c)	(d)	Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price	(k)	(l)
					(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
					(e) x 0.696				(b) + (i)		(a) + (j)	
2016	2.36	0.44	Not Relevant		\$2.00	1.39	Not Relevant		1.83	4.19	3.69	6.04
					\$4.00	2.78			3.22	5.58		
					\$5.00	3.48			3.92	6.28		
					\$7.00	4.87			5.31	7.67		
					\$10.00	6.96			7.40	9.76		

**ADDENDUM A**  
**Jury Trial Waiver**

PacifiCorp and Bly Solar Center, LLC ("Bly") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum A to the PPA is entered into by and between PacifiCorp and Bly and is intended to be interpreted and applied to the PPA.

*Whereas*, the Parties for their respective business purposes have an interest in not presenting a dispute to a jury for trial should a dispute arise between the Parties;

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

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

This Addendum A to the PPA is executed and made effective this 24<sup>th</sup> day of July, 2014.

PacifiCorp  
By: [Signature] 7/24/2014  
Name: Bruce Griswold  
Title: Director, Short-Term Origination  
and QF Contracts

Bly Solar Center, LLC

By: Nelson Teague  
Name: Nelson Teague  
Title: Manager

BWS 7-14-2014



**POWER PURCHASE AGREEMENT**

**BETWEEN**

**CHILOQUIN SOLAR LLC**

**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and  
not an Intermittent Resource]**

**AND**

**PACIFICORP**

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**ADDENDUM A: JURY TRIAL WAIVER**

- EXHIBIT A: DESCRIPTION OF SELLER'S FACILITY**
- EXHIBIT B: SELLER'S INTERCONNECTION FACILITIES**
- EXHIBIT C: REQUIRED FACILITY DOCUMENTS**
- EXHIBIT D-1: SELLER'S MOTIVE FORCE PLAN**
- EXHIBIT D-2: ENGINEER'S CERTIFICATION OF MOTIVE FORCE PLAN**
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- EXHIBIT F: SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO  
PACIFICORP**
- EXHIBIT G: SCHEDULE 37 AND PRICING SUMMARY TABLE**
- EXHIBIT H: GREEN TAG ATTESTATION AND BILL OF SALE**

## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 12<sup>th</sup> day of October, 2015, is between Chiloquin Solar LLC, "Seller" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "PacifiCorp." (Seller and PacifiCorp are referred to individually as a "Party" or collectively as the "Parties").

### RECITALS

A. Seller intends to construct, own, operate and maintain the **Chiloquin Solar LLC** solar facility for the generation of electric power, including interconnection facilities, located in Klamath County, Oregon with a Facility Capacity Rating of 9,900 -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** ("**Facility**"); and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on December 16, 2016 ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on December 16, 2016 ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 20,958,000 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall (choose one) ☒ sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp ☐ sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-built Supplement"** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

1.3 **"Billing Period"** means, unless otherwise agreed to, the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 **"CAMD"** means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Green Tags.

1.5 **"Commercial Operation Date"** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.5.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.5.2 The Facility has completed Start-Up Testing;

1.5.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;

- 1.5.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).
- 1.5.5 Seller has complied with the security requirements of Section 10.
- 1.5.6 PacifiCorp has received an executed copy of **Exhibit F**—Seller's Interconnection Request.
- 1.6 **"Commission"** means the Oregon Public Utilities Commission.
- 1.7 **"Contract Price"** means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1, 5.2, and 5.3.
- 1.8 **"Contract Year"** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time ("PPT") on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.
- 1.9 **"Credit Requirements"** means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) "Baa3" or greater by Moody's, or (2) "BBB-" or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.
- 1.10 **"Default Security"**, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at **Mid-Columbia** (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller's average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.
- 1.11 **"Effective Date"** shall have the meaning set forth in Section 2.1.
- 1.12 **"Energy Delivery Schedule"** shall have the meaning set forth in Section 4.5.
- 1.13 **"Environmental Attributes"** shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water.

Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.14 **"Excess Output"** shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

1.15 **"Facility"** shall have the meaning set forth in Recital A.

1.16 **"Facility Capacity Rating"** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.17 **"FERC"** means the Federal Energy Regulatory Commission, or its successor.

1.18 **"Generation Interconnection Agreement"** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp's transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp's interconnection facilities required to accommodate deliveries of Seller's Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.19 **"Green Tags"** means (1) the Environmental Attributes associated with all Net Output, together with (2) all WREGIS Certificates; and (3) the Green Tag Reporting Rights associated with such energy, Environmental Attributes and WREGIS Certificates, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified", or otherwise. One (1) Green Tag represents the Environmental Attributes made available by the generation of one (1) MWh of energy from the Facility. Provided however, that "Green Tags" do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.20 **"Green Tag Reporting Rights"** means the exclusive right of a purchaser of Green Tags to report exclusive ownership of Green Tags in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, and include reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

1.21 **"Letter of Credit"** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of "A" or greater from S&P or "A2" or greater from Moody's, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.22 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.23 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.24 **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.25 **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.26 **“Nameplate Capacity Rating”** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.27 **“Net Energy”** means the energy component, in kWh, of Net Output.

1.28 **“Net Output”** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.29 **“Net Replacement Power Costs”** shall have the meaning set forth in Section 11.4.1.

1.30 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.31 **“On-Peak Hours”** means the hours between 6 a.m. Pacific Prevailing Time (“PPT”) and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.32 **“Point of Delivery”** means the high side of the Seller’s step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp’s distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.33 **“Prime Rate”** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time

quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.34 **“Prudent Electrical Practices”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.35 **“QF”** means **“Qualifying Facility,”** as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.36 **“Renewable Resource Deficiency Period”** means the period from 2024 through 2040.

1.37 **“Renewable Resource Sufficiency Period”** means the period from 2014 through 2023.

1.38 **“Replacement Price”** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.39 **“Required Facility Documents”** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.40 **“Schedule 37”** means the Schedule 37 of Pacific Power & Light Company’s Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which was in effect on August 21, 2014. A copy of that Schedule 37 is attached as **Exhibit G**.

1.41 **“Scheduled Commercial Operation Date”** shall have the meaning set forth in Recital C.



1.42 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.43 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.44 “**Termination Date**” shall have the meaning set forth in Section 2.4.

1.45 “**WREGIS**” means the Western Renewable Energy Generation Information System or successor organization in case WREGIS is ever replaced.

1.46 “**WREGIS Certificate**” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules dated July 15, 2013.

1.47 “**WREGIS Operating Rules**” means the operating rules and requirements adopted by WREGIS, dated July 15, 2013.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (“**Effective Date**”).

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

By October 30, 2015, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on December 15, 2036 [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] (“**Termination Date**”).

### **SECTION 3: REPRESENTATIONS AND WARRANTIES**

- 3.1 PacifiCorp represents, covenants, and warrants to Seller that:
  - 3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.
  - 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
  - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
  - 3.2.1 Seller is a corporation duly organized and validly existing under the laws of Delaware.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

- 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Compliance with Ownership Requirements in Commission Proceedings No. UM 1129 and UM 1610. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request. These ownership requirements, as well as the dispute resolution provision governing any disputes over a QF's entitlement to the standard rates and standard contract with respect to the requirements, are detailed in Schedule 37.

i. Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

- a. Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
- b. Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- c. Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- d. Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- e. **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

_____	Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or
___X___	Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase (a) all Net Output from the Facility delivered to the Point of Delivery and (b) all Green Tags associated with the output or otherwise resulting from the generation of energy by the Facility (which shall come from the Facility and from no other source), for the periods during which the Green Tags are required to be transferred to PacifiCorp under the terms of Section 5.5.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 20,958,000 kWh per Contract Year ("**Average Annual Generation**"). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 10,750,000 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure ("**Minimum Annual Delivery**"). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 26,750,000 kWh of Net Output during each Contract Year ("**Maximum Annual Delivery**"). Seller's basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller's failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility ("**Energy Delivery Schedule**"), incorporated into **Exhibit D**.

4.6 Transfer of Title to Green Tags; Documentation of Green Tags Transfers. Subject to the Green Tags ownership as defined in Section 5.5, title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the Net Output at the Facility that gives rise to such Green Tags. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the 10th day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale in the form attached as **Exhibit H** for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program or successor organization in case the Center for Resource Solutions is replaced by another party over the life of the contract. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags, except that when Seller is required to transfer Green Tags to PacifiCorp under Section 5.5, PacifiCorp will pay all fees

required by WREGIS relating to the Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller will use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of WREGIS Certificates to PacifiCorp, and transfer such WREGIS Certificates to PacifiCorp, in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form approved by PacifiCorp, enter into a Qualified Reporting Entity Services Agreement with a third-party authorized to act as a Qualified Reporting Entity, or elect to act as its own WREGIS-defined Qualified Reporting Entity. Seller shall promptly give PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by CAMD, upon notification by CAMD that any transfer contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp. Without limiting the generality of PacifiCorp's ownership of the Green Tag Reporting Rights, PacifiCorp may report under such program that such Green Tags purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfer. Seller shall reasonably cooperate in any registration by PacifiCorp of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which PacifiCorp may wish to register or maintain registration of the Facility by providing copies of all such information as PacifiCorp reasonably required for such registration.

## **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of three pricing options: Standard Fixed Avoided Cost Prices ("Fixed Price Standard"), Renewable Fixed Avoided Cost Prices ("Fixed Price Renewable"), or Firm Market Indexed Avoided Cost Prices ("Firm Electric Market"), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility's contract. Seller has selected the following (Seller to initial one):

_____	Fixed Price Standard
___X___	Fixed Price Renewable
_____	Firm Electric Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit G**.

5.2 (Fixed Price Standard Seller Only). In the event Seller elects the Fixed Price Standard pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.3 (Fixed Price Renewable Seller Only). In the event Seller elects the Fixed Price Renewable pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak

rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller 93 percent of a blended market index price for day-ahead firm energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde market indices as reported by the Intercontinental Exchange (ICE), for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes

5.5.1 (Fixed Price Standard Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement throughout the Term.

5.5.2 (Fixed Price Renewable Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes during the Renewable Resource Sufficiency Period, and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Scheduled Initial Delivery Date. Subject to the foregoing, Seller shall transfer the Green Tags to PacifiCorp in accordance with Section 4.5 during the Renewable Resource Deficiency Period.

**SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six months' prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1, 5.2, and 5.3 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating

or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.



## **SECTION 8: METERING**

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

## **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## **SECTION 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

\_\_\_\_\_ Cash Escrow

\_\_\_\_\_ Letter of Credit

\_\_\_\_\_ Senior Lien

  X   Step-in Rights

\_\_\_\_\_ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

### **[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

### **[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

### **[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller

shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]**

**10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).**

Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

PacifiCorp shall give Seller ten (10) calendar day's notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.

11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

## 11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

## 11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

11.3.2 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price

from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

#### 11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

#### 11.4.2 Recoupment of Damages.

Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.

Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

### **SECTION 12: INDEMNIFICATION AND LIABILITY**

#### 12.1 Indemnities.

Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of

injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an

insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

#### **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or



availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and

the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

#### **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the

Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

#### **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

#### **SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

#### **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

### **SECTION 23: NOTICES**

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	Saturn Power Corp C/O S&W 100 Mill St. Unit F Attn: Jeremy Goertz New Hamburg, Ont, N3A 1R1 Phone: 866-961-8654 Fax: 519-220-5912 Tax ID: 30-0829959
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as street address above)  Attn: Accounts Payable Phone: 866-961-8654 Fax: 519-220-5912
<b>Scheduling:</b>	(same as street address above)  Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	(same as street address above)  Attn: Jeremy Goertz Phone: 866-961-8654 Fax: 519-220-5912
<b>Payments:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as street address above)  Attn: Accounts Receivable Phone: 866-961-8654 Fax: 519-220-5912
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	Available upon request
<b>Credit and</b>	(same as street address above)	(same as street address above)

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>Collections:</b>	Attn: Credit Manager, Suite 700 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	Attn: Saturn Credit Phone: 866-961-8654 Fax: 519-220-5912
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	same as street address above) Attn: Counsel Phone: 866-961-8654 Fax: 519-220-5912

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

Pacific Corp

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

Name: Bruce Griswold

Title: Director, Short-Term Origination  
and QF Contracts

Chiloquin Solar LLC

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

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

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

*nd*  
OCT 12, 2013

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

**PacifiCorp**

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

Name: Bruce Griswold

Title: Director, Short-Term Origination  
and QF Contracts

**Chiloquin Solar LLC**

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

Name: Ray Roth

Title: V.P.

## **ADDENDUM A**

### **Jury Trial Waiver**

PacifiCorp and Chiloquin Solar LLC ("Chiloquin") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum A to the PPA is entered into by and between PacifiCorp and Saturn and is intended to be interpreted and applied to the PPA.

Whereas, the Parties for their respective business purposes have an interest in not presenting a dispute to a jury for trial should a dispute arise between the Parties;

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

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

This Addendum A to the PPA is executed and made effective this 12<sup>th</sup> day of October, 2015.

**PacifiCorp**

By: 

Name: Bruce Griswold

Title: Director, Short-Term Origination  
and QF Contracts

*auth 12/2015*

**Chiloquin Solar LLC**

By: 

Name: Ray Ritt

Title: V.P.

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**  
**[Seller to Complete]**

Seller's Facility consists of a 9.9 MWac solar photovoltaic project including PV panels, inverters, and fixed tilt system. More specifically, the inverter at the Facility is described as:

**Number of Inverters:** 165

**Model:** Danfoss MLX 60

**Number of Phases:** 3

**Rated Output (kW):** 9,900 **Rated Output (kVA):** 9,900

**Rated Voltage (line to line):** 480V

**Maximum kW Output:** 9,900 **Maximum kVA Output:** 9,900 kVA

**Minimum kW Output:** 0

**Facility Annual Degradation Rate:** 0.7 %

---

**Facility Capacity Rating:** 9,900 kW.

---

Identify the maximum output of the inverter (s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

---

Transformer: 70% , Tracker Motor:- % , Data Acquisition and Aux Loads: 30%

---

Values above are percentage loss of Total output and losses are already accounted for in the expected output in Exhibit D-1.

**Location of the Facility:** The Facility is to be constructed in the vicinity of Chiloquin in Klamath County, Oregon. The location is more particularly described as follows:

GPS: Lat 42.596, Long-121.857

Parcel ID: #192650, #886466, #892362

**Power factor requirements:** Power Factor Range – 0.8 Leading, 0.8 Lagging

A more detailed and updated Exhibit A will be provided per section 6.1.



## **EXHIBIT B**

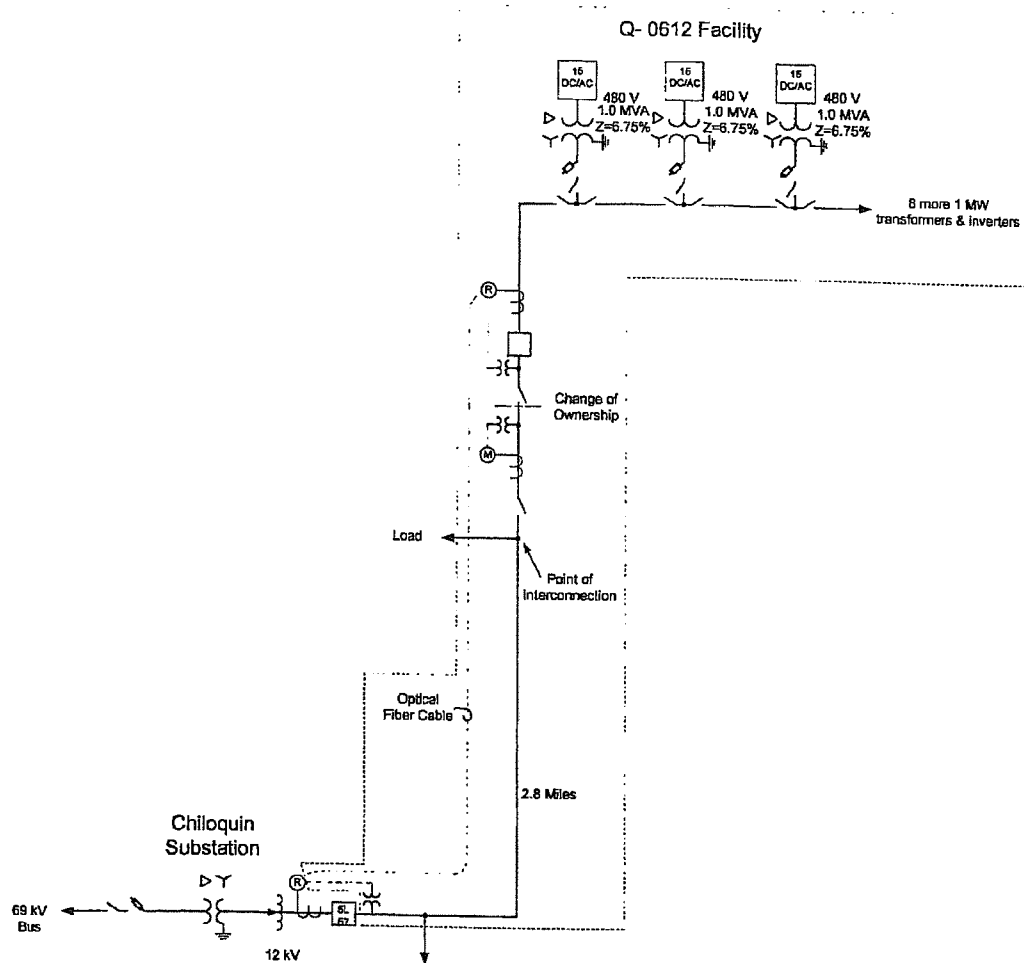
### **SELLER'S INTERCONNECTION FACILITIES**

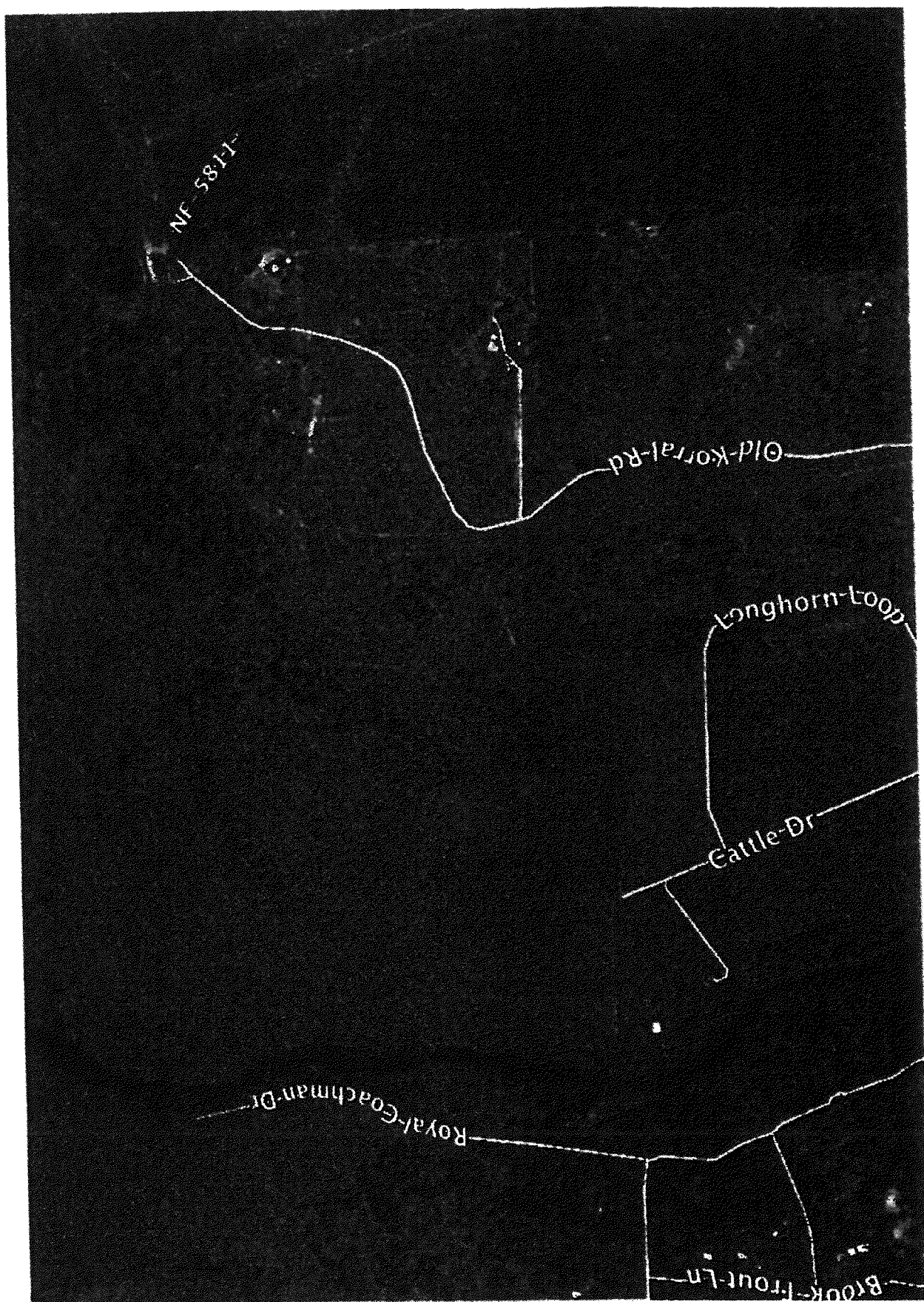
[Seller to provide its own diagram and description]

### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

#### **Instructions to Seller:**

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.
  1. The point of delivery and point of metering are at the high side of the step-up transformer at the Point of Interconnection, located on Circuit 5L57, Crater Lake, out of the Chiloquin Substation. The metering will be installed at the Point of Interconnection. Delivery will be at the Change of Ownership identified in PacifiCorp's one-line diagram from the System Impact Study Q0612.
  2. The project site map and one-line diagram are attached.







**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

QF Certification: QF15-006-000

Interconnection Agreement: Due September 15, 2015

Fuel Supply Agreement, if applicable

Qualifying Reporting Entity (QRE) Agreement:

Retail Electric Service Agreement:

Permits:

- Conditional Use Permit or alternative zoning approval as applicable by the local jurisdiction
- Building Permit
- Electrical Permit (as applicable)
- 1200C Construction Stormwater General Permit (as applicable)

**REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN OR STEP-IN RIGHTS:**

Deed or Lease to Facility Premises: Lease option with Peter M. Bourdet and Linda Long

Preliminary Title Report of Premises: Dated 10/27/2014 was provided

Proof of ownership of Facility

Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.



OPTION TO LEASE

This option is granted at Modoc Point on this 24<sup>th</sup> day of Sept, 2014.

By: Pete Bourdet/Linda Lang (Landlord") to and in favor of Saturn Power Inc. ("Tenant") for properties described as:

Municipality: \_\_\_\_\_

County: Klamath

Address: Modoc Point Rd + Cattle Drive

Legal Description: Town 34 S Range 7 E 1/4 section 22  
Town 36 Range 7 Section 15

The Landlord represents and warrants that it is the owner or tenant of the Lands described above or is the duly authorized agent of such owner or tenant and has the authority to grant this option.

In consideration of the sum of US\$ \$10,000 (the "Option Consideration") and other good and valuable consideration in hand paid to the Landlord(s) whereof are hereby acknowledged by Landlord(s) hereby grant(s) and convey(s) to Tenant for the term hereof 3 (years/months) an exclusive and irreversible option.

This option may be extended solely by the Tenant, for additional consideration of the sum of US\$ \$5,000 (the "Option Extension Consideration") and other good and valuable consideration in hand paid to the Landlord(s) whereof are hereby acknowledged by Landlord(s) hereby grant(s) and convey(s) to Tenant for an additional term hereof 3 (years/months) an exclusive and irreversible option.

The option to lease certain real property as further described in the attached "lease" on the terms and conditions set out therein what shall for greater certainty includes the right to install a solar array and related appertain in covering the leased area. Further in consideration of the payment on the premise of payment by Tenant to the Landlord of US\$ \$50. per acre per year of the leased area as further described in the attached lease upon exercising the lease option.

TENANT may record a Memorandum of Option regarding the matters herein, the Term, and any rights to extend the Option and the Landlord will execute any documents required to give effect to such recordation.

At any time during the Option Period, Tenant may give notice prior to the end of any period that it is terminating this Agreement in which case, the Option Period shall continue until the relevant next anniversary date of the commencement date of the

Confidential Saturn Power

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Landlord Initials

Tenant Initials

4-8-15



Saturn Power

Option Period and thereafter this Agreement shall be null and void and the parties shall be relieved of any further obligation.

This option may be exercised at any time during the Option Period by TENANT: (a) indicating on the attached form of Lease a Commencement Date that shall be prior to the expiration of the Option Period, and a corresponding ending date; and (b) providing the completed and fully executed Lease (attached) by certified mail, electronic mail or facsimile transmission, to the Landlord at the address or the fax number indicated below. The Landlord covenants and agrees to return the fully executed lease within five (5) business days after receiving notice that TENANT has exercised its option.

Throughout the Option Period: (i) The Landlord shall not use the Lands for the purposes of solar power electricity generation nor shall it lease, license or convey in any manner any rights to third parties for the purposes of solar power electricity generation or in any manner which would interfere with the rights granted TENANT, or with any contract TENANT has or may enter into with any utility; (ii) TENANT may enter onto the Lands (as defined in Schedule A as the "Leased Area") to conduct necessary testing, at TENANT's sole expense. Such testing shall include, but shall not be limited to, soil testing, climate monitoring and other activities that TENANT reasonably determines is necessary to assess the viability of the Lands for a solar electricity generation project; and (iii) the Landlord will not act or omit to act in any manner that could reasonably be expected to have the effect of rendering the exercise of this option less desirable to TENANT than it is on the date hereof.

Without limiting the generality of the foregoing, the Landlord will not dispose of its interest in the Lands unless the acquirer of such interest has agreed to be bound by this option.

Any damage to existing tile drains during the Option Period as a result of entry onto the Lands by TENANT for the purposes contemplated in this Option to Lease, shall be repaired by TENANT, at its expense, using qualified drainage contractors in consultation with the Landlord acting in a commercially reasonable and responsible manner. To the extent reasonably possible, such damage shall be repaired to a level such that the damaged tile drains shall be restored to the working state which existed prior to such damage. *including irrigation ditches and systems*

The Landlord acknowledges that TENANT intends to develop this through a related party or the formation of a limited partnership or other legal entity. In this clause, the related party or the limited partnership or other legal entity shall be referred to as the "Developing Entity". TENANT shall have the absolute and unfettered right at any time, from time to time, delegate, assign, lease, sell, license or convey to the Developing Entity all or any of the powers, rights and interests obtained by or conferred upon TENANT pursuant to this Option to Lease and the attached Lease.

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Landlord Initials

  
Tenant Initials



Saturn Power

TENANT shall give notice thereof to the Landlord and in such case, the Lease shall be between the Developing Entity and the Landlord.

The Option Period shall be reasonably extended, beyond the period indicated above, where circumstances existing or future beyond the direct control of TENANT delay the ability of TENANT to assess the viability of the Lands for the purposes of a solar power electricity generation project, as detailed in the attached Lease. Such circumstances shall include but not be limited to, war, acts of vandalism, lightning, ice storms, strikes, fires, shutdowns of electricity infrastructure, government delay and solar panels and associated equipment delivery delay.

At any time during the Option Period, TENANT may, in its sole discretion make applications for:

1. any site plan approval and/or zone changes and/or official plan amendments (individually and collectively the "Zoning Application"); and/or
2. any application as may be necessary to obtain any required consents from the local planning authority (the "Consent Application");

If and when TENANT in its discretion determines it wishes to proceed with a Consent Application and or a Zoning Application, TENANT shall proceed expeditiously in making such applications. The Landlord hereby appoints TENANT or its authorized agents or servants (as described in Schedule B Authorization Letter) to execute such documents, consents or authorizations as may be necessary to carry out such applications.

At all times, the Landlord and TENANT will assist each other as much as possible in processing the applications. From and after the date of acceptance of this Option Agreement, the Landlord agrees to co-operate with TENANT and to execute without payment of any kind any and all plans, documents, agreements and applications TENANT may make including the execution of any and all agreements or documents required by the appropriate municipality or of any governing authority or public agencies as a condition of permitting or completing any such Consent Application or Zoning Application. The Landlord shall upon written request execute any of the foregoing documentation or do any other matters or things previously requested within five (5) days of written request thereof. TENANT is responsible for the cost of the application fees and all surveys and reference plans in completing the applications.

The provisions of this Option to lease shall be governed by and interpreted in accordance with the laws of the state in which the Lands are located. The parties hereby attorn to the exclusive jurisdiction of the courts of that state. Any demand, notice, direction or other communication to be made or given hereunder shall be in writing and may be made or given by personal delivery, by electronic mail, by courier, by transmittal, by telecopy number as any party may from time to time notify the other in accordance with this section. Any Communication made by personal delivery or by courier shall be conclusively deemed to have been given and

Confidential Saturn Power

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Landlord Initials

Tenant Initials





saturn power

received on the day of actual delivery thereof, or, if made or given by telecopy or other electronic means of communication, on the first Business Day following the transmittal thereof. Any Communication that is mailed shall be conclusively deemed to have been given and received on the third Business Day following the date of mailing, but if at the time of mailing or within three Business Days thereafter, there is or occurs a labor dispute or other event that might reasonably be expected to disrupt delivery of documents by mail, any Communication shall be delivered or transmitted by means of recorded electronic communication as provided for in this section.

This Option to Lease shall inure to the benefit of and be binding upon the successors and assigns of the Landlord and the successors and assigns of TENANT, and no assignee or successor of the Landlord shall challenge the validity or enforceability of any provision of this Option to Lease and every assignee or successor of the Landlord shall be bound by all the obligations of the Landlord hereunder. Upon a conveyance or assignment of its interest in the Lands, the Landlord shall provide TENANT with written notice of the identity of the successor or assignee and the address at which the rent shall be tendered and notices given pursuant to the conveyance or assignment. The parties agree that each party and its counsel have had the opportunity to review and revise this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any revisions or amendments or exhibits hereto.

All capitalized terms not defined herein have the meaning assigned to them in the attached form of Lease.

Landlord Initials

Tenant Initials



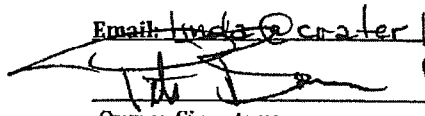
**Landlord Contact Information:**

Name: Pete Bourdet & Linda Long

Address: PO Box 803 Chilloguin, Ore 97624

Phone: 541 591-0101 Fax: 541 783-2759

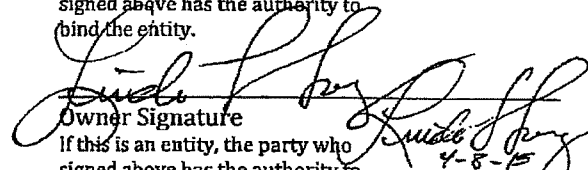
Email: ~~linda@craterlake Realty, inc. com~~ / info@bourdet-ranch.com

  
Owner Signature

If this is an entity, the party who signed above has the authority to bind the entity.

Date: 9-24-14

\_\_\_\_\_  
Witness Signature

  
Owner Signature

If this is an entity, the party who signed above has the authority to bind the entity.

Date: 9-24-14

\_\_\_\_\_  
Witness Signature

**Address of Saturn Power Inc.**

100 Mill Street, Unit F


PO Box 6087

New Hamburg, ON

N3A 2K6

Tel: 519-804-9163

Fax: 519-220-5912

Per: 

Title: Vice / pres.

I have the authority to bind the corporation.

**Attachments:**

Schedule A - Leased Area

Schedule B - Authorization Letter

Lease Agreement

Terms & Conditions of the Lease Agreement

  
Landlord Initials


  
Tenant Initials



**Schedule "A"**  
**Leased Area**  
**(Attach Map of Property)**



Landlord Initials

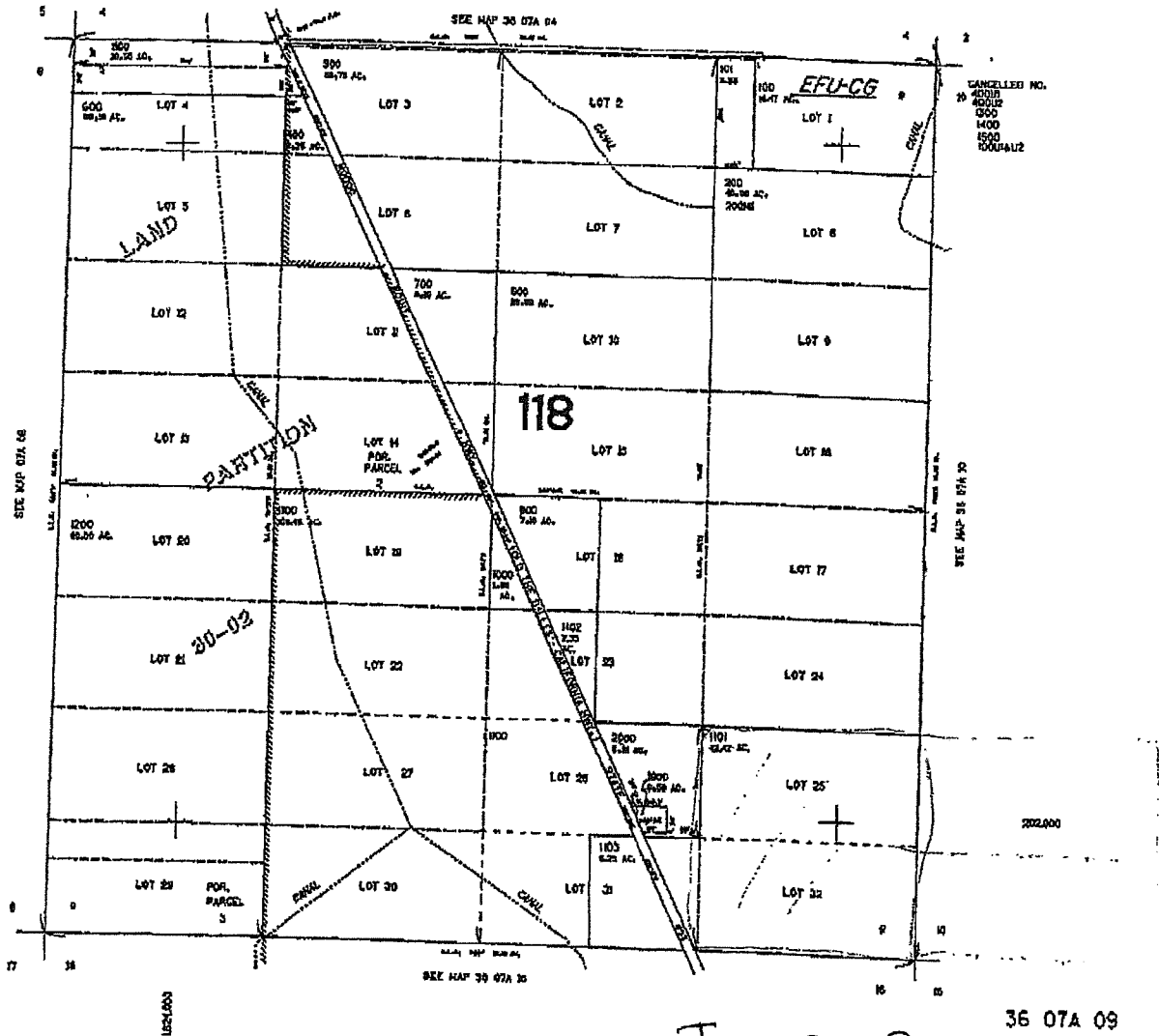


Tenant Initials

REVISED 5-21-07  
THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

SECTION 09 T.36S. R.07E. W.M.  
(EAST OF LAKE)  
KLAMATH COUNTY  
1" = 400'

36 07A 09



AmeriTitle

THIS SKETCH IS MADE SOLELY FOR THE  
PURPOSE OF ASSISTING IN LOCATING  
CERTAIN PREMISES AND NO LIABILITY IS  
ASSUMED FOR ERRORS IF ANY, IN  
DIMENSIONS OR LOCATIONS ASCERTAINED  
BY ACTUAL SURVEY





Changed &  
resubmitted

9-24-14

7:40 pm

Schedule "B"  
Authorization Letter

Date: Sept 24 2014

Re: Real property located in the County of Klamath known as  
Twins 36 R7EWM Sec 10 & 9 Lt 25 & 32  
following legal description:

Twn 36 S R7EWM Section 15 lots 12, 5, 4, 6, 11, 14  
lying N of Madoc Point Rd & Twins 34 S R7EWM  
Section 22 T8 Lt 300

TO WHOM IT MAY CONCERN:

I Percy Bonnet & Linda Long, the owner(s) of the above-mentioned properties, hereby give Saturn Power Inc. (SATURN) and its agents permission to act as our agent to acquire the necessary permits, drawings and/or buildings structural blue-prints, hydro information from the public utility and information from the municipality/county or other authorities concerned, needed to approve the construction of the Solar Farm at the address indicated above and as shown on the attached plans.

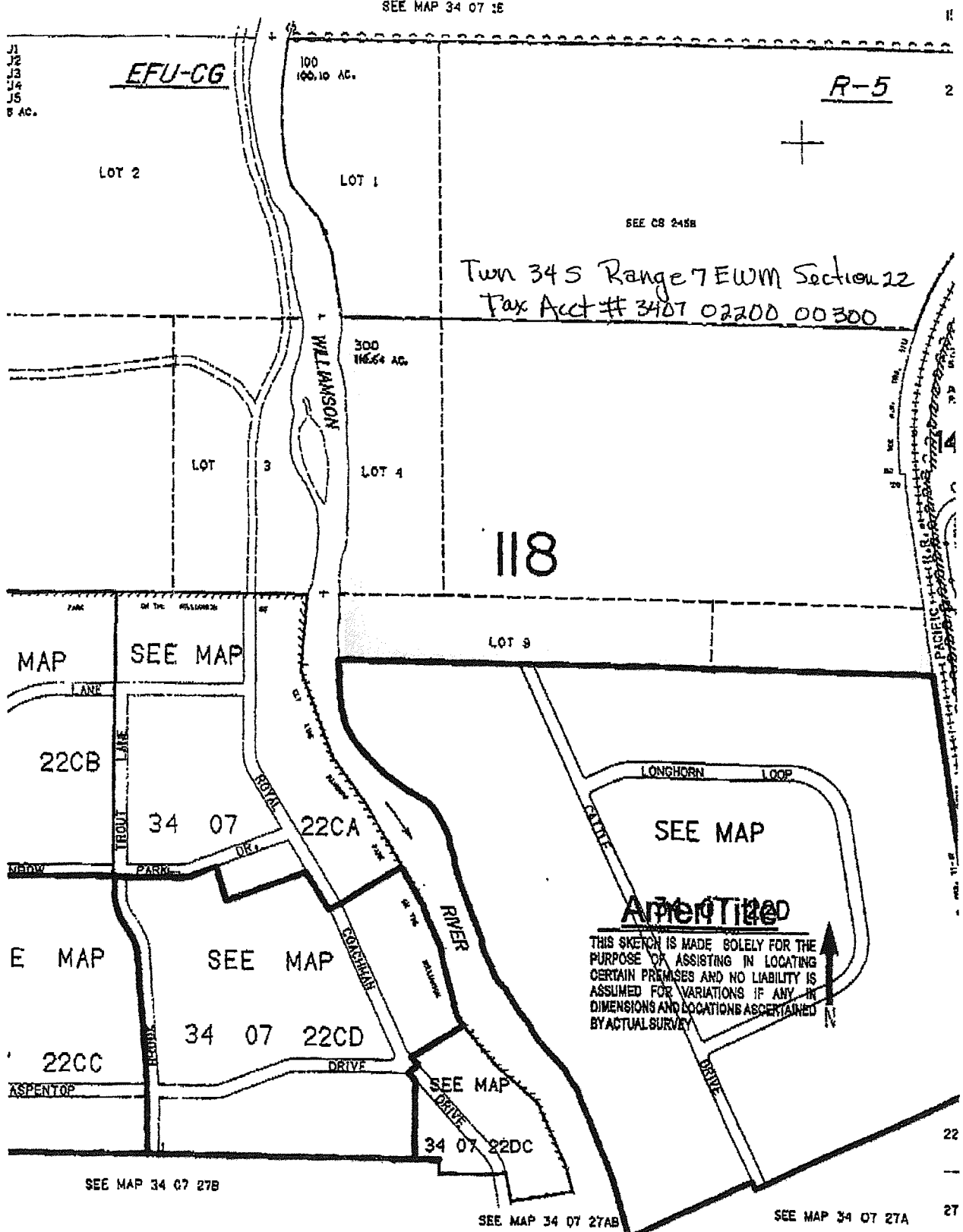
Sincerely,

[Signature]  
Title: Owner  
Date: 9-24-14

[Signature]  
Landlord Initials

[Signature]  
Tenant Initials







To be attached to  
Option to Lease  
dated 9-24-14  
changed 4-8-15

### TERMS & CONDITIONS OF THE LEASE AGREEMENT

1. TENANT shall have the right to install a Solar Array and associated Equipment on the Leased Area.

2. **Rental Rate.** Beginning with notification of the Installation Commencement Date (as defined below), and ending at the completion of the Term from the Generation Commencement Date (as defined below) or any extension thereof TENANT shall pay to the Landlord annual rent of \_\_\_\_\_ Dollars (US\$ \_\_\_\_\_) per acre payable once annually within sixty (60) days of the notification date and any anniversary thereof.

The annual Lease Payment shall be adjusted annually by CPI

The term "CPI" means the Consumer Price Index - U.S. City Averages for All Urban Consumers - All Items (1982-84=100), of the United States Bureau of Labor Statistics.

If the CPI shall become unavailable to the public because publication is discontinued, or otherwise, Landlord will substitute therefor, a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency or, if no such index shall be available then a comparable index published by a major bank or other financial institution.

### 3. **Term & Renewal.**

- a) **Installation Commencement Date** - The TENANT shall be entitled to an installation period determined by the TENANT of not more than one (1) year prior to the Generation Commencement, to install the Equipment. In the event that the TENANT has not completed construction and installation of the Equipment within the one-year period, it may, at its option, extend such installation period as described herein by a further six (6) months.
- b) **Generation Commencement Date** - The date at which the installation period ends and the Term begins. Notification of the start of the term, from the TENANT will be provided 30 days in advance of the Generation Commencement date.
- c) **Term** - The term of the Lease shall be for a period of twenty (20) years plus the period of time that the TENANT is granted access to permit it to complete any required installation and decommissioning, as provided herein (the "Term"),

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unless earlier terminated or extended in accordance herewith, commencing on the date the TENANT has connected the Equipment to the granting authority grid system and has commenced transmitting electricity and generating revenue therefrom (the "Generation Commencement Date").

*Date of Signing of Lease*

- d) **Decommissioning Period** - The TENANT shall, promptly upon the expiration or termination of this Lease, and in any event within one (1) calendar year thereof, remove the Equipment and, at its expense, reinstate the Land so as to make it reasonably capable of supporting the use to which it was employed immediately prior to the TENANT's occupation thereof. This obligation shall extend to the activities of the TENANT in relation to any other portion of the Land over which the TENANT exercised any access rights pursuant to this Lease. The parties agree that the Equipment shall remain the property of the TENANT and no part of the Equipment shall be deemed to be a legal fixture of the Land by virtue of it being affixed to the Land in any manner and the OWNER shall have acquired no title thereto.
- e) **Right of Extension** - The Landlord hereby grants to TENANT the right to extend the Term of this Lease for two (2) further and consecutive periods of ten (10) years. Each extension shall take effect automatically and without further notice unless TENANT gives notice to the Landlord at least ninety (90) days prior to the end of the Term or any extensions thereof, that it shall not exercise such right of extension. During each five year period during the Term and any extensions thereof, the rent shall be determined as set forth above in Paragraph 2.

Notwithstanding the foregoing, this Lease is entered into upon the express condition that it is to be effective only if all applicable governmental regulations (the "Regulations") are complied with. If any renewals or extension of the Term should require an approval pursuant to said Regulations, then the within clause shall not be considered in breach or in contravention of the Regulations, but rather conditional upon appropriate permission being granted pursuant to said Regulations at the expense of TENANT.

The Landlord and TENANT hereby agree that they will each do and perform all such acts and things and execute all such deeds, documents and writings and give all such assurances as may be necessary to give effect to this Lease.

If compliance with the provisions of any Regulations should be required, in the sole discretion of TENANT, then the Landlord hereby appoints TENANT or its authorized agents or servants to execute such consents or authorizations as may be necessary for TENANT to obtain any required consents from the appropriate authority and agrees to cooperate in any such applications for consent (the "Consent Application").



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In addition, TENANT may, in its sole discretion make applications for any site plan approval and/or zone changes and/or official plan amendments (individually and collectively the "Zoning Application") that may be necessary to allow TENANT to do that which is contemplated in this Lease. If a Zoning Application is necessary, the Landlord hereby appoints TENANT or its authorized agents or servants to execute such documents, consents or authorizations as may be necessary.

If and when TENANT in its discretion determines it wishes to proceed with a "Consent Application" and/ or a "Zoning Application", TENANT shall proceed expeditiously in making such applications. At all times, the Landlord and TENANT will assist each other as much as possible in processing the applications. From and after the date of acceptance of this Lease, the Landlord agrees to co-operate with TENANT and to execute without payment of any kind any and all plans, documents, agreements and applications whatsoever which may in TENANT'S opinion be necessary or desirable in order to facilitate any application. Furthermore the Landlord shall provide any consents to writing as may be necessary to any such applications TENANT may make including the execution of any and all agreements or documents required by the appropriate municipality or of any governing authority or public agencies as a condition of permitting or completing any such "Consent Application" or "Zoning Application". The Landlord shall upon written request execute any of the foregoing documentation or do any other matters or things previously requested within five (5) days of written request therefor. TENANT is responsible for the cost of the application fees and all surveys and reference plans in completing the applications.

4. **Termination by TENANT.** If, at any time during the Term or any extensions thereof, TENANT determines in its sole and unfettered discretion that operating the Leased Area for the purposes declared herein is or has become commercially impractical, for any reason, TENANT may terminate this Lease without damages or penalty upon sixty (60) days prior written notice to the Landlord. In the event of such termination, the Landlord shall refund to TENANT any rent paid in advance for any period of time subsequent to the effective date of termination.

5. **Covenants of TENANT.**

(a) **Safety and Maintenance** – TENANT shall install, operate, and maintain its Equipment, in a good, safe and workmanlike manner and shall repair, reasonable wear and tear excepted, any physical damage, at its sole cost and expense, to the Lands and improvements caused by the construction and operation of the Equipment, including restoring the surface of the Lands to the same condition, as far as practicable, as existed before the entry thereon.

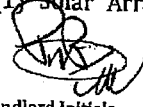
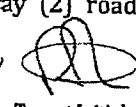
(b) **Tile Drains & Open Ditches** – To the extent reasonably possible, TENANT shall repair any tile drains or open drains which have been damaged or impacted (collectively the "damage") as a result of TENANT'S: (1) Solar Array (2) road

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construction or (3) electrical placement related to the foregoing. The damage shall be repaired by TENANT, at its expense, using qualified drainage contractors in consultation with the Landlord acting in a commercially reasonable and responsible manner. To the extent reasonably possible, such damage shall be repaired to a level such that the damaged tile drains or open drains shall be restored to the working state which existed prior to the damage.

(c) **Taxes, Rates and Assessments** - TENANT will pay as and when due all applicable taxes, rates and assessments, that are levied, charged or assessed with respect to any business carried on by TENANT on or from the Leased Area.

*Real + personal*

(d) **Government Regulation** - TENANT shall, at its own expense, at all times ensure that the installation, operation and maintenance of its Equipment comply with all required laws, directions, rules and regulations of relevant governmental authorities. TENANT shall have the right, in its sole discretion, to contest by appropriate legal proceedings, the validity or applicability to the Lands, Leased Area or the Equipment of any law, ordinance, statute, order, regulation, property assessment, or the like now or hereafter made or issued by any federal, state, local or other governmental agency or entity. Any such contest or proceeding shall be controlled and direction by TENANT.

(e) **Removal of Equipment** - TENANT shall quit and surrender possession of the Leased Area within the decommissioning period.

(f) **Insurance** - TENANT will at all times throughout the Term and any extensions thereof, maintain Commercial General Liability Insurance coverage in an amount not less than Two Million (U.S. \$ 2,000,000.00) U.S. Dollars (or such greater amounts as the normally recommended minimum amounts by TENANT'S insurers of Commercial General Liability Insurance) per occurrence for Bodily Injury and Property Damage. Such policy shall extend to include the Landlord as an additional insured but solely with respect to liability related to the Equipment. Once annually, TENANT shall provide Landlord with a Memorandum of Insurance evidencing that said coverage are in force and shall also notify Landlord in advance of any material change in coverage or cancellation of any such policy.

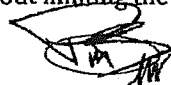
*certificates of Ins And Activity of Tenant*

#### 6. **Covenants of the Landlord.**

(a) **Quiet Possession** - The Landlord covenants that TENANT shall peaceably and quietly hold and enjoy the Leased Area and its appurtenances, subject to the terms and conditions of this Lease. The Landlord shall not make any change to the Lands and its appurtenances and will not act or omit to act in any manner that could adversely affect access to or use of the Leased Area by TENANT at any time throughout the duration of this Lease without the prior written consent of TENANT, which consent may not be unreasonably withheld. Without limiting the generality of

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the foregoing, the Landlord shall not interfere with the construction, installation, maintenance or operation of the Equipment, disturb the solar radiance over the Lands and Leased Area by building or installing any structures or planting any trees that may negatively affect the efficiency of the Equipment.

(b) **Exclusivity** - Throughout the Term and any extensions thereof, OWNER shall not use the Lands or convey rights in any manner, including but not limited to, leasing or licensing space at the Lands [if this Lease relates to only a partial rental of the Lands] to any person, for the purpose of the installation and operation of a wind farm or solar farm or to erect any Wind Turbine or other towers or a Solar Array for any purposes on the Lands without the prior written consent of TENANT, which consent may be arbitrarily withheld.

(c) **Non-Obstruction Rights** - For each structure installed or placed on the Land by Owner after the Effective Date, the following provisions shall apply:

- a. Owner shall obtain prior written permission from Developer to erect any structure on the Lands, and in any case, within 30 meters of any Solar Panel Rack on the Land. The Owner shall be permitted to install any structure outside of the Lands provided said installation does not interfere with the Developer's access to the Lands or structures thereon or to the Developer's ability to maintain the Project, within its reasonable discretion.
- b. Owner shall obtain prior written permission from Developer to erect any structure, place any thing or seed or install any plant or that is capable of shading any Solar Power Rack; and
- c. Developer shall have thirty (30) business days within which to provide its consent or rejection. The Developer hereby confirms that consent hereunder shall not be withheld in an unreasonable or arbitrary manner.

7. **TENANT'S Equipment.** The Equipment shall remain at all times the personal and moveable property of TENANT, and not become fixtures, notwithstanding the attachment to any degree or in any manner of any part of the Equipment to the Lands. TENANT shall have the right to make alterations or improvements or both at the Leased Area at any time during the Term and any extensions thereof, including, but not limited to, the replacement, expansion, reconfiguration or addition of Solar Arrays, or other Equipment and/or additional facilities as deemed necessary by TENANT.

8. **Landlord not Liable.** Except for the negligent acts or omissions or the willful and wrongful acts or omissions of the Landlord or the Landlord's employees or those persons authorized by the Landlord to be on the Lands, the Landlord shall not be liable to or indemnify TENANT for any inconvenience to the operations of



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TENANT at the Leased Area, or damage to the Equipment, or injury to any person occupying the Leased Area.

9. **TENANT not Liable.** Except for the negligent acts or omissions or the willful and wrongful acts or omissions of TENANT or TENANT'S employees and those persons authorized by TENANT to be on the Lands, TENANT shall not be liable to or indemnify the Landlord for any costs incurred or losses or damages or injury suffered by the Landlord. Notwithstanding the above, TENANT shall not be liable for any consequential, indirect or special damages, whether arising in contract, tort, strict liability or under any statute. ✓


10. **Confidentiality.** Except as otherwise provided herein, the parties agree that all information relating to the use of the Lands or Leased Area pursuant to this Lease is confidential and proprietary, and shall not be disclosed to any third party other than (a) to employees, attorneys, accountants, agents and affiliates of the parties who are involved in the ordinary course of business with this transaction, all of which shall be instructed to comply with the non disclosure provisions hereof; (b) in response to lawful process or other valid or enforceable order of a court of competent jurisdiction; and (c) in any filings with governmental authorities required by reason of the transactions provided for herein. Each party will take all reasonable steps to protect the confidentiality of such information, and in particular shall hold the terms and conditions of this Lease in the strictest confidence. This provision shall survive any termination or expiration of this Lease.


11. **Default.** Either party may at its option and without further liability to the other party terminate this Lease: upon the material default by such other party in the performance of any of its covenants or obligation under this Lease, if such default is not remedied within sixty (60) days of the party in default receiving written notice of such default, or within such longer period as is reasonable in the circumstances, so long as the party in default is diligently moving to implement remedial action.

(a) As a precondition to exercising any rights or remedies related to any alleged default by TENANT under this lease, the Landlord shall give written notice of the default to each Financier (as defined below) or assignee at the same time it delivers notice of default to TENANT, specifying in detail the alleged event of default and the required remedy. The Financier or assignee shall have the right but not the obligation to cure a default on behalf of TENANT. In the event that the Financier or assignee elects to cure said default it shall provide notice of same to the Landlord and the Financier or assignee shall have an additional sixty (60) day period from the notice period described above, for a total of one hundred and twenty (120) days to cure the default, or such other longer period of time as is reasonable in the circumstances so long as the Financier or assignee is diligently moving to implement remedial action.

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(b) If any default by TENANT cannot be cured without obtaining possession of all or part of the Leased Area and Equipment, then any such default shall be deemed remedied if a Financier or assignee: (a) within one hundred and eighty (180) days after receiving notice from the Landlord acquires possession of all or part of the Leased Area or Equipment, or begins appropriate judicial or non-judicial proceedings to obtain the same, and (b) diligently prosecutes any such proceedings to completion. If a Financier or assignee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the one hundred and eighty (180) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

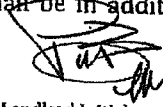
(c) In the event that the Lease is terminated due to the default of TENANT or if the Lease is rejected or disaffirmed by reason of law, the Landlord agrees that it shall enter into a new lease for the Leased Area with the Financier or assignee, upon the same terms and conditions as the Lease. This new lease shall be executed within thirty (30) days of the Financier or assignee providing written notice to the Landlord and provided the Financier or assignee cures or begins to cure any outstanding defaults, any new lease shall enjoy the same priority as the Lease over any existing liens, mortgages, encumbrances or other security interest created by the Landlord affecting the Lands.

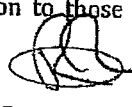
(d) The provisions of this Section 11 shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by the Landlord. TENANT and such Financier or assignee, and, from the effective date of such termination, rejection or disaffirmation of the Lease to the date of execution and delivery of such new lease, such Financier or assignee may use and enjoy the Leased Area without hindrance by the Landlord or any person claiming by, through or under the Landlord, provided that all of the conditions for a new lease as set forth herein are complied with.

**12. TENANT'S Financing Arrangements.** The Landlord acknowledges that TENANT has entered into, and will be entering into, certain financing arrangements which may require an assignment or hypothecation of TENANT'S rights and obligations under this Lease, or the creation of security interests in the personal or moveable property of TENANT located at the Lands. The Landlord consents to any such assignment, hypothecation or grant of security interests, and to any transfers occurring on the enforcement of same. The Landlord shall, at the request of TENANT, acknowledge in writing the foregoing in such form as the relevant financier (the "Financiers") may reasonably require. For the purposes of this section, TENANT is executing this Lease for itself and as agent for the Financiers with whom TENANT may be entering into financing arrangements from time to time as acknowledged herein. Any Financier, for so long as its financing is in existence shall be entitled to the following protections which shall be in addition to those

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granted elsewhere in the Lease. A Financier shall have the absolute right: (a) to assign its Loan; (b) to enforce its lien and acquire title to the Equipment and the leasehold interest in all or any portion of the Leased Area by any lawful means; (c) to take possession of and operate all or any portion of the business carried on by TENANT and to perform all obligations to be performed by TENANT under this Lease, or to cause a receiver to be appointed to do so; and (d) to acquire all or any portion of the Project or Equipment by foreclosure or by an assignment in lieu of foreclosure and thereafter without Landlord's consent to assign or transfer all or any portion of the Leased Area and Equipment to a third party.

At TENANT'S request, the Landlord shall amend this Lease to include any provision which may reasonably be requested by a proposed Financier provided, however, that such amendment does not impair any of the Landlord's rights under this Lease or substantially increase the burdens or obligations of Landlord under this Lease. Upon the request of any Financier, Landlord shall execute any additional instruments reasonably required to evidence such Financier's rights under this Lease.

13. **Recordation.** TENANT may record a memorandum of lease and option in the Register of Deeds office of the state in which the Lands are situated, stipulating TENANT'S interest, the Term, any rights to extend land, when applicable, a short form lease, the terms of the Right of first Refusal set out hereafter, and the Landlord will execute any documents required to affect such recordation. Such recordation may be effected on behalf of the TENANT by an affiliated corporation, partnership, or other entity as bare nominee for recordation purposes only, at the TENANT'S expense. The Landlord also agrees to obtain a non-disturbance agreement at TENANT'S expense from any mortgagee or other party with an encumbrance or security interest in the Lands in such form as TENANT may reasonably require. The Landlord shall also obtain co-existence agreements, in such form as TENANT reasonably requires, with other tenants on the Lands, where necessary. The Landlord agrees that TENANT may have already executed and delivered or will in the future execute and deliver to TENANT'S banker debentures, leasehold mortgages or other security agreements in favor of such Bank as security for the present and future indebtedness and liability of TENANT to such Bank. The Landlord acknowledges that the security given in favor of the Bank includes or will include a charge over TENANT's present and future equipment and other assets of TENANT including the Solar Array and associated Equipment (collectively the "Encumbered Equipment"). The Landlord hereby subordinates any interest which the Landlord may now have or may hereafter acquire the equipment and other assets of TENANT to and in favor of the interest of such Bank and as against such Bank, releases any right to distrain the equipment and other assets of TENANT.

14. **Right of First Refusal to Purchaser.** The Landlord covenants and agrees with TENANT that, during the term of the lease or any renewal thereof, the Landlord will give TENANT (5) business days to submit an offer upon the same

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terms and conditions as any bona fide Offer to Purchase the leased property that the Landlord has received and is willing to accept, and any Lease executed by the Landlord and TENANT shall include this first right of refusal.

The Landlord shall give TENANT written notice of such bona fide Offer and a copy of such Offer to TENANT. In the event that TENANT submits to the Landlord, within the time period described above, a written and signed Offer to Purchase the property upon the same terms and conditions as the Offer initially received by the Landlord, the Landlord shall accept the Offer submitted by TENANT. In the event that TENANT fails to deliver to the Landlord, within the time limit described above, a written and signed Offer to Purchase the property on the same terms and conditions the initial Offer, the Landlord shall be at the liberty to sell the property to the buyer who submitted the initial Offer.

15. **Encumbrances.** - TENANT may, at its option, pay or discharge any arrears owing under any encumbrance upon the Lands which has priority over the interest of TENANT under this Lease, or any arrears of any property taxes, local improvement charges and any other rates, duties, levies and assessments levied or assessed by any competent government authority upon or in respect of the Lands or that affect the Lands in any way, in which event TENANT shall be subrogated to the rights of the creditors of such discharged obligations and may, at its option, apply the rent or any other amounts owing to the Landlord under this Lease to the repayment of any arrears so paid or discharged.

16. **Assignment.** - TENANT shall have the absolute and unfettered right at any time, from time to time, to delegate, assign, lease, sell, license or convey to other persons or corporations, all or any of the powers, rights and interests obtained by or conferred upon TENANT pursuant to this Lease and TENANT shall not be bound to give notice thereof to the Landlord or any other party or obtain any consent thereto and may enter into all agreements, contracts, and writings and do all necessary acts and things to give effect to the provisions of this Section.

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17. **Successors and Assigns.** This Lease shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and the successors and assigns of TENANT, and no assignee or successor of the Landlord shall challenge the validity or enforceability of any provision of this Lease and every assignee or successor of the Landlord shall be bound by all the obligations of the Landlord hereunder. Upon a conveyance or assignment of its interest in the Lands, the Landlord shall provide TENANT with written notice of the identity of the successor or assignee and the address at which the rent shall be tendered and notices given pursuant to the conveyance or assignment.

18. **Over holding.** - In the event that TENANT remains in possession of the Leased Area after the expiration of the Term or any extensions thereof, TENANT shall be deemed to be occupying the Leased Area as a tenant from month to month

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at the current monthly rent, or if the rent is payable annually, one twelfth (1/12) of the annual rent. The rent shall thereafter be payable monthly in advance on the first day of each month following the expiration of the Term or any extensions thereof, with all other rights and obligations of this Lease remaining in force to the extent they may apply to a month to month tenancy, subject to the proviso that neither party may terminate the month to month tenancy except by giving ninety (90) days written notice to the other party. No extension of the Term, or any new Term, or any tenancy from year to year will be created by implication of law through over holding.

19. **Condemnation.** - If during the Term or any extensions thereof, the whole or any part of the Lands is taken by eminent domain, the Landlord shall not accept any award for compensation without TENANT'S written consent, which shall not be unreasonably withheld, conditioned, or delayed. TENANT shall be entitled to receive such part of the award as compensates for the loss of its interest in the Leased Area.

20. **Governing Law and Jurisdiction.** - The provisions of this Lease shall be governed by and interpreted in accordance with the laws of the state in which the Lands are located. The parties hereby attorn to the exclusive jurisdiction of the courts of that state.

21. **Entire Lease: Survey.** - This Lease cancels and replaces all other agreements between the parties with respect to the Lands. This Lease contains the entire agreement between the Landlord and TENANT with respect to the Lands and expressly excludes all prior representations and discussions, either oral or written, between the parties other than those set forth in this Lease. Each party acknowledges having obtained adequate explanation of the nature and scope of each of the clauses of this Lease, and having had the opportunity to consult legal counsel with respect thereto. Except as otherwise provided herein, this Lease may not be amended or modified except by written instrument executed by both parties. TENANT may elect to obtain, at its discretion, technical drawings or a survey of the Lands and the Leased Area.

22. **Facsimile Transmissions: Notices.** - Either party may provide consent to the execution, amendment or renewal of this Lease by facsimile transmission, and receipt of a copy of the document so executing, amending or renewing this Lease shall bind the transmitting party to all the terms and conditions contained therein. Any notice required or authorized by this Lease shall be deemed to have been properly given if by personal delivery at any place, or by certified mail or courier, or by facsimile transmission to the address or fax number specified herein, or to any other address or fax number duly notified by one party to the other.

23. **Severability, Interpretation.** - Any provision of this Lease that is determined to be void or unenforceable in whole or in part shall be deemed



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unwritten and shall not affect or impair the validity or enforceability of any other provision of this Lease, which shall all remain binding on the parties. The parties agree that each party and its counsel have had the opportunity to review and revise this Lease and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Lease or any revisions or amendments or exhibits hereto

24. **Authorization.** - The Landlord hereby authorizes TENANT during the Term and any extensions thereof, to use the form of correspondence attached as Schedule "B" (the "Authorization Letter"), to obtain from any person, corporation or government authority, any information regarding the Lands that TENANT may require for the purposes of exercising its rights under this Lease, including but not limited to, information pertaining to any mortgages, encumbrances or security interests on the Lands and regarding payment of property taxes by the Landlord and any delinquency thereof, and the Landlord agrees to execute the Authorization Letter from time to time as reasonably requested by TENANT for these purposes.

25. **Environmental.** - During the Term, or any extensions thereof, the Landlord represents and warrants continuously that there are not contained, within or under the Lands, any toxic material or hazardous substances or any other contaminants (collectively "Hazardous Substances") as defined under all applicable state or federal legislation, regulation or orders of any kind. The Landlord shall indemnify and hold TENANT harmless from and against any liability arising from the presence of Hazardous Substances on the Lands. TENANT shall have the right to conduct environmental testing at the Lands and Leased Area at any time during the Term and any extensions thereof and to terminate this Lease immediately without damages or penalty should the results of such environmental testing demonstrate the presence of Hazardous Substances at levels not acceptable to TENANT. TENANT shall comply with all applicable state or federal environmental legislation, regulation or orders of any kind.

26. **Requirements of Contract to Sell Electricity.** - If under any applicable law, rules or procedures, TENANT becomes ineligible to obtain an electricity sales contract offered by any local, state or federal government, or other entity then, at TENANT'S option, the Landlord agrees to execute any additional agreements or amendments to this Lease reasonably needed to the TENANT for its business purposes so long as they do not adversely affect the rights of the Landlord or violate the terms and spirit of this Lease.

27. **Arbitration.** - In the event that either Party provides the other Party with written notice of a dispute arising under this Lease (the "Dispute") then each Party shall use their best efforts to settle the Dispute by consulting and negotiating with each other, in good faith and understanding of their individual and mutual interest, to reach a just and equitable solution satisfactory to each Party. However, if each Party does not reach a solution for the Dispute within Thirty (30) Days following

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notice thereof, then either Party may provide written notice to the other Party (the "Arbitration Notice") requiring resolution by arbitration and thereafter the Dispute shall be referred to arbitration for final settlement, to be binding on each Party in accordance with the provisions of the applicable arbitration act of the address of the Landlord including any amendments or replacements thereto, as follows:

- (i) The arbitration tribunal shall consist of One (1) arbitrator appointed by mutual agreement of each Party or, in the event of failure to agree within Ten (10) Days after receipt of the Arbitration Notice, then either Party may apply to a judge of the Superior Court to appoint an arbitrator. The arbitrator shall be qualified by education and training to pass ruling upon the particular matter to be decided;
- (ii) The arbitrator shall be instructed that time is of the essence in proceeding with the determination of the Dispute; and
- (iii) The arbitration shall take place in the State of the address of the Landlord.

  
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SATURN POWER INC.  
NEW BRUNSWICK, CANADA

0123

DATE 20/05/98

PAY TO Boudet Ranch

PAY TO THE ORDER OF

\$ 10,000.00

Ten thousand

ROYAL BANK OF CANADA

DOLLARS 00/100

SATURN POWER INC.

12345678901234567890

*[Signature]*

400-123-78 65

Order No. 0102212



**STATUS OF RECORD TITLE**

SATURN POWER  
100 MILL ST, UNIT F  
NEW HAMBURG, ON N3A1R1

Date: October 27, 2014  
Title Number: 0102212  
Title Officer: Aquila Reed  
Fee: \$400.00

**We have searched the status of record title as to the following described property:**

PLEASE SEE ATTACHED EXHIBIT "A"

**Vestee:**

PETER M. BOURDET AND LINDA LONG,  
AS TENANTS BY THE ENTIRETY

**and dated as of October 13, 2014 at 8:00 A.M.**

**Said property is subject to the following on records matters:**

**EXCEPTIONS:**

1. Taxes for the fiscal year 2014-2015, a lien, now due and payable.

Map Tax Lot:	3407-02200-00300-000	Property ID:	192650
Amount:	\$65.48	Code No:	138
Map Tax Lot:	3607-A0900-01101-000	Property ID:	886466
Amount:	\$28.49	Code No:	118
Map Tax Lot:	3607-A1500-00301-000	Property ID:	892362
Amount:	\$277.12	Code No:	118
2. Taxes deferred, as disclosed by the tax roll, the premises herein described have been zoned or classified for farm use. At any time that said land is disqualified for such use the property will be subject to additional taxes or penalties and interest.

3. This report does not include a search for financing statements filed in the office of the Secretary of State in this or any other State, or in a county other than the county wherein the premises are situated, and no liability is assumed if a financing statement is filed in the office of the County Clerk (Recorder) covering growing crops or fixtures on the premises wherein the lands are described other than by metes and bounds or under the rectangular survey system.
4. The premises herein described are within and subject to the statutory powers, including the power of assessment, of Modoc Point Irrigation District.
5. The rights of the public in and to any portion of the herein described premises lying within the limits of streets, roads or highways.
6. The premises herein described are within and subject to the statutory powers, including the power of assessment and easements of Klamath Lake Timber Fire Patrol.
7. Reservations as contained in Patent from United States of America to Lamm Lumber Company,  
Recorded: May 5, 1921  
Volume: 56, page 204, Deed Records of Klamath County, Oregon  
To wit:  
"And there is reserved from the lands hereby allotted, a right of way thereof for ditches or canals constructed by the authority of the United States."  
(Affects Government Lots 14, 19 and 22, Section 15)
8. Reservations as contained in Patent from the United States of America to Lee Taylor,  
Recorded: May 15, 1925  
Volume: 65, page 596, Deed Records of Klamath County, Oregon  
To wit:  
"And there is reserved from the lands hereby allotted, a right of way thereof for ditches or canals constructed by the authority of the United States."  
(Affects Government Lots 4 and 5, Section 15)
9. Reservation of subsurface rights as contained in Deed recorded in Volume 302, page 581, Deed Records of Klamath County, Oregon.
10. Reservations and restrictions in Land Status Report, recorded October 7, 1958 in Volume 304, page 243, Deed Records of Klamath County, Oregon. (Affects Government Lots 31 and 32 Section 9)
11. Reservation and restrictions in Land Status Report as recorded on October 2, 1958 in Volume 304, page 261, Deed Records of Klamath County, Oregon.  
(Affects Government Lots 8 and 9, Section 16; Government Lots 12, 13 and S1/2 Lot 5, Section 15)

12. Reservations as contained in Deed recorded February 8, 1959 in Volume 309, page 485, Deed Records of Klamath County, Oregon.

To wit:

"This conveyance is made pursuant to the provisions of the Act of August 13, 1954 (68 Stat. 720, 722)."

"Title to the above described property is conveyed subject to any existing easements for public roads and highways for public utilities, and for railroads and pipelines, and for any other easements or rights of way of record."

"There is reserved from the lands hereby granted a right of way of the Southern Pacific Railway Company, approved by the Assistant Secretary of the Interior on February 4, 1914, pursuant to the provisions of the Act of March 2, 1899 (30 Stat. 990) as amended by the Act of June 21, 1906, (34 Stat. 325,330) and Section 16 of the Act of June 25, 1910 (36 Stat. L., 855-859)."

"There is reserved from the lands hereby granted a right of way for the Dalles-California Highway No. 97, approved April 13, 1938, by the Assistant Secretary of the Interior, subject to the provisions of the Act of March 3, 1901 (31 Stat. L., 1084), and Departmental regulations thereunder."

"The lands hereby conveyed are subject to a lien, prior, and superior to all other liens for the amount of costs and charges due to the United States for an on account of construction, operation, and maintenance of the irrigation system or acquisition of water rights by which said lands have been or are to be reclaimed and the lien so created is hereby expressly reserved in accordance with the provisions of the Act of March 7, 1928 (45 Stat. 200-210), and as supplemented by the Act of July 1, 1932 (47 Stat. 564,565)." Affects: Government Lots 3, 6 and 11, Section 15"

13. An easement created by instrument, subject to the terms and provisions thereof,

Dated: March 9, 1989

Recorded: March 22, 1989

Volume: M89, page 4869, Microfilm Records of Klamath County, Oregon

In favor of: Pacific Power and Light Company

For: Electric transmission and distribution lines

(Affects SW1/4 NW1/4 Section 15)

14. Right of Way Easement, subject to the terms and provisions thereof;

Recorded: July 11, 1996

Volume: M96, page 20615, Microfilm Records of Klamath County, Oregon

In favor of: Pacific Power & Light Company

For: Electric transmission and distribution line

(Affects a strip of land 20 feet in width not specifically located of record in the SE NE of Said Section 22 and other property)

15. Line of Credit Deed of Trust, Mortgage, Assignment of Rents and Security Agreement and Fixture Filing, subject to the terms and provisions thereof, given to secure an indebtedness with interest thereon and such future advance as may be provided therein;

Dated: December 14, 2006  
Recorded: December 21, 2006  
Volume: 2006, page 025143, Microfilm Records of Klamath County, Oregon  
Amount: \$990,000.00  
Grantor: Peter M. Bourdet (who also appears of record as Pete Bourdet) and Linda Long, husband & wife  
Beneficiary: Harvest Capital Company  
(with other property)

The beneficial interest under said Trust Deed was assigned by instrument;

Dated: March 2, 2011  
Recorded: March 9, 2011  
Volume: 2011-003390, Microfilm Records of Klamath County, Oregon  
From: Harvest Capital Company, an Oregon corporation  
To: U.S. Bank National Association

16. Mortgage, Assignment of Rents and Security Agreement and Fixture Filing, subject to the terms and provisions thereof given to secure an indebtedness with interest thereon and such future advance as may be provided therein;

Dated: December 14, 2006  
Recorded: December 21, 2006  
Volume: 2006, page 025145, Microfilm Records of Klamath County, Oregon  
Rerecorded: February 23, 2007  
Volume: 2007-003113, Microfilm Records of Klamath County, Oregon  
Amount: \$660,000.00  
Mortgagor: Peter M. Bourdet and Linda L. Long, husband and wife  
Mortgagee: Harvest Capital Company  
(Affects other property also)

The beneficial interest under said Trust Deed was assigned by instrument;

Dated: March 2, 2011  
Recorded: March 9, 2011  
Volume: 2011-003391, Microfilm Records of Klamath County, Oregon  
From: Harvest Capital Company, an Oregon corporation  
To: U.S. Bank National Association

**END OF EXCEPTIONS**



Order No. 102212

**NOTE:** Any map or sketch enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.

THIS IS NOT A TITLE REPORT, A COMMITMENT TO ISSUE TITLE INSURANCE OR A GUARANTEE OF ANY KIND. No liability is assumed with this report. The fee charged for this service does not include supplemental reports or other services. Further dissemination of the information in this report in a form purporting to insure title to the herein described land is prohibited by law.

**AmeriTitle**

By: Aquiea Reed  
AQUIEA REED,

*"Superior Service with Commitment and Respect for Customers and Employees"*

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

The following described real property situate in Klamath County, Oregon:

Township 36 South, Range 7 East of the Willamette Meridian

Section 9: Government Lots 25, 32 and the E1/2 of Government Lot 31 lying Easterly of Highway 427.

**PARCEL 2:**

Government Lots 4 and 5 and those portions of Government Lots 12 and 13 lying Northerly of Highway 427; all those portions of Government Lots 3, 6, 11 and 14 lying West of the Southern Pacific Railroad Right of Way

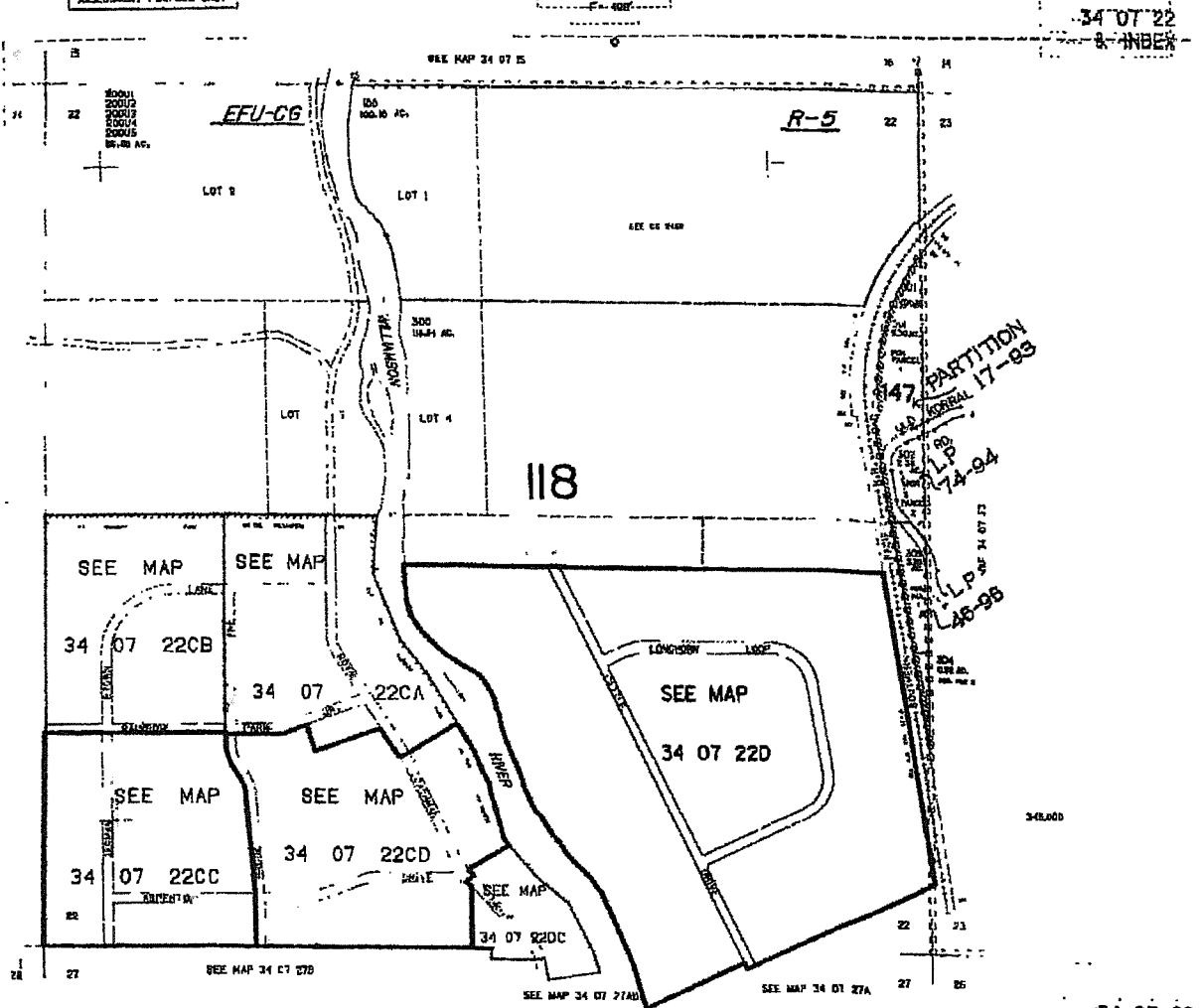
**PARCEL 3:**

The following described property in Section 22, Township 34 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon:

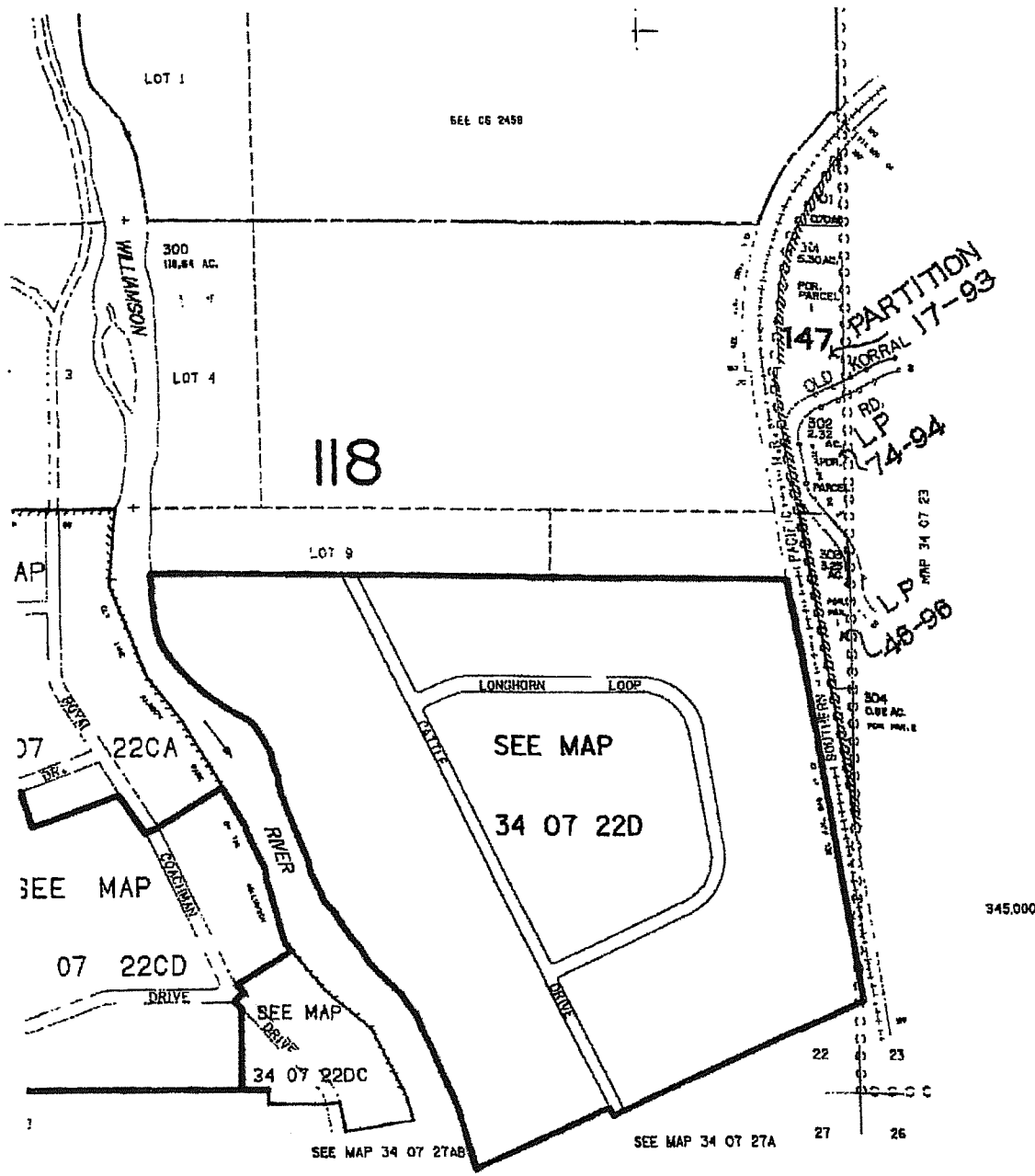
Government Lots 4 and 9, that portion of the S1/2 NE1/4 lying Westerly of the Southern Pacific Railroad right-of-way and that portion of the E1/2 SE1/4 lying Westerly of the Southern Pacific Railroad right-of-way and North of the plat of Tract 1314 – PINE RIDGE RANCHES, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

SECTION 22 T.34S. R.07E. W.M.  
KLAMATH COUNTY



34 07 22  
INDEX



34 07  
& INC

SECTION 09 T.36S. R.07E. W.M.  
(EAST OF LAKE)  
KLAMATH COUNTY  
r - 400

SEE MAP 38 67A 04

CANCELLED NO.  
10001  
10002  
1300  
1400  
1500  
10001A12

EFU-CG

LOT 1  
100 15.47 AC.

LOT 2  
100 15.47 AC.

LOT 3  
100 15.47 AC.

LOT 4  
100 15.47 AC.

LOT 5  
100 15.47 AC.

LOT 6  
100 15.47 AC.

LOT 7  
100 15.47 AC.

LOT 8  
100 15.47 AC.

LOT 9  
100 15.47 AC.

LOT 10  
100 15.47 AC.

LOT 11  
100 15.47 AC.

LOT 12  
100 15.47 AC.

LOT 13  
100 15.47 AC.

LOT 14  
100 15.47 AC.

LOT 15  
100 15.47 AC.

LOT 16  
100 15.47 AC.

LOT 17  
100 15.47 AC.

LOT 18  
100 15.47 AC.

LOT 19  
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LOT 25  
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LOT 26  
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LOT 27  
100 15.47 AC.

LOT 28  
100 15.47 AC.

LOT 29  
100 15.47 AC.

LOT 30  
100 15.47 AC.

LOT 31  
100 15.47 AC.

PORT. PARCEL 1  
100 15.47 AC.

PORT. PARCEL 2  
100 15.47 AC.

PORT. PARCEL 3  
100 15.47 AC.

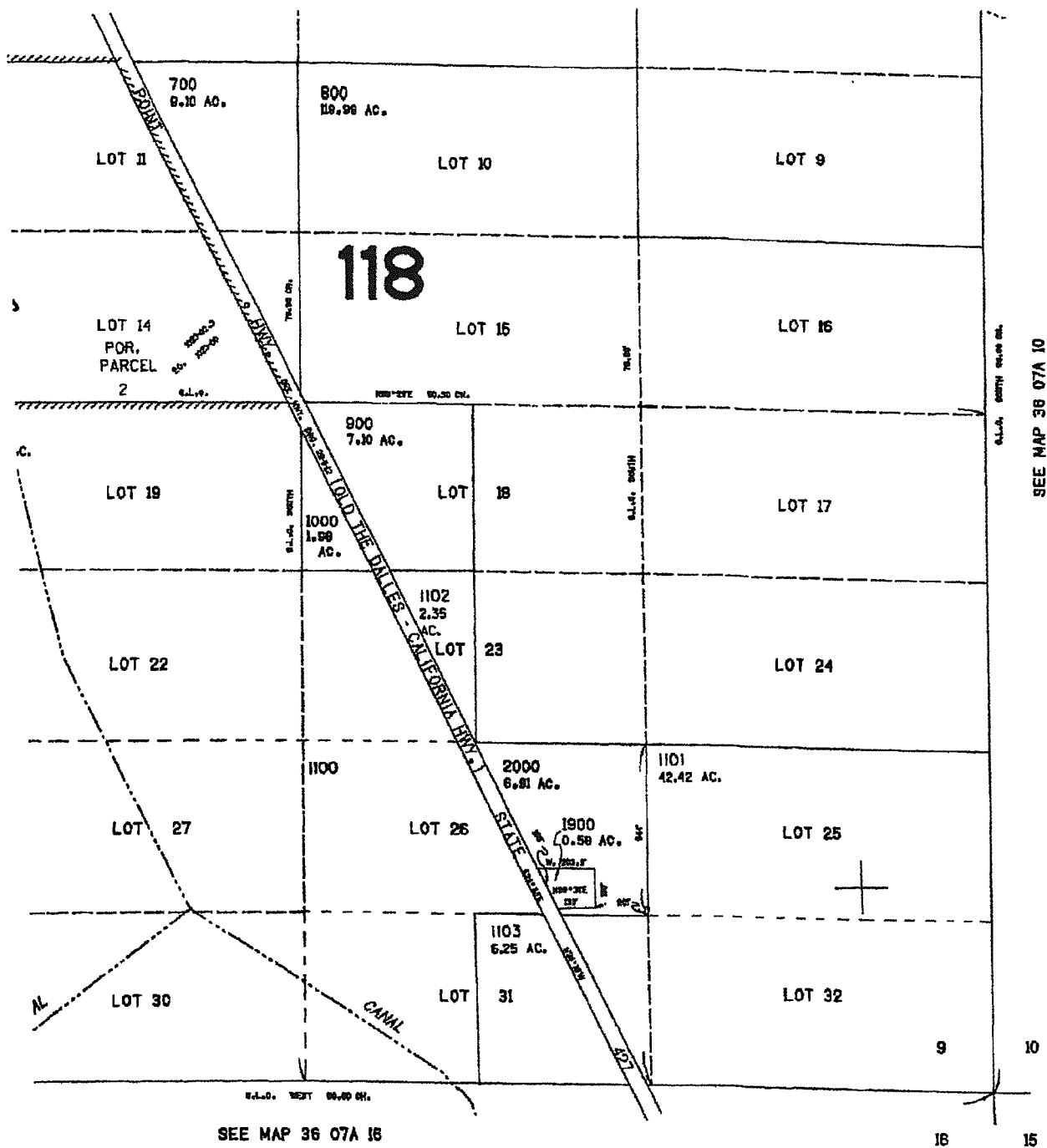
PARTITION

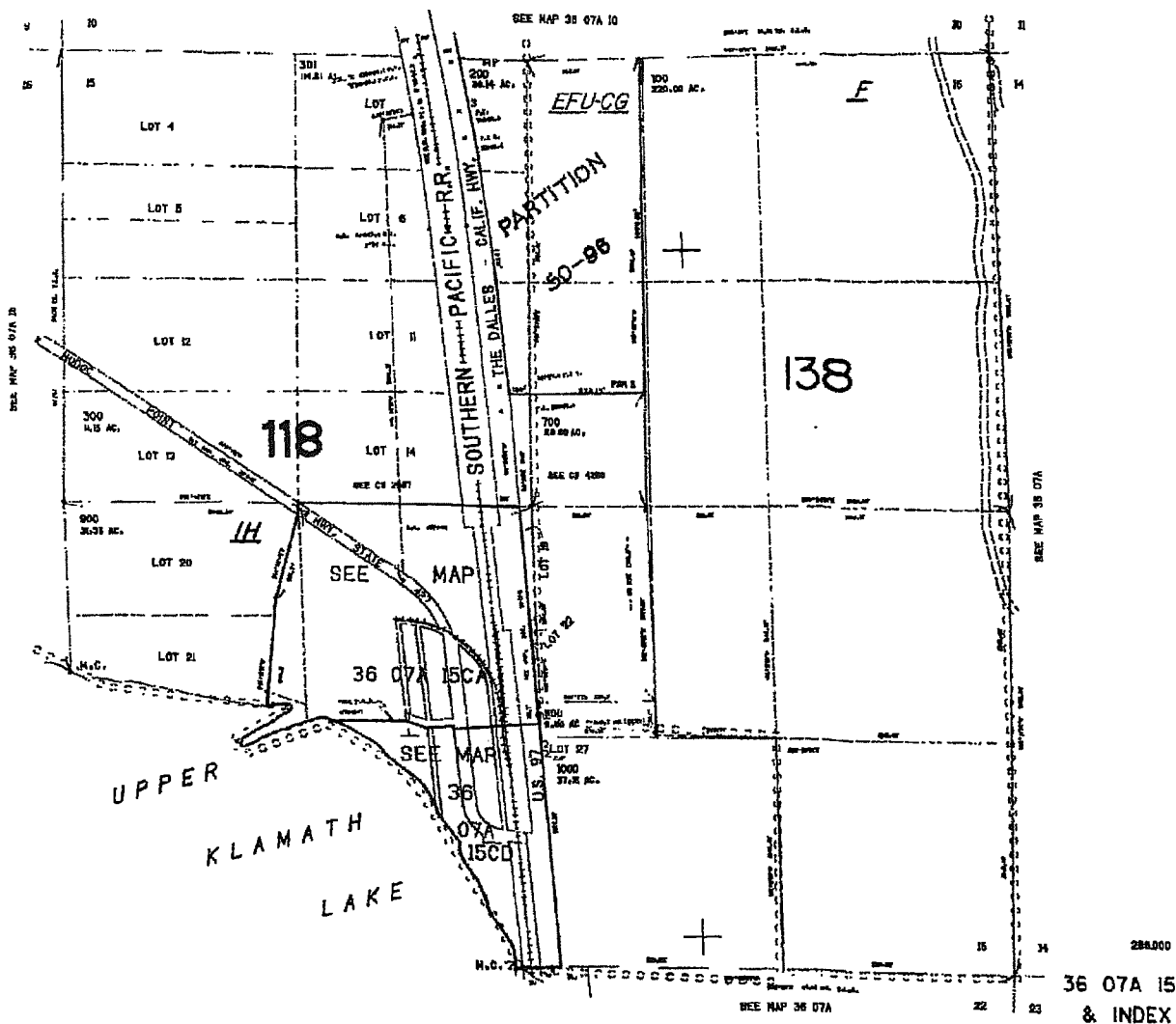
118

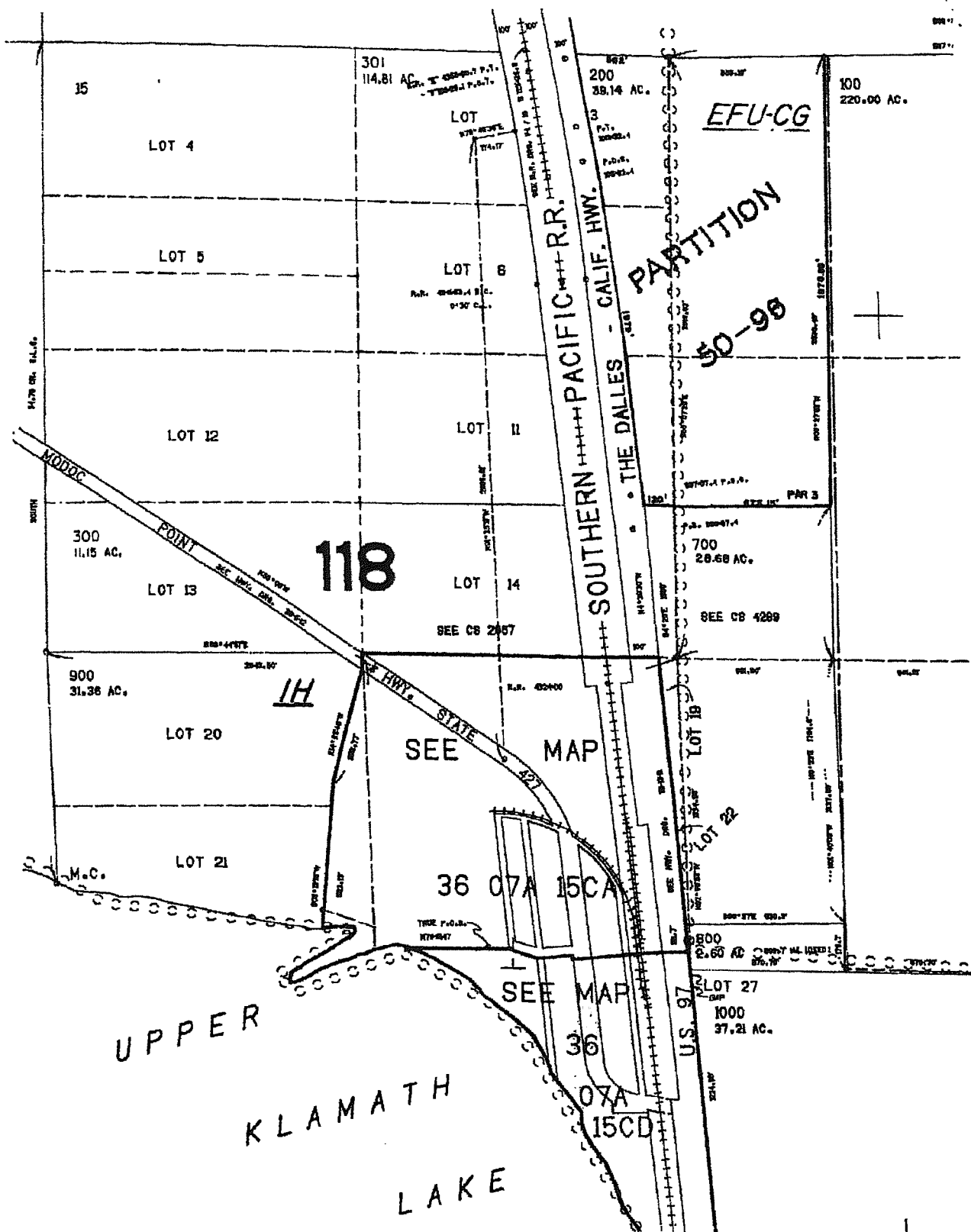
30-02

SEE MAP 38 67A 08

36









**EXHIBIT D-1**  
**SELLER'S MOTIVE FORCE PLAN**

**A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	1,124,150
February	1,181,347
March	1,228,637
April	1,960,753
May	2,204,221
June	2,312,172
July	2,447,700
August	2,459,271
September	2,092,677
October	1,652,219
November	1,131,138
December	1,164,147

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account maintenance and Seller's load (if any). 10,750,000 is based on adverse maintenance condition that could reduce operating output based on component failure of main equipment and lead time for this equipment, adverse weather conditions during operation

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate. 26,750,000 is based on exceptional weather performance and component performance.

## Grid-Connected System: Simulation parameters

**Project :** Chiloquin County

**Geographical Site** Klamath Falls Intl Ap [uo] **Country** United States

**Situation** Latitude 42.2°N Longitude 121.7°W  
Time defined as Legal Time Time zone UT-8 Altitude 1220 m  
Albedo 0.20

**Meteo data:** Klamath Falls Intl Ap [uo] TMY - NREL: TMY3 hourly DB (1991-2005)

**Simulation variant :** Chiloquin

Simulation date 15/08/14 08h02

## Simulation parameters

**Collector Plane Orientation** Tilt 28° Azimuth 0°

**5 Sheds** Pitch 11.0 m Collector width 4.00 m  
Inactive band Top 0.00 m Bottom 0.00 m  
Shading limit angle Gamma 14.11 ° Occupation Ratio 36.4 %

**Horizon** Free Horizon

**Near Shadings** Mutual shadings of sheds

## PV Array Characteristics

**PV module** Si-poly Model TSM-310 P14A  
Manufacturer Trina Solar  
In series 19 modules In parallel 2145 strings  
Total number of PV modules Nb. modules 40755 Unit Nom. Power 310 Wp  
Array global power Nominal (STC) 12634 kWp At operating cond. 11288 kWp (50°C)  
Array operating characteristics (50°C) U mpp 625 V I mpp 18049 A  
Total area Module area 79079 m²

**Inverter** Model MLX 60, 400Vac  
Manufacturer Danfoss  
Operating Voltage 565-850 V Unit Nom. Power 60 kW AC  
Nb. of inverters 165 units Total Power 9900 kW AC

## PV Array loss factors

## Array Soiling Losses

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
2.0%	1.0%	1.0%	1.0%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	1.0%	2.0%

**Thermal Loss factor** U<sub>c</sub> (const) 29.0 W/m²K U<sub>v</sub> (wind) 0.0 W/m²K / m/s

**Wiring Ohmic Loss** Global array res. 0.31 mOhm Loss Fraction 0.6 % at STC

**Module Quality Loss** Loss Fraction 0.0 %

**Module Mismatch Losses** Loss Fraction 1.0 % at MPP

**Incidence effect, ASHRAE parametrization** IAM = 1 - bo (1/cos i - 1) bo Param. 0.05

## System loss factors

**AC loss, transfo to Injection** Grid Voltage 28 kV  
Wires 6545 m 3x240 mm² Loss Fraction 1.0 % at STC

**External transformer** Iron loss (24H connexion) 12354 W Loss Fraction 0.1 % at STC  
Resistive/inductive losses 0.0 mOhm Loss Fraction 0.1 % at STC

**User's needs :** Unlimited load (grid)

## Grid-Connected System: Main results

Project : Chiloquin County

Simulation variant : Chiloquin

## Main system parameters

PV Field Orientation

PV modules

PV Array

Inverter

Inverter pack

User's needs

System type

Sheds disposition, tilt

Model

Nb. of modules

Model

Nb. of units

Unlimited load (grid)

Grid-Connected

28°

TSM-310 P14A

40755

MLX 60, 400Vac

165.0

azimuth 0°

Pnom 310 Wp

Pnom total 12634 kWp

Pnom 60.0 kW ac

Pnom total 9900 kW ac

## Main simulation results

System Production

Produced Energy

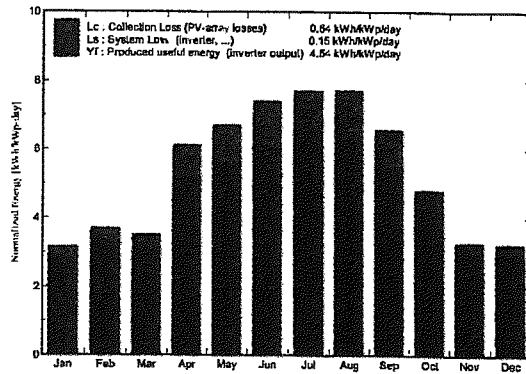
Performance Ratio PR

20958432372 W/year

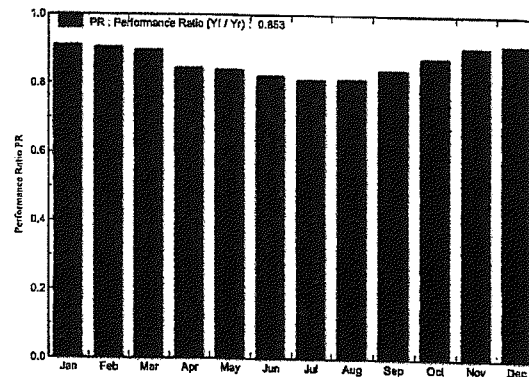
specific prod. 1659 kWh/kWp/year

85.3 %

Normalized productions (per installed kWp): Nominal power 12634 kWp



Performance Ratio PR



## Chiloquin

## Balances and main results

	GlobHor kWh/m <sup>2</sup>	T Amb °C	GlobInc kWh/m <sup>2</sup>	GlobEff kWh/m <sup>2</sup>	EArray kWh	E_Grid kWh	EffArrR %	EffSysR %
January	58.4	-0.80	97.6	91.5	1163859	1124150	15.07	14.56
February	72.4	2.85	103.3	97.9	1221610	1181347	14.95	14.46
March	94.7	2.10	108.5	102.2	1268916	1228637	14.78	14.31
April	167.7	7.19	183.7	173.7	2023872	1960753	13.94	13.50
May	208.9	10.66	207.7	197.6	2273658	2204221	13.85	13.42
June	233.9	15.85	222.0	211.7	2383549	2312172	13.68	13.17
July	245.2	20.31	238.6	227.9	2521804	2447700	13.36	12.97
August	223.3	19.53	238.8	228.4	2534612	2459271	13.42	13.02
September	159.6	12.95	196.7	188.5	2159165	2092677	13.88	13.46
October	106.1	7.15	149.0	142.6	1706639	1652219	14.48	14.02
November	60.8	1.64	98.5	93.1	1170557	1131138	15.03	14.53
December	57.0	-0.61	100.6	94.0	1203680	1164147	15.13	14.63
Year	1687.9	8.26	1945.1	1848.9	21631920	20958432	14.06	13.63

Legends: GlobHor

Horizontal global irradiation

T Amb

Ambient Temperature

GlobInc

Global incident in coll. plane

GlobEff

Effective Global, corr. for IAM and shadings

EArray

Effective energy at the output of the array

E\_Grid

Energy injected into grid

EffArrR

Effic. Eout array / rough area

EffSysR

Effic. Eout system / rough area

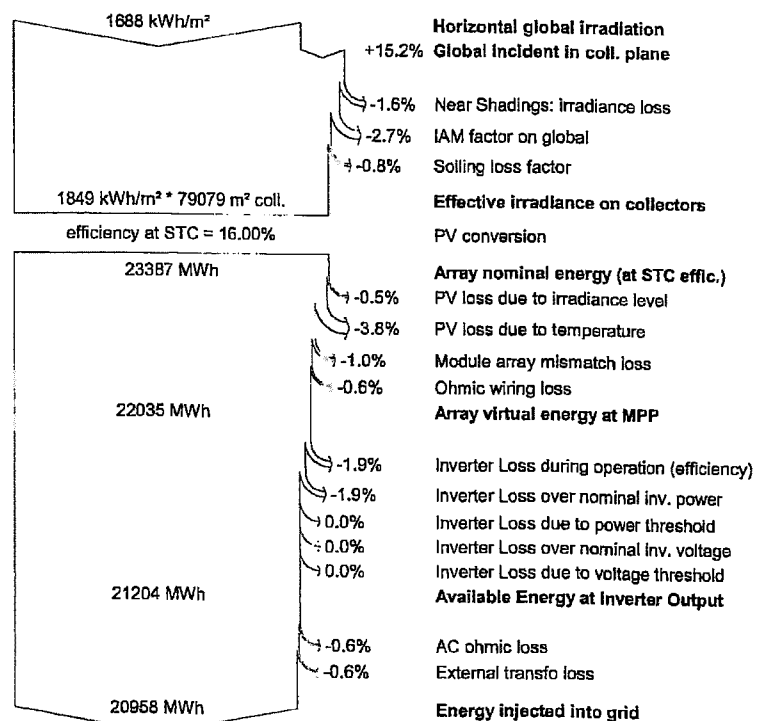
## Grid-Connected System: Loss diagram

**Project :** Chiloquin County

**Simulation variant :** Chiloquin

<b>Main system parameters</b>	<b>System type</b>	<b>Grid-Connected</b>	
PV Field Orientation	Sheds disposition, tilt	28°	azimuth 0°
PV modules	Model	TSM-310 P14A	Pnom 310 Wp
PV Array	Nb. of modules	40755	Pnom total <b>12634 kWp</b>
Inverter	Model	MLX 60, 400Vac	Pnom 60.0 kW ac
Inverter pack	Nb. of units	165.0	Pnom total <b>9900 kW ac</b>
User's needs	Unlimited load (grid)		

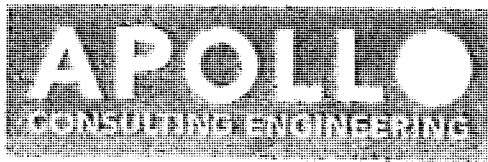
### Loss diagram over the whole year



**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION OF**  
**MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*

See Attached Letter



October 17, 2014

Jeremy Goertz  
Vice President – Construction/Business Development  
Saturn Power  
100 Mill St. Unit F  
New Hamburg, Ont, N3A 1R1  
jgoertz@saturnpower.ca

RE: Klamath County 12.6MW Photovoltaic Installation  
Estimated Annual Production Model

Dear Jeremy,


We were retained to evaluate the estimated annual production at the proposed photovoltaic (PV) installation mentioned above. We were provided equipment specifications, array information, and project location by Saturn Power.

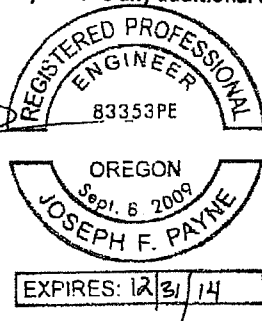
**We certify that the implementation of the new PV installation can reasonably be expected to provide annual energy production above the minimum value of 10,750 MWh per year. The anticipated average production will be approximately 20,958 MWh per year with an estimated maximum production of 26,750 MWh per year.**

The production is based on the output from the PVSyst modeling software and is an industry-accepted performance tool. We independently verified these results using another industry-accepted software, PVWatts.

Please let me know if you have any additional questions.

Sincerely,

  
Joseph Payne, P.E.  
(503) 329-4643



## **EXHIBIT E**

### **START-UP TESTING**

Start-Up Testing shall consist of the Quality Assurance/Quality Control plans and procedures developed by the EPC Contractor.

Contractor shall submit to Owner a final copy of its quality assurance/quality control (QA/QC) plan for review not later than 45 days after contract execution for Owner review and comment.

The QA/QC program shall include, but is not limited to, such procedures and systems as the following:

- Road construction
- Rebar and conduit placement
- Concrete placement and testing
- All wire insulation testing—Megger testing or very low frequency testing
- Mechanical system—trackers, mounting structures, tracker controls
- Factory testing of inverters and transformers by the manufacturer
- PV source open-circuit measurements—VOC at combiner boxes
- Fuse tests
- Termination pull testing
- All visual inspections
- Grounding continuity testing
- Earth-ground resistivity testing
- PV module inspection and manufacturer documentation of factory test per the manufacturer's existing program
- Metering and instrumentation calibration testing
- Step-up transformer field testing
- Inverter phase rotation and matching with utility
- Relay settings/transfer trip/etc. at the point of interconnection to Owner
- Other Contractor-prescribed procedures

All QA/QC testing procedures onsite shall be witnessed and documented by a qualified representative of Contractor. Owner shall observe and witness QA/QC as necessary and at its discretion. A qualified field engineer/QA representative of Contractor shall date and sign documentation indicating completion and acceptance of each onsite QA/QC test procedures.

Following installation, Contractor shall provide a proposed commissioning and startup plan for the Plant.

Contractor shall coordinate with Owner to develop an acceptable commissioning plan that includes a checkout and startup procedure. This work will assure: that systems are activated in a manner that is safe for personnel as well as for the equipment, that Contractor work is complete and according to the contract documents, and that the systems perform as required by the contract documents and are ready to be turned over to Owner. As the construction and installation of the systems nears completion, Contractor shall prepare punch lists and conduct system walk-downs, sub-system and system checkouts, startups, testing, and turnovers.

The final approved Commissioning Procedures shall, at minimum, include the following:

- Safety plan during startup and commissioning
- Review of all QA/QC testing on the DC and AC sides of inverters
- Detailed procedure for PV Plant startup, including switching sequencing
- Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected
- Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.
- Testing the system control and monitoring system to verify that it is performing correctly
- Testing the communication system for offsite monitoring
- Testing the Plant metering and protective relaying in conjunction with the utility during energization procedures

- Detailed procedure for interface and initialization with the grid
- Documentation of successful startup and commissioning procedure
- Written notification submitted by Contractor to Owner that the completion of Commissioning has occurred

Upon successful completion of energizing and startup, the Plant will be considered operable.



**EXHIBIT F**  
**SELLER AUTHORIZATION TO RELEASE**  
**GENERATION DATA TO PACIFICORP**

See attached letter

Redefine natural energy **Together**

**Seller Authorization to Release Generation Data to PacifiCorp**

August 15, 2014

Q 0612

Transmission Services  
Attn: Director, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

RE: Interconnection Request

Dear Sir:

Saturn Power Corp. hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Saturn Power Corp's generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group.

Saturn Power Corp acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.



Ray Roth

Vice President, General Manager



Canadian Head Office  
100 Mill Street, New Hamburg, Ontario, N3A 2K6 Canada  
Tel: 519.804.9163 • Fax: 519.220.5912

US Office  
1666K Street NW, Washington DC, 20006 USA  
Toll Free phone: 866-967-8654

Saturnpower

**EXHIBIT G**  
**SCHEDULE 37 AND PRICING SUMMARY TABLE**

	On-Peak (cents/kWh)	Off-Peak (cents/kWh)
2016	3.85	2.84
2017	4.06	3.01
2018	4.33	3.20
2019	4.55	3.41
2020	4.78	3.84
2021	4.92	4.25
2022	5.58	4.83
2023	5.79	5.02
2024	8.84	7.36
2025	9.01	7.49
2026	9.17	7.64
2027	9.34	7.78
2028	9.52	7.94
2029	9.68	8.11
2030	9.85	8.28
2031, up to but not including December 16, 2031	10.03	8.46
From December 16, 2031 through the Termination Date	Price specified by Section 5.2 of the Agreement	

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 1

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

For power purchased from Qualifying Facilities with a nameplate capacity of 10,000 kW or less or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 10,000 kW or less. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

**Definitions****Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Qualifying Electricity**

Electricity that meets the requirements of "qualifying electricity" set forth in the Oregon Renewable Portfolio Standards: ORS 469A.010, 469A.020, and 469A.025.

**Renewable Qualifying Facility**

A Qualifying Facility that generates Qualifying Electricity.

**Wind Qualifying Facility**

A Renewable Qualifying Facility that generates Qualifying Electricity using wind as its motive force.

**Baseload Renewable Qualifying Facility**

A Renewable Qualifying Facility that generates Qualifying Electricity using any qualifying resource other than wind or solar.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

**On-Peak Hours or Peak Hours**

On-Peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005, the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April and for the period between the last Sunday in October and the first Sunday in November.

(continued)

**Definitions (continued)****Off-Peak Hours**

All hours other than On-Peak.

**Excess Output**

Excess Output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-Peak Price as described and calculated under pricing option 4 (Non-Firm Market Index Avoided Cost Price) for all Excess Output.

**Same Site**

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

**Person(s) or Affiliated Person(s)**

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit and the facilities at issue are independent family-owned or community-based projects. A unit of Oregon local government may also be a "passive investor" in a community-based project if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

**Shared Interconnection and Infrastructure**

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

**Dispute Resolution**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 3

**Dispute Resolution (continued)**

Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution.

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

**Pricing Options****1. Standard Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Standard Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price. The Standard Fixed Avoided Cost pricing option is available to all Qualifying Facilities. The Standard Fixed Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs as set forth on page 5.

**2. Renewable Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Renewable Qualifying Facility and the Company and will not change during the term of the contract. Renewable Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price. The Renewable Fixed Avoided Cost pricing option is available only to Renewable Qualifying Facilities. A Renewable Qualifying Facility choosing the Renewable Fixed Avoided Cost pricing option must cede all Green Tags generated by the facility, as defined in the standard contract, to the Company during the Renewable Resource Deficiency Period identified on page 6, except that a Renewable Qualifying Facility retains ownership of all Environmental Attributes generated by the facility, as defined in the standard contract, during the Renewable Resource Sufficiency Period identified on page 6 and during any period after the first 15 years of a longer term contract (up to 20 years).

**3. Firm Market Indexed Avoided Cost Prices**

Firm Market Index Avoided Cost Prices are available to Qualifying Facilities that contract to deliver firm power. Monthly on-peak / off-peak prices paid are a blending of Intercontinental Exchange (ICE) Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

**4. Non-Firm Market Index Avoided Cost Prices**

Non-Firm Market Index Avoided Cost Prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay or, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are 93 percent of a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak firm index prices. The monthly blending matrix is available upon request. The Non-Firm Market Index Avoided Cost pricing option is available to all Qualifying Facilities. The Non-Firm Market Index Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of the Pricing Options specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Renewable or Standard Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the renewable or standard fixed prices as provided in this schedule. On-Peak and Off-Peak are defined in the definitions section of this schedule.

**Firm Market Indexed and Non-Firm Market Index Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the market prices calculated at the time of delivery. On-Peak and Off-Peak are defined in the definitions section of this schedule.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 5

**Avoided Cost Prices**
**Standard Fixed Avoided Cost Prices**
**Fixed Prices ¢/kWh**

Deliveries During Calendar Year	Base Load QF (1)		Wind QF (2)		Solar QF	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)	(c)	(d)	(e)	(f)
2014	3.98	2.62	3.71	2.35	3.98	2.62
2015	3.94	2.86	3.67	2.59	3.94	2.86
2016	3.85	2.84	3.58	2.57	3.85	2.84
2017	4.06	3.01	3.79	2.73	4.06	3.01
2018	4.33	3.20	4.04	2.92	4.33	3.20
2019	4.55	3.41	4.26	3.12	4.55	3.41
2020	4.78	3.84	4.48	3.54	4.78	3.84
2021	4.92	4.25	4.62	3.95	4.92	4.25
2022	5.58	4.83	5.28	4.53	5.58	4.83
2023	5.79	5.02	5.48	4.71	5.79	5.02
2024	6.97	3.91	3.72	3.59	4.32	3.91
2025	7.11	4.00	3.81	3.68	4.42	4.00
2026	7.31	4.13	3.94	3.80	4.56	4.13
2027	7.52	4.29	4.09	3.96	4.73	4.29
2028	7.74	4.44	4.24	4.11	4.89	4.44
2029	8.00	4.64	4.44	4.30	5.10	4.64
2030	8.25	4.83	4.62	4.48	5.30	4.83
2031	8.42	4.93	4.72	4.57	5.40	4.93
2032	8.59	5.03	4.81	4.66	5.51	5.03
2033	8.76	5.13	4.91	4.75	5.62	5.13
2034	8.94	5.23	5.01	4.85	5.74	5.23
2035	9.11	5.33	5.10	4.94	5.84	5.33
2036	9.30	5.44	5.21	5.05	5.97	5.44
2037	9.50	5.56	5.32	5.16	6.09	5.56
2038	9.70	5.68	5.44	5.27	6.22	5.68
2039	9.90	5.80	5.55	5.38	6.35	5.80
2040	10.11	5.91	5.66	5.48	6.48	5.91

- (1) Capacity Contribution to Peak for Avoided Proxy Resource and Base Load Qualifying Facility resource are assumed 100%.
- (2) The standard avoided cost price for wind is reduced by an integration charge of \$2.55/MWh (\$2012). If Wind Qualifying Facility is not in PacificCorp's balancing authority area, then no reduction is required.

(continued)

P.U.C. OR No. 36

 Issued August 11, 2014  
 R. Bryce Dalley, Vice President, Regulation

 Second Revision of Sheet No. 37-5  
 Canceling First Revision of Sheet No. 37-5  
**Effective for service on and after August 20, 2014**  
 Advice No. 14-007



**AVOIDED COST PURCHASES FROM  
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**Avoided Cost Prices (Continued)**
**Renewable Fixed Avoided Cost Prices**

Fixed Prices \$/kWh								
Deliveries During Calendar Year (1)	Base Load Renewable QF (2)		Wind QF (3,4)		Solar QF (5)			
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price		
	(a)	(b)	(c)	(d)	(e)	(f)		
2014	3.98	2.62	3.71	2.35	3.98	2.62		
2015	3.94	2.86	3.67	2.59	3.94	2.86		
2016	3.85	2.84	3.58	2.57	3.85	2.84		
2017	4.06	3.01	3.79	2.73	4.06	3.01		
2018	4.33	3.20	4.04	2.92	4.33	3.20		
2019	4.55	3.41	4.26	3.12	4.55	3.41		
2020	4.78	3.84	4.48	3.54	4.78	3.84		
2021	4.92	4.25	4.62	3.95	4.92	4.25		
2022	5.58	4.83	5.28	4.53	5.58	4.83		
2023	5.79	5.02	5.48	4.71	5.79	5.02		
2024	11.48	7.36	8.24	7.05	8.84	7.36		
2025	11.70	7.49	8.39	7.17	9.01	7.49		
2026	11.91	7.64	8.54	7.31	9.17	7.64		
2027	12.14	7.78	8.71	7.45	9.34	7.78		
2028	12.36	7.94	8.87	7.61	9.52	7.94		
2029	12.58	8.11	9.02	7.77	9.68	8.11		
2030	12.81	8.28	9.18	7.93	9.85	8.28		
2031	13.05	8.46	9.34	8.10	10.03	8.46		
2032	13.29	8.66	9.51	8.30	10.21	8.66		
2033	13.53	8.87	9.68	8.50	10.39	8.87		
2034	13.79	9.07	9.86	8.69	10.58	9.07		
2035	14.04	9.27	10.03	8.89	10.78	9.27		
2036	14.32	9.49	10.23	9.09	10.99	9.49		
2037	14.59	9.72	10.42	9.32	11.19	9.72		
2038	14.87	9.96	10.60	9.55	11.39	9.96		
2039	15.15	10.21	10.80	9.79	11.60	10.21		
2040	15.47	10.43	11.02	10.00	11.85	10.43		

(1) For the purpose of determining: (1) when the Renewable Qualifying Facility is entitled to renewable avoided cost prices; and (2) the ownership of Environmental Attributes and the transfer of Green Tags to PacifiCorp, the Renewable Resource Sufficiency Period ends December 31, 2023, and the Renewable Resource Deficiency Period begins January 1, 2024.

(2) The renewable avoided cost price during the Renewable Resource Deficiency Period (2024-2040) has been increased by an integration charge of \$2.55/MWh (\$2012).

(3) During the Renewable Resource Deficiency Period, the renewable avoided cost price for a Wind Qualifying Facility will be adjusted by adding the difference between the avoided integration costs and the Qualifying Facility's integration costs. If the Wind Qualifying Facility is in PacifiCorp's balancing authority area (BAA), the adjustment is zero (integration costs cancel each other out). If the Wind Qualifying Facility is not in PacifiCorp's BAA, \$2.55/MWh (\$2012) will be added for avoided integration charges.

(4) During Renewable Resource Sufficiency Period, the renewable avoided cost price for a Wind Qualifying Facility has been reduced by an integration charge of \$2.55/MWh (\$2012) for Wind Qualifying Facilities located in PacifiCorp's BAA (in-system). If a Wind Qualifying Facility is not in PacifiCorp's BAA, \$2.55/MWh (\$2012) will be added for avoided integration charges.

(5) The renewable avoided cost payment during the Renewable Resource Deficiency Period (2024-2040) has been increased by an integration charge of \$2.55/MWh (\$2012).

(continued)

P.U.C. OR No. 36

Second Revision of Sheet No. 37-6

Canceling First Revision of Sheet No. 37-6

Issued August 11, 2014

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R. Bryce Dalley, Vice President, Regulation

Advice No. 14-007

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Qualifying Facilities Contracting Procedure**

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

**1. Qualifying Facilities up to 10,000 kW**

**APPLICATION:** To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement****A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

(continued)

**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions as defined in this Schedule (i.e., standard fixed price, renewable fixed price);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Public Utility Commission of Oregon in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)

**B. Procedures (continued)**

5. After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

(continued)

**II. Process for Negotiating Interconnection Agreements (continued)****A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

**B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

**EXHIBIT H**  
**GREEN TAG ATTESTATION AND BILL OF SALE**

Subject to Green Tags ownership as defined in Section 5.5, from the period commencing on \_\_\_\_\_ and ending on \_\_\_\_\_, \_\_\_\_\_ ("Seller") hereby sells, transfers and delivers to PacifiCorp the Green Tags (including all Green Tag Reporting Rights) associated with the generation of Net Output under the Power Purchase Agreement (Renewable Energy) between Seller and PacifiCorp dated [\_\_\_\_\_] (the "PPA"), as described below, in the amount of one Green Tag for each megawatt hour generated. Defined terms used in this Green Tag Attestation and Bill of Sale (as indicated by initial capitalization) shall have the meaning set forth in the PPA.

Facility name and location: \_\_\_\_\_ Fuel Type: \_\_\_\_\_

Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_

Energy Admin. ID no.: \_\_\_\_\_

Dates	MWh generated
-------	---------------

_____	_____
-------	-------

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to PacifiCorp is its one and only sale of the Green Tags referenced herein;
- iii) the Facility generated Output in the amount indicated above; and
- iv) to the best of Seller's knowledge, each of the Green Tags associated with the generation Output have been generated and sold by the Facility.

This Green Tag Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to PacifiCorp all of Seller's right, title and interest in and to the Green Tags (including Green Tag Reporting Rights), as set forth above.

Seller's Contact Person: [\_\_\_\_\_]

WITNESS MY HAND,

\_\_\_\_\_

a \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

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

This Attestation may be disclosed by Seller and PacifiCorp to others, including the Center for Resource Solutions and the public utility commissions having jurisdiction over PacifiCorp, to substantiate and verify the accuracy of PacifiCorp's advertising and public communication claims, as well as in PacifiCorp's advertising and other public communications.

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**ELBE SOLAR CENTER, LLC**

**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and  
not an Intermittent Resource]**

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 7<sup>th</sup> day of August, 2014, is between Elbe Solar Center, LLC, "**Seller**" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp**." (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

### RECITALS

A. Seller intends to construct, own, operate and maintain a solar facility for the generation of electric power, including interconnection facilities, located near Madras, Jefferson County, with a Facility Capacity Rating of 10,000 kilowatts (kW) as further described in **Exhibit A** and **Exhibit B ("Facility")**; and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on October 31, 2016 ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on April 30, 2017 ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 20,060,000 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall (choose one) ☒ sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp ☐ sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-built Supplement"** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

1.3 **"Billing Period"** means, unless otherwise agreed to, the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 **"Commercial Operation Date"** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.4.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.4.2 The Facility has completed Start-Up Testing;

1.4.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;

1.4.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).

- 1.4.5 Seller has complied with the security requirements of Section 10.
- 1.4.6 PacifiCorp has received an executed copy of **Exhibit F**—Seller’s Interconnection Request.
- 1.5 **“Commission”** means the Oregon Public Utilities Commission.
- 1.6 **“Contract Price”** means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1 and 5.2.
- 1.7 **“Contract Year”** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.
- 1.8 **“Credit Requirements”** means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.
- 1.9 **“Default Security”**, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at **Mid-Columbia** (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.
- 1.10 **“Effective Date”** shall have the meaning set forth in Section 2.1.
- 1.11 **“Energy Delivery Schedule”** shall have the meaning set forth in Section 4.5.
- 1.12 **“Environmental Attributes”** shall have the meaning set forth in Section 5.5.
- 1.13 **“Excess Output”** shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.
- 1.14 **“Facility”** shall have the meaning set forth in Recital A.
- 1.15 **“Facility Capacity Rating”** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.
- 1.16 **“FERC”** means the Federal Energy Regulatory Commission, or its successor.

1.17 **“Generation Interconnection Agreement”** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp’s interconnection facilities required to accommodate deliveries of Seller’s Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.18 **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.19 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.20 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.21 **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.22 **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.23 **“Nameplate Capacity Rating”** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.24 **“Net Energy”** means the energy component, in kWh, of Net Output.

1.25 **“Net Output”** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.26 **“Net Replacement Power Costs”** shall have the meaning set forth in Section 11.4.1.

1.27 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.28 **"On-Peak Hours"** means the hours between 6 a.m. Pacific Prevailing Time ("PPT") and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.29 **"Point of Delivery"** means the high side of the Seller's step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.30 **"Prime Rate"** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.31 **"Prudent Electrical Practices"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.32 **"QF"** means **"Qualifying Facility,"** as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.33 **"Replacement Price"** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.34 **"Required Facility Documents"** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.35 **"Schedule 37"** means the Schedule 37 of Pacific Power & Light Company's Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit G**.

1.36 **"Scheduled Commercial Operation Date"** shall have the meaning set forth in Recital C.

1.37 **"Scheduled Initial Delivery Date"** shall have the meaning set forth in Recital B.

1.38 **"Start-Up Testing"** means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.39 **"Termination Date"** shall have the meaning set forth in Section 2.4.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (**"Effective Date"**).

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By May 31, 2015, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on October 30, 2036 [enter Date that is no later than 20 years after the Scheduled Initial Delivery Date] (**"Termination Date"**).

## **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

- 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
  - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a limited liability company duly organized and validly existing under the laws of Oregon.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
  - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general

principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.
- 3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:
- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
  - (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.



- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

\_\_\_\_\_ Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or

\_\_\_NT\_\_\_ Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase all Net Output from the Facility delivered to the Point of Delivery.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 20,060,000 kWh per Contract Year ("**Average Annual Generation**"). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 11,501,000 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-

rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 23,069,000 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

## **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of four pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Firm Market Indexed Avoided Cost Prices (“Firm Electric Market”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

<u>  X  </u>	Fixed Price
<u>      </u>	Firm Electric Market
<u>      </u>	Gas Market
<u>      </u>	Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit G**.

5.2 (Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

<u>  X  </u>	Firm Electric Market
<u>      </u>	Gas Market
<u>      </u>	Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller a blended market index price for day-ahead non-firm energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde market

indices as reported by Dow Jones, for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller's Facility.

## **SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six month's prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or

by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

## **SECTION 8: METERING**

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection

agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

## **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## **SECTION 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

☒ NT Cash Escrow

☐ Letter of Credit

☐ Senior Lien

☐ Step-in Rights

☐ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

**[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]**

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4.

Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

(a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

(b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such

notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.

11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.



- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.
- 11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

11.3 Termination.

- 11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.
- 11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.
- 11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by

subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

#### 11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

#### 11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

## **SECTION 12: INDEMNIFICATION AND LIABILITY**

### **12.1 Indemnities.**

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

## **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, “Force Majeure” or “an event of Force Majeure” means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

- 14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and
- 14.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and
- 14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

## **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

#### **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

#### **SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

#### **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender

as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

## **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

## **SECTION 23: NOTICES**


23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	Elbe Solar Center, LLC Attn: Andrew Foukal____ 117 4 <sup>th</sup> Street SE, Suite B Charlottesville, VA 22902 Phone: 434-293-7589
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as address above)
<b>Scheduling:</b>	(same as street address above)  Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	(same as address above)
<b>Payments:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as address above)
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	(same as address above)

Notices	PacifiCorp	Seller
<b>Credit and Collections:</b>	(same as street address above) Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	(same as address above)
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	(same as address above)

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp By:  Name: <u>Bruce Griswold</u> Title: <u>Director, Short-Term Origination and</u> <u>OF Contracts</u> Date: <u>8/7/2014</u>	Elbe Solar Center, LLC By: <u>Nelson Teague</u> Name: <u>Nelson Teague</u> Title: <u>Manager</u> Date: <u>08/12/14</u>
---	--

BWS 7-21-2014



**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**  
**[Seller to Complete]**

Seller's Facility consists of a 10 MWac solar photovoltaic project including PV panels, inverters, and single axis tracker system. More specifically, the inverter at the Facility is described as:

**Number of Inverters:** 12

**Model:** SMA\_850CP XT, or similar

**Number of Phases:** 3

**Rated Output (kW):** 850      **Rated Output (kVA):** 850

**Rated Voltage (line to line):** 386

**Maximum kW Output:** 833      **Maximum kVA Output:** \_850 kVA

**Minimum kW Output:** 0

---

**Facility Capacity Rating:** 10,000 kW.

---

Identify the maximum output of the inverter (s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

---

Transformer:-1.07% , Tracker Motor -0.07%\_, Data Acquisition and Aux Loads -0.1%

---

**Location of the Facility:** The Facility is to be constructed in the vicinity of Madras in Jefferson County, Oregon. The location is more particularly described as follows:

GPS 44.621, -121.197

Parcel ID 1113170000100

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): Power Factor requirements will meet PacifiCorp standard interconnection procedures.

A more detailed and updated Exhibit A will be provided per section 6.1.

## **EXHIBIT B**

### **SELLER'S INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

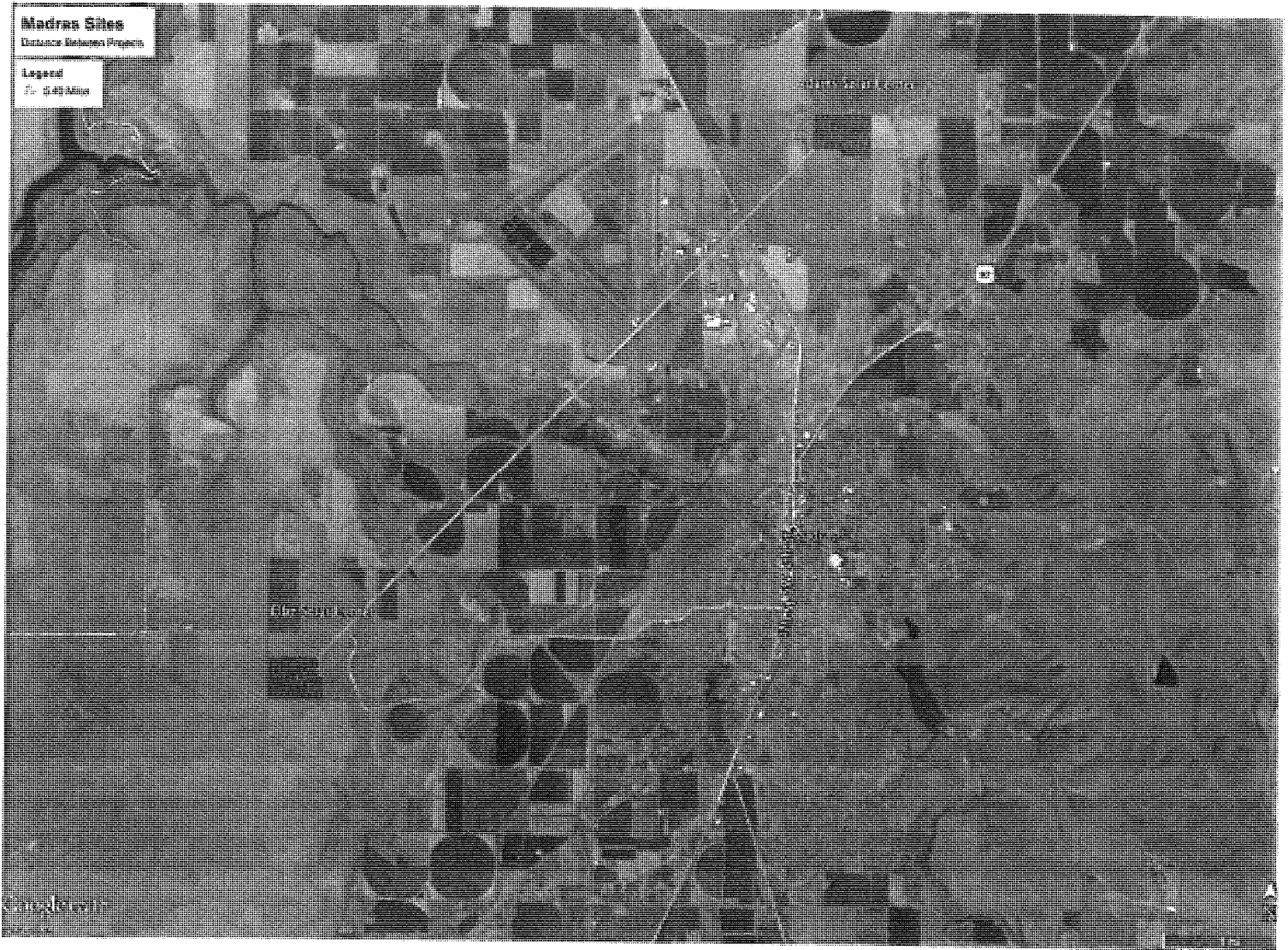
### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

Instructions to Seller:

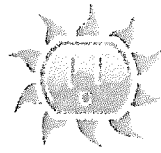
1. Include description of point of metering, and Point of Delivery
  2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.
- 
1. The interconnection voltage will be at 12.47kV. The Point of Metering will be on the project site, adjacent to Belmont Ln. (please refer to Exhibit A for the Location of the Facility). The Point of Delivery will be determined through a Transmission Service Request submitted by PacifiCorp upon execution of the Power Purchase Agreement.
  2. Please refer to attached preliminary electrical one-line electrical diagram. Final electrical one-line with final equipment will be updated with the as-built supplement.



## Distance Between Adams Solar Center And Elbe Solar Center

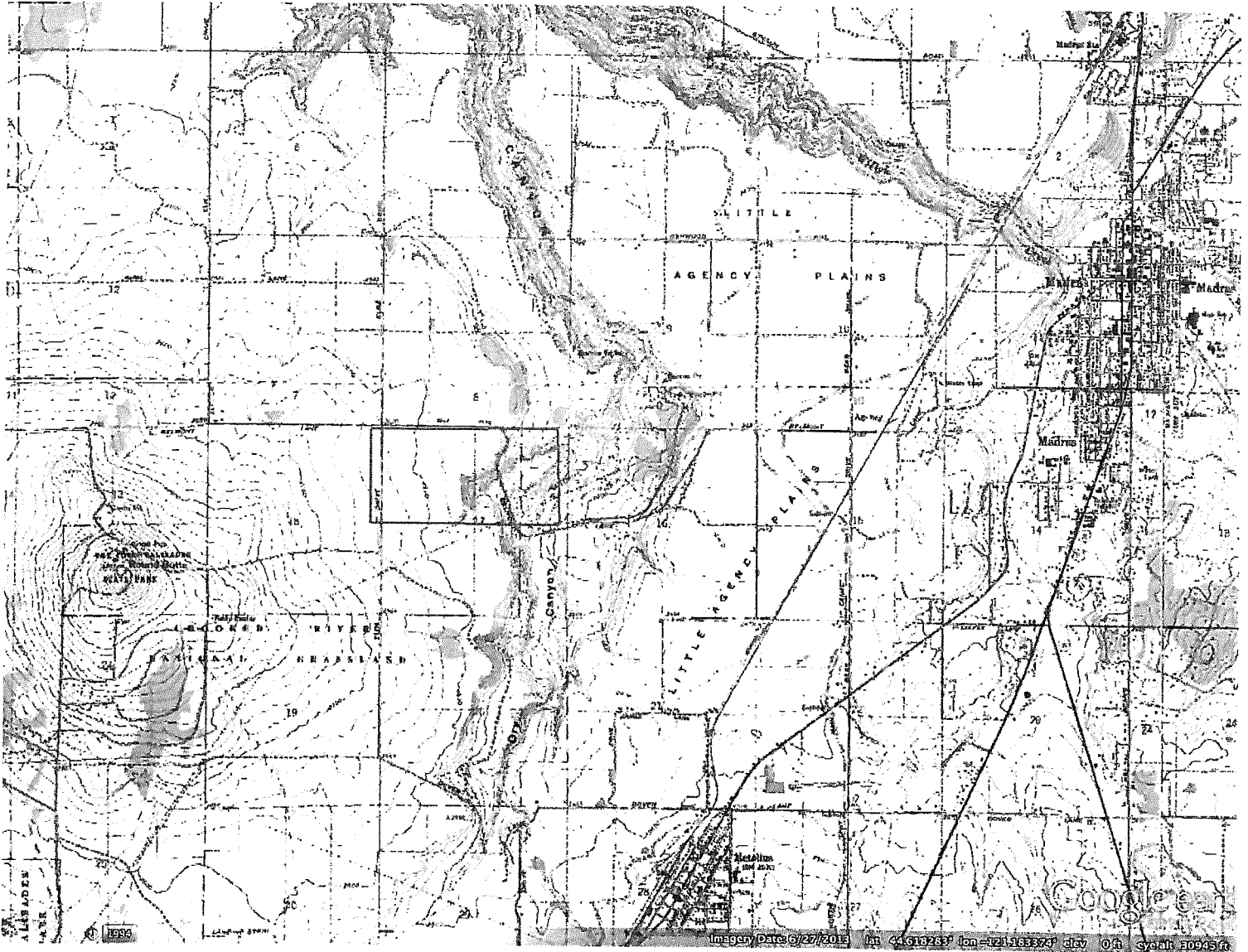


Projects are approx. 5.40 miles apart.

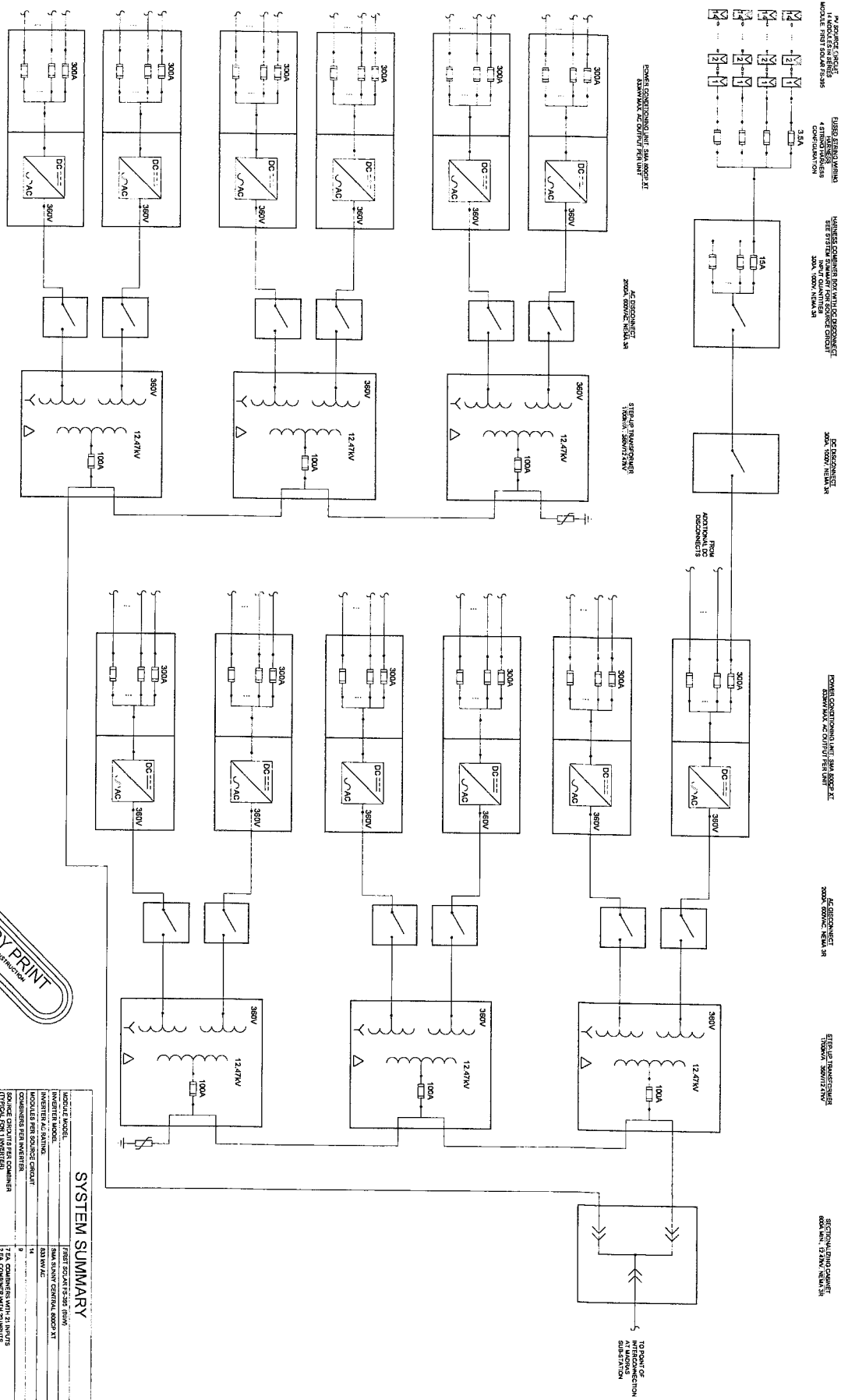


HELIO SAGE  
WISDOM IN SUN

## Elbe Solar Center



Location on USGS Map (site outlined in Red)



## SYSTEM SUMMARY

[illegible]

W-805	PROJECT	HELIOSAGE ELBE SOLAR CENTER
	DRAWING TITLE	SINGLE LINE DIAGRAM

**PRELIMINARY**  
NOT FOR CONSTRUCTION



**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

QF Certification: QF14-390-000

Interconnection Agreement: To be provided May 31, 2015

Fuel Supply Agreement, NA

Retail Electric Service Agreement

Land Lease: Lease Option Agreement with Dry Canyon Farms, LLC dated March 3, 2014

Permits: A list of applicable local, county, state, and federal permits will be provided by Seller prior to Scheduled Initial Delivery Date.

**REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN OR STEP-IN RIGHTS:**

Deed or Lease to Facility Premises

Preliminary Title Report of Premises

Proof of ownership of Facility

Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.

**EXHIBIT D-1**  
**SELLER'S MOTIVE FORCE PLAN**

**A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	628,000
February	850,000
March	1,470,000
April	1,992,000
May	2,417,000
June	2,753,000
July	2,869,000
August	2,566,000
September	1,920,000
October	1,367,000
November	678,000
December	551,000

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account maintenance and Seller's load (if any). The minimum delivery is 11,501,000 kWh based on PVSYST modeling and weather data measurements from the Redmond Roberts Municipal Airport over 19 years of continuous data collection and analysis.

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate. The maximum delivery is 23,069,000 kWh based on PVSYST modeling and weather data measurements from the Redmond Roberts Municipal Airport over 19 years of continuous data collection and analysis.

**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION**  
**OF**  
**MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*

*Motive Force Plan and Engineer's Certification of Motive Force Plan attached*





HelioSage Energy  
117 4<sup>th</sup> Street SE  
Charlottesville, VA 22902

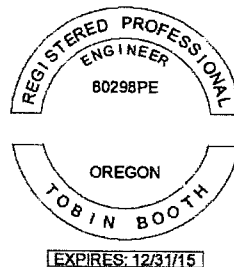
Attention: Jason Fisher

**RE: Elbe Solar Project**

A review of the Energy Performance Estimation dated May 2, 2014 for the Elbe Solar Project has been completed, it shows a maximum annual delivered energy of 23,069 MWhr and a minimum annual delivered energy of 11,501 MWhr. It is concluded that the methods used to determine the weather file and simulation parameters, and the assumptions used for the PV Array loss factors and System loss factors were all performed using approved industry standards.

Sincerely,

Tobin Booth, PE





## **Elbe Solar Project**

**Near Madras, OR**

**44.6176, -121.2017**

## **Energy Performance Estimation**

**May 2, 2014**

### Overview:

HelioSage has prepared an energy performance model for this project using PV industry standard practices and tools. The PVsyst energy modeling program was used to create the baseline energy performance report and post-report processing of the hourly data was used to account for losses not modeled in the PVsyst tool. The weather file used as the basis for the energy model was selected after considering the available weather files sources in the region and the project site's unique geography. Probability assumptions around expected annual performance are primarily based on the energy model and the source weather file. Our selections and assumptions for all these areas are outlined below.

### Plant Ratings and Summary (MW or MWhr)

AC Capacity (Inverter nameplate:	10.0
Net P50 Annual Energy:	20,060
Net P90 Annual Energy:	16,773
Maximum Annual Delivered Energy:	23,069
Minimum Annual Delivered Energy:	11,501

### Weather Site Analysis:

One of the most significant drivers of PV plant energy modeling results is the selected weather file which forms the basis of the model. When modeling the expected energy of any geographic site, a meteorological weather file must be manually selected that is used by the energy modeling tool to compute the performance of the PV system on an hourly basis over the course of a "typical" year. This model forms the basis of a P50 energy estimation for the PV project. Ideal elements of a weather file include hourly horizontal global and diffuse irradiation, ambient temperature, and average wind velocity. With these values, the modeling tool can very accurately simulate expected energy performance of the PV cells since it is these environmental variables that determine actual power produced by the cells.



Many available weather files in the US are taken directly from measured weather sites such as at major airports. This data is typically based on over 30 years of measured values which is then comparatively selected and formulated into a “Typical Meteorological Year” or TMY file for use in modeling. Increasingly satellite data is being used to either create fully synthetic weather files or to augment ground measured data. These weather file sources are particularly advantageous for project sites located farther away from measured sites, in different local geographies, or when the measured sites available are in question.

For this project, we considered several weather sites located in the region including measured sites and one synthetic site near the project location (based on measured satellite data). The differences in both distance and elevation from the project site to the weather collection location are considered when deciding on a suitable weather file. In other words, the closest weather site to the project is not always the most appropriate one; differences in latitude and elevation are important factors to consider when making final selections.

The weather data file selected for this project is a synthetic data set derived from local ground measurements at the Redmond Roberts Municipal Airport and was obtained from the National Solar Resource Database created by the National Renewable Energy Lab. The TMY3 dataset is based on over 19 years of continuous data collection and analysis.

#### The PVsyst report

Attached in appendix A is a copy of the PVsyst report for this project. This report outlines all the major system inputs and output of the energy performance model. Net energy values delivered for this project will deviate from this report since the PVsyst model is for a subsection of the overall system and some post-PVsyst adjustments are made to account for factors not included in the PVsyst model.

Below is a summary of the average monthly energy generation (MWhrs) for the project:

	MWh		MWh
Jan	628	Jul	2,869
Feb	850	Aug	2,566
Mar	1,470	Sep	1,920
Apr	1,992	Oct	1,367
May	2,417	Nov	678
Jun	2,753	Dec	551
		Year	20,060



### Station Service and Parasitic Losses

The operation of a PV power plant requires very few planned operational losses. Most losses occur in the conversion of DC energy to AC energy, from the PV modules up to the inverter output. From the AC output of the inverter, system losses are generally small, though this is the only area where station loads, including nighttime loads, occur. Below is a summary table of the losses that have been planned for this plant.

Loss	Percentage Loss (of Total)
MV Transformers	-1.07%
HV Transformers (substation)	N/A
Inverter Nighttime Consumption	-0.06%
AC Conductor Voltage Drop	-0.60%
Tracker Motor Operation	-0.07%
Data Acquisition & Aux Loads	-0.10%

### Hourly and Average Daily Values:

Attached in Appendix B is an hourly file (8760 values) representing the P50 expected production of the plant. Additionally, a 12 x 24 profile of energy values is also attached in the Appendix B file. All values in these tables are in megawatts AC and include all expected plant losses up to the point of interconnection.

### Probability Values:

A maximum and minimum number for plant energy production is included in the summary above. These numbers were derived using the following assumptions:

Annual weather variability	8.50%
PV module modeling accuracy	6.50%
Measurement error	7.00%
System Degradation (avg -%/yr)	1.00%



## Appendix A

### The PVsyst report

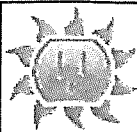


Project: Elbe Solar Project  
Date: 4/13/2014  
Modeled By: JF  
AC Capacity (kW): 10,000  
DC Capacity (kW): 11,940  
PV System Type: Horizontal Tracking System  
Net Plant Energy (kWh): 20,060

Note: Time stamp is the beginning of the time interval. Year stamp should be ignored.  
Note: Energy meter values include onsite consumption for inverter, transformer, data acquisition, and tracker motor operation. Any other station loads to be metered via separate retail meter.

Table of Average Daily System AC Energy (MWh)

Hour	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Year Avg
0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
4	0.0	0.0	0.0	0.0	0.0	0.3	0.1	0.0	0.0	0.0	0.0	0.0	0.0
5	0.0	0.0	0.0	0.4	1.4	2.1	1.7	0.8	0.0	0.0	0.0	0.0	0.0
6	0.0	0.0	0.6	2.6	3.7	4.5	4.4	3.0	1.8	0.2	0.0	0.0	0.5
7	0.0	0.7	2.4	4.7	6.5	6.6	7.3	5.9	4.4	2.4	0.4	0.0	1.7
8	1.1	2.4	4.5	6.5	7.1	8.2	8.3	7.8	6.4	5.0	2.2	1.2	3.4
9	2.5	3.2	5.4	6.9	7.9	8.2	8.4	7.9	6.8	5.2	3.3	2.4	5.1
10	2.9	3.9	5.3	7.2	7.2	8.4	8.6	7.8	6.8	5.0	3.1	2.4	5.7
11	2.9	3.7	5.4	6.8	7.5	8.1	8.3	7.9	6.7	4.8	2.8	2.5	5.6
12	2.8	3.4	5.4	6.4	7.3	8.1	8.3	8.0	6.2	5.0	2.9	2.4	5.5
13	3.1	3.6	5.0	6.3	7.0	8.1	8.3	7.7	6.5	5.2	3.0	2.6	5.5
14	2.9	3.8	5.3	6.3	6.8	7.8	7.6	7.6	6.5	5.3	3.1	2.7	5.5
15	1.8	4.0	4.5	5.4	6.0	7.1	7.3	7.4	6.2	4.7	2.0	1.9	4.9
16	0.5	1.7	2.9	4.2	5.4	6.5	6.6	6.1	4.5	1.5	0.1	0.0	3.3
17	0.0	0.0	1.0	2.3	3.2	4.6	4.7	3.8	1.2	0.0	0.0	0.0	1.7
18	0.0	0.0	0.0	0.5	1.2	2.4	2.3	1.2	0.0	0.0	0.0	0.0	0.6
19	0.0	0.0	0.0	0.0	0.0	0.5	0.5	0.0	0.0	0.0	0.0	0.0	0.1
20	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
21	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
22	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
23	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Daily Total	20.3	30.4	47.4	66.4	78.0	91.8	92.5	82.8	64.0	44.1	22.6	17.8	
Month Total	628.1	849.8	1,470.3	1,991.8	2,417.0	2,752.6	2,869.0	2,565.5	1,919.9	1,367.1	677.9	550.6	



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**Grid-Connected System: Simulation parameters****Project :** OR\_Elbe**Geographical Site** Redmond Roberts Field**Country** United States**Situation**

Time defined as

Latitude 44.2°N

Longitude 121.2°W

Legal Time Time zone UT-8

Altitude 933 m

Albedo 0.20

**Meteo data:**

Redmond Roberts Field

TMY - NREL: TMY3 hourly DB (1991-2005)

**Simulation variant :** SAT0\_FS395\_SMA-833\_r119\_GCR40\_NBT\_5MWac

Simulation date 13/04/14 17h19

**Simulation parameters****Tracking plane, tilted Axis**

Rotation Limitations

Axis Tilt 0°

Axis Azimuth 0°

Minimum Phi -45°

Maximum Phi 45°

**Models used**

Transposition Perez

Diffuse Imported

**Horizon**

Free Horizon

**Near Shadings**

According to strings

Electrical effect 100 %

**PV Array Characteristics****PV module**

CdTe

Model

FS-395

Manufacturer First Solar

Number of PV modules

In series

14 modules

In parallel 4488 strings

Total number of PV modules

Nb. modules

62832

Unit Nom. Power 95 Wp

Array global power

Nominal (STC)

5969 kWp

At operating cond. 5614 kWp (50°C)

Array operating characteristics (50°C)

U mpp

629 V

I mpp 8928 A

Total area

Module area

45239 m²

Cell area 36963 m²

**Inverter**

Model

SMA\_SC800CP-US\_w110-833kW limit

Manufacturer

SMA

Characteristics

Operating Voltage

568-850 V

Unit Nom. Power 833 kW AC

Inverter pack

Nb. of inverters

6 units

Total Power 4998 kW AC

**PV Array loss factors**

Array Soiling Losses

Loss Fraction 5.0 %

Thermal Loss factor

Uc (const)

29.0 W/m²K

Uv (wind) 0.0 W/m²K / m/s

Wiring Ohmic Loss

Global array res.

1.1 mOhm

Loss Fraction 1.5 % at STC

Module Quality Loss

Loss Fraction 1.5 %

Module Mismatch Losses

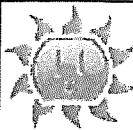
Loss Fraction 1.6 % at MPP

Incidence effect, ASHRAE parametrization

IAM =

1 - bo (1/cos i - 1)

bo Param. 0.05



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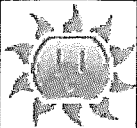
## Grid-Connected System: Simulation parameters (continued)

### System loss factors

AC loss, transfo to injection	Grid Voltage	13 kV		
	Wires	8507 m 3x700 mm <sup>2</sup>	Loss Fraction	1.0 % at STC
External transformer	Iron loss (24H connexion)	5844 W	Loss Fraction	0.1 % at STC
	Resistive/Inductive losses	0.2 mOhm	Loss Fraction	0.9 % at STC

**User's needs :** Unlimited load (grid)





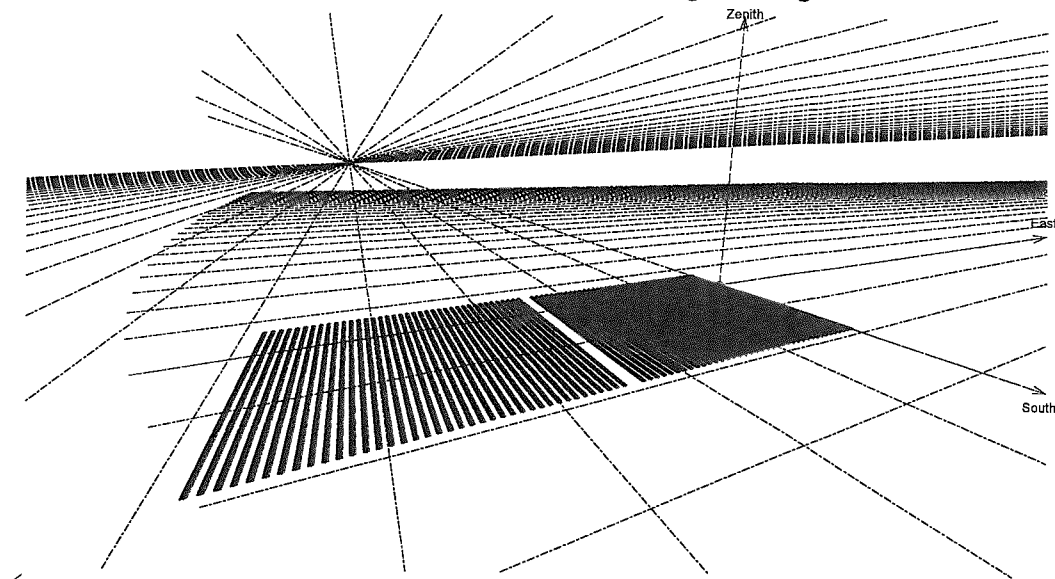
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## Grid-Connected System: Near shading definition

**Project :** OR\_Elbe**Simulation variant :** SAT0\_FS395\_SMA-833\_r119\_GCR40\_NBT\_5MWac**Main system parameters**System type **Grid-Connected****Near Shadings**

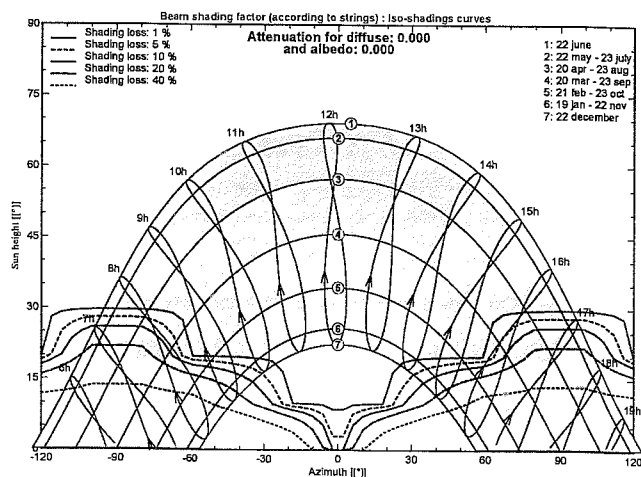
	According to strings	Electrical effect	100 %
PV Field Orientation	tracking, tilted axis, Axis Tilt	Axis Azimuth	0°
PV modules	Model FS-395	Pnom	95 Wp
PV Array	Nb. of modules 62832	Pnom total	<b>5969 kWp</b>
Inverter	SMA_SC800CP-US_w110-833kW limit	Pnom	833 kW ac
Inverter pack	Nb. of units 6.0	Pnom total	<b>4998 kW ac</b>
User's needs	Unlimited load (grid)		

### Perspective of the PV-field and surrounding shading scene



### Iso-shadings diagram

OR\_Elbe





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## Grid-Connected System: Main results

Project : OR\_Elbe

Simulation variant : SAT0\_FS395\_SMA-833\_r119\_GCR40\_NBT\_5MWac

## Main system parameters

System type Grid-Connected

## Near Shadings

According to strings

Electrical effect 100 %

PV Field Orientation

tracking, tilted axis, Axis Tilt

0°

Axis Azimuth 0°

PV modules

Model FS-395

Pnom 95 Wp

PV Array

Nb. of modules 62832

Pnom total 5969 kWp

Inverter

SMA\_SC800CP-US\_w110-833kW limit Pnom 833 kW ac

Inverter pack

Nb. of units 6.0

Pnom total 4998 kW ac

User's needs

Unlimited load (grid)

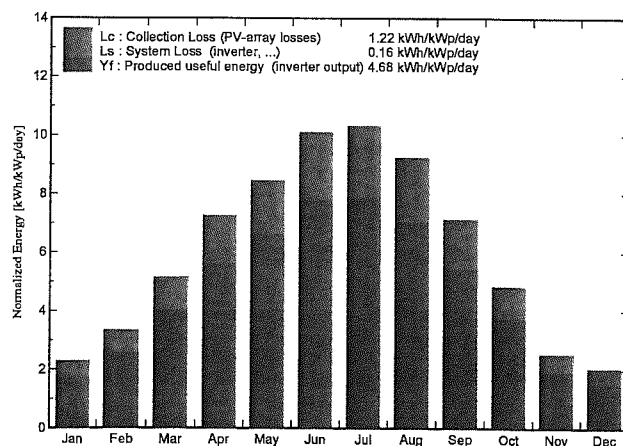
## Main simulation results

System Production

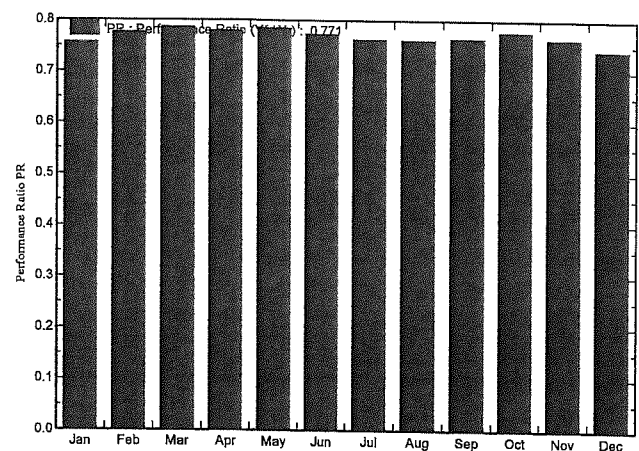
Produced Energy 10198 MWh/year  
Performance Ratio PR 77.1 %

Specific prod. 1708 kWh/kWp/year

Normalized productions (per installed kWp): Nominal power 5969 kWp



Performance Ratio PR



SAT0\_FS395\_SMA-833\_r119\_GCR40\_NBT\_5MWac

## Balances and main results

	GlobHor kWh/m²	T Amb °C	GlobInc kWh/m²	GlobEff kWh/m²	EArray MWh	E_Grid MWh	EffArrR %	EffSysR %
January	50.5	-0.20	70.8	57.6	333	320	10.39	10.00
February	66.0	2.63	93.3	78.2	448	433	10.62	10.25
March	116.3	3.78	159.3	136.1	773	748	10.73	10.38
April	160.0	8.36	217.6	189.5	1047	1012	10.63	10.28
May	196.2	10.27	261.9	231.4	1271	1228	10.72	10.36
June	223.1	16.08	302.9	268.5	1447	1398	10.56	10.20
July	230.5	19.65	319.9	283.4	1508	1458	10.42	10.07
August	202.7	17.45	286.4	251.6	1348	1304	10.40	10.06
September	148.6	14.45	213.6	186.2	1008	976	10.43	10.10
October	102.0	9.12	149.8	128.9	719	695	10.61	10.26
November	52.4	1.82	75.7	62.6	369	345	10.48	10.09
December	42.3	1.23	63.4	50.9	283	261	10.21	9.79
Year	1590.5	8.75	2214.6	1925.0	10554	10198	10.53	10.18

Legends: GlobHor Horizontal global irradiation  
T Amb Ambient Temperature  
GlobInc Global incident in coll. plane  
GlobEff Effective Global, corr. for IAM and shadings  
EArray Effective energy at the output of the array  
E\_Grid Energy injected into grid  
EffArrR Effic. Eout array / rough area  
EffSysR Effic. Eout system / rough area



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## Grid-Connected System: Loss diagram

**Project :** OR\_Elbe**Simulation variant :** SAT0\_FS395\_SMA-833\_r119\_GCR40\_NBT\_5MWac**Main system parameters**System type **Grid-Connected****Near Shadings**

PV Field Orientation

PV modules

PV Array

Inverter

Inverter pack

User's needs

According to strings

tracking, tilted axis, Axis Tilt

0°

Model FS-395

Nb. of modules 62832

SMA\_SC800CP-US\_w110-833kW limit Pnom

Nb. of units 6.0

Unlimited load (grid)

Electrical effect 100 %

Axis Azimuth 0°

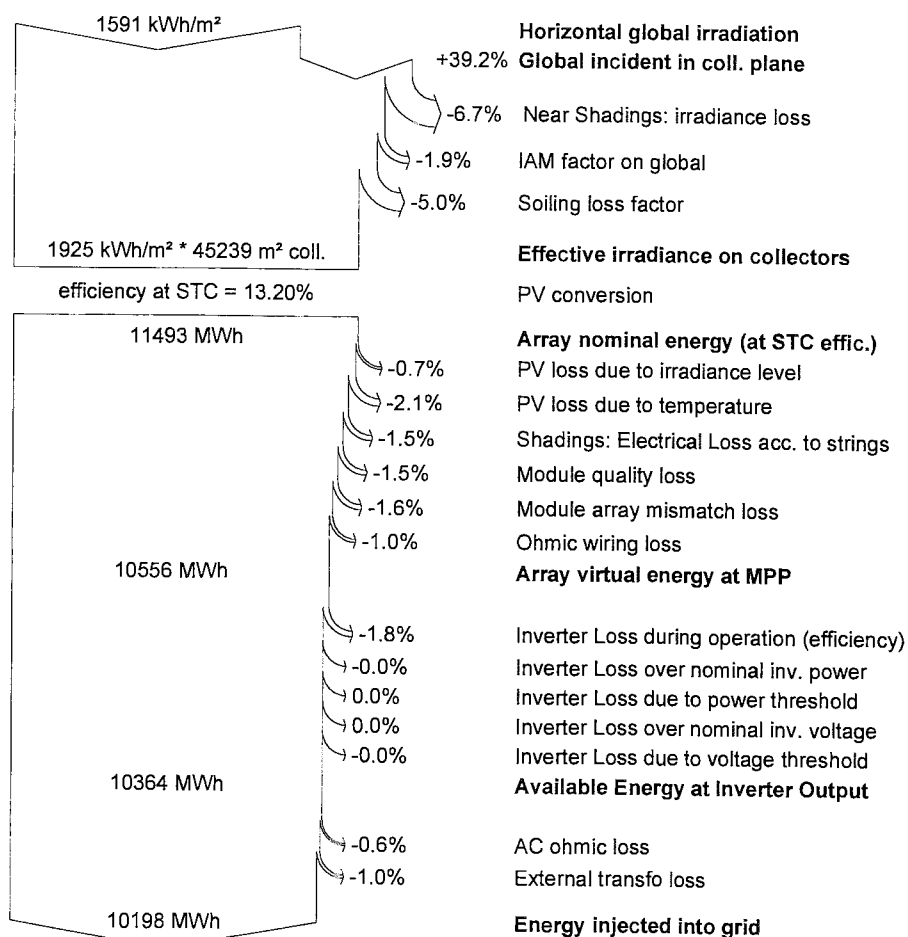
Pnom 95 Wp

Pnom total **5969 kWp**

Pnom 833 kW ac

Pnom total **4998 kW ac**

## Loss diagram over the whole year





## Appendix B

Excel file of Hourly production values and 12 x 24 matrix of average daily production.

## **EXHIBIT E**

### **START-UP TESTING**

Start-Up Testing shall consist of the Quality Assurance/Quality Control plans and procedures developed by the EPC Contractor.

Contractor shall submit to Owner a final copy of its quality assurance/quality control (QA/QC) plan for review not later than 45 days after contract execution for Owner review and comment. The QA/QC program shall include, but is not limited to, such procedures and systems as the following:

- Road construction
- Rebar and conduit placement
- Concrete placement and testing
- All wire insulation testing—Megger testing or very low frequency testing
- Mechanical system—trackers, mounting structures, tracker controls
- Factory testing of inverters and transformers by the manufacturer
- PV source open-circuit measurements—VOC at combiner boxes
- Fuse tests
- Termination pull testing
- All visual inspections
- Grounding continuity testing
- Earth-ground resistivity testing
- PV module inspection and manufacturer documentation of factory test per the manufacturer's existing program
- Metering and instrumentation calibration testing
- Step-up transformer field testing
- Inverter phase rotation and matching with utility
- Relay settings/transfer trip/etc. at the point of interconnection to Owner
- Other Contractor-prescribed procedures

All QA/QC testing procedures onsite shall be witnessed and documented by a qualified representative of Contractor. Owner shall observe and witness QA/QC as necessary and at its discretion. A qualified field engineer/QA representative of Contractor shall date and sign documentation indicating completion and acceptance of each onsite QA/QC test procedures.

Following installation, Contractor shall provide a proposed commissioning and startup plan for the Plant.

Contractor shall coordinate with Owner to develop an acceptable commissioning plan that includes a checkout and startup procedure. This work will assure: that systems are activated in a manner that is safe for personnel as well as for the equipment, that Contractor work is complete and according to the contract documents, and that the systems perform as required by the contract documents and are ready to be turned over to Owner. As the construction and installation of the systems nears completion, Contractor shall prepare punch lists and conduct system walk-downs, sub-system and system checkouts, startups, testing, and turnovers.

The final approved Commissioning Procedures shall, at minimum, include the following:

- Safety plan during startup and commissioning
- Review of all QA/QC testing on the DC and AC sides of inverters
- Detailed procedure for PV Plant startup, including switching sequencing
- Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected
- Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.
- Testing the system control and monitoring system to verify that it is performing correctly
- Testing the communication system for offsite monitoring
- Testing the Plant metering and protective relaying in conjunction with the utility during energization procedures
- Detailed procedure for interface and initialization with the grid
- Documentation of successful startup and commissioning procedure
- Written notification submitted by Contractor to Owner that the completion of Commissioning has occurred

Upon successful completion of energizing and startup, the Plant will be considered operable

**EXHIBIT F**  
**Seller Authorization to Release Generation Data to PacifiCorp**

[See attached letter]



# HELIO SAGE

## Customer Authorization to Release Generation Data Elbe Solar Center: Q0556

March 14, 2014

PacifiCorp Transmission Services  
Attention: Director, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, Oregon 97232

RE: Voluntary Consent Form

Dear PacifiCorp Transmission:

HelioSage, LLC hereby voluntarily authorizes PacifiCorp's transmission business unit to share HelioSage, LLC generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial & Trading group.

HelioSage, LLC acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

**Andrew Foukal**

Digitally signed by Andrew Foukal  
DN: cn=Andrew Foukal, o=HelioSage, ou,  
email=afoukal@heliosage.com, c=US  
Date: 2014.05.13 14:35:11 -05'00'

Name: Andrew Foukal

Title: Director of Operations

Date: 3/14/14

WISDOM IN SUN



**EXHIBIT G**  
**SCHEDULE 37 and PRICING SUMMARY TABLE**

Year	On-Peak	Off-Peak
	¢/kWh	¢/kWh
2016	6.04	3.69
2017	6.32	3.91
2018	6.66	4.21
2019	6.99	4.50
2020	6.94	4.41
2021	7.23	4.65
2022	7.67	5.04
2023	7.92	5.24
2024	7.89	5.16
2025	8.09	5.32
2026	8.39	5.57
2027	8.66	5.78
2028	8.88	5.95
2029	9.07	6.09
2030	9.20	6.16
2031, up to but not including November 1, 2031	9.35	6.25
from November 1, 2031 through the Termination Date:	Price specified by Section 5.2 of the Agreement	

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 1

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

For power purchased from Qualifying Facilities with a nameplate capacity of 10,000 kW or less or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 10,000 kW or less. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

**Definitions****Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

**On-Peak Hours or Peak Hours**

On-peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005, the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April and for the period between the last Sunday in October and the first Sunday in November.

**Off-Peak Hours**

All hours other than On-Peak.

**West Side Gas Market Index**

The monthly indexed gas price shall be the average of the price indexes published by Platts in "Inside FERC's Gas Market Report" monthly price report for Northwest Pipeline Corp. Rock Mountains, Northwest Pipeline Corp. Canadian Border, and Rockies/Northwest Stanfield, OR.

**Excess Output**

Excess output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-peak Price as described and calculated under pricing option 5 for all Excess Output.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 2

**Same Site**

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

**Person(s) or Affiliated Person(s)**

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit. A unit of Oregon local government may also be a "passive investor" if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

**Shared Interconnection and Infrastructure**

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

**Dispute Resolution**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract. Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution.

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 3

**Pricing Options****1. Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under either the Firm Market Indexed, the Banded Gas Market Indexed or the Gas Market Indexed Avoided Cost pricing option.

**2. Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2012 through 2015), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Prices are available for a term of up to 20 years.

**3. Banded Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2012 through 2015), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. The gas indexed portion of the avoided cost prices are banded to limit the amount that prices can vary with changes in gas prices. Prices are available for a term of up to 20 years.

**4. Firm Market Indexed Avoided Cost Prices**

Firm market index avoided cost prices are available to Qualifying Facilities that contract to deliver firm power. Monthly on-peak / off-peak prices paid are a blending of Intercontinental Exchange (ICE) Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

**5. Non-firm Market Index Avoided Cost Prices**

Non- Firm market index avoided cost prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 4

**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of three Pricing Options as specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the fixed prices as provided in this tariff. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

**Gas Market Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.696 to get actual gas price in cents/kWh. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Banded Gas Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.696 to get actual gas price in cents/kWh. This price is banded such that the actual gas price shall be no lower than the Gas Market Index Floor nor greater than the Gas Market Index Ceiling as listed in the price section of this tariff. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Firm Market Indexed and Non-firm Market Index Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the market prices calculated at the time of delivery. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 5

**Avoided Cost Prices**
**Pricing Option 1 – Fixed Avoided cost Prices ¢/kWh**

Deliveries During Calendar Year	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)
2012	3.09	2.32
2013	3.72	2.62
2014	4.13	2.80
2015	4.39	2.99
2016	6.04	3.69
2017	6.32	3.91
2018	6.66	4.21
2019	6.99	4.50
2020	6.94	4.41
2021	7.23	4.65
2022	7.67	5.04
2023	7.92	5.24
2024	7.89	5.16
2025	8.09	5.32
2026	8.39	5.57
2027	8.66	5.78
2028	8.88	5.95
2029	9.07	6.09
2030	9.20	6.16

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 6

**Avoided Cost Prices (Continued)**
**Pricing Option 2 – Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries During Calendar Year	Fixed Prices		Gas Market Index		Forecast	Estimated Prices (3)	
	On-Peak	Off-Peak	On-Peak	Off-Peak	West Side Gas Market Index Price (2)	On- Peak	Off-Peak
	Energy	Energy	Capacity	Energy		Energy	Energy
	Price	Price	Adder (1)	Adder	\$/MMBtu	Price	Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
			Avoided Firm Capacity Costs / (0.876 * 88.6% * 57%)	Total Avoided Energy Costs - ((e) * 0.696)		(g) + (c)	((e) * 0.696) + (d)
2012	3.09	2.32	Market Based Prices 2012 through 2015				
2013	3.72	2.62					
2014	4.13	2.80					
2015	4.39	2.99					
2016			2.36	0.44	\$4.66	6.042	3.685
2017			2.40	0.47	\$4.95	6.316	3.914
2018			2.45	0.47	\$5.38	6.660	4.212
2019			2.49	0.47	\$5.79	6.988	4.496
2020			2.53	0.47	\$5.66	6.943	4.409
2021			2.58	0.48	\$5.98	7.225	4.645
2022			2.63	0.50	\$6.53	7.667	5.041
2023			2.67	0.52	\$6.78	7.916	5.242
2024			2.72	0.53	\$6.66	7.885	5.163
2025			2.77	0.54	\$6.87	8.093	5.322
2026			2.82	0.55	\$7.21	8.385	5.565
2027			2.87	0.57	\$7.49	8.655	5.781
2028			2.93	0.60	\$7.69	8.877	5.948
2029			2.98	0.62	\$7.85	9.070	6.086
2030			3.04	0.64	\$7.92	9.197	6.156
2031			3.10	0.64	\$8.06	9.348	6.246
2032			3.16	0.65	\$8.21	9.526	6.365
2033			3.22	0.66	\$8.37	9.705	6.484
2034			3.29	0.68	\$8.53	9.902	6.616

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2011 IRP.
- (2) A heat rate of 0.696 is used to adjust gas prices from \$/MMBtu to ¢/kWh
- (3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.  
Actual prices will be calculated each month using actual index gas prices.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices (Continued)**
**Pricing Option 3 – Banded Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries  During  Calendar  Year	Fixed Prices		Banded Gas Market Index				Forecast  West Side Gas  Market Index Price (2)  \$/MMBtu	Estimated Prices (3)	
	On-Peak	Off-Peak	On-Peak	Off-Peak	Gas Market Index			On-Peak	Off-Peak
	Energy	Energy	Capacity	Energy	Floor	Ceiling		Energy	Energy
	Price	Price	Adder (1)	Adder	90%	110%		Price	Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
			Avoided Firm Capacity Costs / (0.876 * 88.6% * 57%)	Total Avoided Energy Costs - ((e) * 0.696)	(g) * 0.696 * 90%	(g) * 0.696 * 110%		(i) + (c)	MIN(MAX( ((g) * 0.696) , (e)) , (f)) + (d)
2012	3.09	2.32							
2013	3.72	2.62							
2014	4.13	2.80							
2015	4.39	2.99							
			Market Based Prices 2010 through 2013						
2016			2.36	0.44	2.92	3.57	\$4.66	6.04	3.69
2017			2.40	0.47	3.10	3.79	\$4.95	6.32	3.91
2018			2.45	0.47	3.37	4.12	\$5.38	6.66	4.21
2019			2.49	0.47	3.63	4.43	\$5.79	6.99	4.50
2020			2.53	0.47	3.55	4.33	\$5.66	6.94	4.41
2021			2.58	0.48	3.75	4.58	\$5.98	7.23	4.65
2022			2.63	0.50	4.09	5.00	\$6.53	7.67	5.04
2023			2.67	0.52	4.25	5.19	\$6.78	7.92	5.24
2024			2.72	0.53	4.17	5.10	\$6.66	7.89	5.16
2025			2.77	0.54	4.30	5.26	\$6.87	8.09	5.32
2026			2.82	0.55	4.52	5.52	\$7.21	8.39	5.57
2027			2.87	0.57	4.69	5.73	\$7.49	8.66	5.78
2028			2.93	0.60	4.82	5.89	\$7.69	8.88	5.95
2029			2.98	0.62	4.92	6.01	\$7.85	9.07	6.09
2030			3.04	0.64	4.96	6.06	\$7.92	9.20	6.16
2031			3.10	0.64	5.05	6.17	\$8.06	9.35	6.25
2032			3.16	0.65	5.14	6.29	\$8.21	9.53	6.37
2033			3.22	0.66	5.24	6.41	\$8.37	9.71	6.48
2034			3.29	0.68	5.34	6.53	\$8.53	9.90	6.62

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2011 IRP.
- (2) A heat rate of 0.696 is used to adjust gas prices from \$/MMBtu to ¢/kWh
- (3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.  
Actual prices will be calculated each month using actual index gas prices.

(continued)



**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Example of Gas Pricing Options available to the Qualifying Facility**

An example of the two gas pricing options using different assumed gas prices is provided at the end of this tariff.

**Qualifying Facilities Contracting Procedure**

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

**1. Qualifying Facilities up to 10,000 kW**

**APPLICATION:** To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement****A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions (i.e., fixed, deadband, gas indexed);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Oregon Public Utilities Commission in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)

**B. Procedures (continued)**

- 5 After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**II. Process for Negotiating Interconnection Agreements (continued)****A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

**B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Example of Gas Pricing Options given Assumed Gas Prices ¢/kWh**

Banded Gas Market Index												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Gas Market Index		Assumed Gas Price \$/MMBtu		Fuel Index		Price Paid to QF		Fixed Prices	
			Floor 90%	Ceiling 110%		Actual Energy Price	Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price	Off-Peak Price	On-Peak Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
					(e) x 0.696				(b) + (g)		(a) + (i)	
2016	2.36	0.44	2.92	3.57	\$2.00	1.39	2.92	Floor	3.36	5.72	3.69	6.04
					\$4.00	2.78	2.92	Floor	3.36	5.72		
					\$5.00	3.48	3.48	Actual	3.92	6.28		
					\$7.00	4.87	3.57	Ceiling	4.01	6.37		
					\$10.00	6.96	3.57	Ceiling	4.01	6.37		

Gas Market Method												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Fuel Index		Assumed Gas Price \$/MMBtu	Actual Energy Price	Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price
			Floor	Ceiling			Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price		
			90%	110%								
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
						(e) x 0.696			(b) + (f)	(a) + (j)		
2016	2.36	0.44	Not Relevant		\$2.00	1.39	Not Relevant		1.83	4.19	3.69	6.04
					\$4.00	2.78			3.22	5.58		
					\$5.00	3.48			3.92	6.28		
					\$7.00	4.87			5.31	7.67		
					\$10.00	6.96			7.40	9.76		

**ADDENDUM A**  
**Jury Trial Waiver**

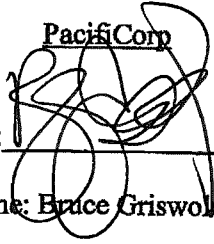
PacifiCorp and Elbe Solar Center, LLC ("Elbe") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum A to the PPA is entered into by and between PacifiCorp and Elbe and is intended to be interpreted and applied to the PPA.

*Whereas*, the Parties for their respective business purposes have an interest in not presenting a dispute to a jury for trial should a dispute arise between the Parties;

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

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

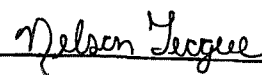
This Addendum A to the PPA is executed and made effective this 7<sup>th</sup> day of August, 2014.

**PacifiCorp**  
By:   
Name: Bruce Griswold

Title: Director, Short-Term Origination  
and QF Contracts

BWS 7-29-2014

Elbe Solar Center, LLC

By:   
Name: Nelson Teague

Title: Manager

## ADDENDUM B

### Transmission Services

PacifiCorp and Elbe Solar Center, LLC ("Elbe") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum B to the PPA is entered into by and between PacifiCorp and Elbe and is intended to be interpreted and applied to the PPA.

*Whereas*, the Parties for their respective business purposes have an interest in exporting excess generation from the Elbe Facility when Elbe generation exceeds load in the Madras area ("Excess Generation");

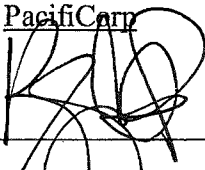
NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

PacifiCorp will contract with Portland General Electric ("PGE") per PGE's Open Access Transmission Tariff ("OATT") to purchase ten (10) megawatts of firm point-to-point ("PTP") transmission in five (5) year increments for the Term to export Excess Generation out of the Madras area from the Elbe Facility to Round Butte substation.

PacifiCorp will contract with Bonneville Power Administration ("BPA") per BPA's OATT to purchase ten (10) megawatts of firm PTP transmission in five (5) year increments for the Term to deliver Excess Generation to PacifiCorp from Round Butte substation to the Redmond 115 kV substation.

Elbe will pay all costs incurred by PacifiCorp to secure transmission service from both PGE and BPA for exporting Excess Generation. Over the Term as the PGE and BPA OATT prices and/or terms change PacifiCorp will update its transmission wheeling expense and billing to Elbe. The transmission wheeling expense will be deducted monthly from the Elbe PPA payments (an example of the monthly billing and settlement is contained in Exhibit B-1).

This Addendum B to the PPA is made effective this 7<sup>th</sup> day of August, 2014.

PacifiCorp  
By:   
Name: Bruce Griswold  
Title: Director, Short-Term Origination  
and OF Contracts  
Date: 8/7/2014  
BWS 8-7-2014

Elbe Solar Center, LLC  
By: Nelson Teague  
Name: Nelson Teague  
Title: Manager  
Date: 08/12/14

## ADDENDUM B--Ctd

### Exhibit B-1 Monthly Billing and Settlement for PTP Transmission Reimbursement

	A	B	C	D = C - A - B
	PTP Transmission			
Month	PGE(1)	BPA (2)	Generation Payment (3)	Final Settlement for Billing (4)
January	\$5,358.00	\$17,360.00	\$37,422.52	
February	\$5,358.00	\$17,360.00	\$50,651.50	\$14,704.52
March	\$5,358.00	\$17,360.00	\$87,597.30	\$27,933.50
April	\$5,358.00	\$17,360.00	\$118,703.28	\$64,879.30
May	\$5,358.00	\$17,360.00	\$144,029.03	\$95,985.28
June	\$5,358.00	\$17,360.00	\$164,051.27	\$121,311.03
July				\$141,333.27

- (1) PGE bills PacifiCorp on the 1st of each month for the prior month's expense (i.e., billed January 1 for PTP for December). Payment is due on the 20<sup>th</sup>. PGE charges are subject to change and the charges below are for example only per PGE's current OATT.

<u>PGE Charges</u>	<u>\$/KW-Month</u>
Long Term PTP	523.33
Sch, Sys Control, Disp	12.49
Total	535.82
Project Size (KW)	10,000
Monthly Cost	\$5,358

- (2) BPA bills PacifiCorp on the 1st of each month for the prior month's expense (i.e., billed January 1 for PTP for December). Payment is due on the 20<sup>th</sup>. BPA charges are subject to change and the charges below are for example only per BPA's current OATT.

<u>BPA Charges</u>	<u>\$/KW-Month</u>
Long Term PTP	\$1.479
Sch, Sys Control, Disp	\$0.257
Total	\$1.736
Project Size (KW)	10,000
Monthly Cost	\$17,360

- (3) PacifiCorp pays for generation on or before the 30th day after the billing period. PacifiCorp will make a transmission payment to BPA and PGE on the 20th of each month.
- (4) PacifiCorp will subtract the PGE and BPA payment from the payment to Elbe for Net Output for the same billing period.

The table above demonstrates the netting of the PGE and BPA PTP wheeling expense against the PPA payment to Seller for generation. For example, February's PPA payment of \$32,064.52 is determined by subtracting the January PTP Transmission of \$5,358.00 and \$17,360.00 from the January Generation Payment of \$37,422.52.



**POWER PURCHASE AGREEMENT**

**BETWEEN**

**J-BAR 9 RANCH, INC.**

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “Agreement”), is entered into between J Bar 9 Ranch, Inc., a Wyoming corporation (the “Seller”) and PacifiCorp, an Oregon corporation acting in its merchant function capacity (“PacifiCorp”). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the “Parties” and individually as a “Party.”

### RECITALS

A. Seller owns, operates and maintains a wind-powered generating facility for the generation of electric energy located in Park County, Wyoming with a facility capacity rating of 100 kilowatts (kW) as further described in Exhibit B (the “Facility”); and

B. Seller intends to utilize the output of the Facility to first offset power usage; and

C. Seller intends to operate the Facility as a Qualifying Facility (“QF”) and the rates, terms and conditions in this Agreement are in accordance with the rates, terms, and conditions approved by the Commission for purchases from QFs; and

D. Seller estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is 64,600 kilowatt-hours (kWh) pursuant to the monthly delivery schedules in Exhibit A hereto; and

E. Seller shall sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

F. PacifiCorp intends to designate Seller’s Facility as a Network Resource for the purposes of serving network load.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

### SECTION 1 - DEFINITIONS, RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, initially capitalized terms used herein shall have the following meanings:

“AAA” means the American Arbitration Association.

“Abandonment” means the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement, but only if such relinquishment is not caused by or attributable to an Event of Default of, or request by, PacifiCorp, or an event of Force Majeure.

“Affiliate” means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to PacifiCorp, Affiliate shall only include Berkshire Hathaway Energy Company and its direct, wholly owned subsidiaries.

“Agreement” is defined in the Recitals.

“Business Day” means any day on which banks in Salt Lake City, Utah are not authorized or required by Requirements of Law to be closed, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Utah.

“Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include ITCs, any Tax Credits, or any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“Commission” means the Wyoming Public Service Commission.

“Confidential Business Information” is defined in Section 23.1.

“Contract Interest Rate” means the lesser of (a) the highest rate permitted under Requirements of Law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by The Wall Street Journal.

“Contract Price” means the applicable price described in Section 5.1.

“Contract Year” means any consecutive 12-month period during the Term, commencing at 00:00 hours on the Effective Date or any of its anniversaries and ending at 24:00 hours on the last day of such 12-month period.

“Credit Requirements” means a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of (a) BBB- or greater from S&P, or (b) Baa3 or greater from Moody’s; provided that if (a) or (b) is not available, an equivalent rating as determined by PacifiCorp through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party.

“Effective Date” is defined in Section 2.1.

“Electric System Authority” means each of NERC, WECC, WREGIS, an RTO, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region, as such are applicable to the Seller or PacifiCorp.

“Environmental Attributes” means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere. Environmental Attributes do not include (i) ITCs or any Tax Credits, or certain other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

“Event of Default” is defined in Section 11.1.

“Facility” is defined in the Recitals and is more fully described in attached Exhibit B and includes all equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to PacifiCorp and required to interconnect with the System.

“FERC” means the Federal Energy Regulatory Commission.

“Firm Market Price Index” means (a) the average price reported on the Intercontinental Exchange, Inc. (“ICE”) Day-Ahead Palo Verde On-Peak Index, for On-Peak Hours, and (b) the average price reported on the ICE Day-Ahead Palo Verde Off-Peak Index, for Off-Peak Hours. If either index is not available for a given period, for purposes of calculations hereunder, the Firm Market Price Index shall be deemed to equal the volumetrically-weighted average price derived from data published by ICE for the same number of days immediately preceding and immediately succeeding the period in which the index in question was not available, regardless of which days of the week are used for this purpose. If the Firm Market Price Index or its replacement or any component of that index or its replacement ceases to be published or available, or useful for its intended purpose hereunder, during the Term, the Parties shall agree upon a replacement Firm Market Price Index or component an index or component that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of electricity for the applicable periods.

“Force Majeure” is defined in Section 13.1.



“Forced Outage” means NERC Event Types U1, U2 and U3, as set forth in attached Exhibit I, and specifically excludes any Maintenance Outage or Planned Outage.

“Generation Interconnection Agreement” means the small generator interconnection agreement to be entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

“Governmental Authority” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, PacifiCorp or this Agreement, including any municipality, township or county, and any entity or body 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.

“Green Tags” means (a) the Environmental Attributes associated with all Output, together with (b) the Green Tag Reporting Rights associated with such energy and Environmental Attributes, however commercially transferred or traded under any or other product names, such as “Renewable Energy Credits,” “Green-e Certified,” or otherwise. One Green Tag represents the Environmental Attributes made available by the generation of one MWh of energy from the Facility.

“Green Tags Price Component” means: (1) the price for Green Tags determined by arithmetically averaging quotes for Green Tags from three nationally recognized independent Green Tag brokers selected by PacifiCorp pursuant to which PacifiCorp could reasonably purchase substitute Green Tags similar to those Green Tags that Seller failed to deliver, with delivery terms, vintage period and any renewable program certification eligibility that are similar to those contained herein, calculated as of the date of default or as soon as reasonably possible thereafter; or (2) if after the Effective Date a liquid market for Green Tags exists, the price established for Green Tags from that established liquid market for Green Tags in a form and location that PacifiCorp determines reasonably states the market value of the Green Tags delivered hereunder.

“Green Tag Reporting Rights” means the exclusive right of a purchaser of Environmental Attributes to report ownership of Environmental Attributes in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

“Hazardous Materials” means any waste or other substance that is listed, defined, designated or classified as or determined to be hazardous under or pursuant to any environmental law or regulation.

“Indemnified Party” is defined in Section 6.1.3(b).

“Interconnection Facilities” means all the facilities installed, or to be installed, for the purpose of interconnecting the Facility to the System, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

“Interconnection Provider” means PacifiCorp Transmission.

“ITCs” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

“KW” means kilowatt.

“KWh” means kilowatt hour.

“Leases” means the memoranda of lease and redacted leases recorded in connection with the development of the Facility, as the same may be supplemented, amended, extended, restated, or replaced from time to time.

“Liabilities” is defined in Section 11.1.1.

“Maintenance Outage” means NERC Event Type MO, as set forth in attached Exhibit I, and includes any outage involving 10 percent of the Facility’s Net Output that is not a Forced Outage or a Planned Outage.

“Maximum Delivery Rate” means the maximum hourly rate of delivery of Net Output in MWh from the Facility to the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating.

“Minimum Annual Delivery” is defined in Section 4.3.

"Moody's" means Moody's Investor Services, Inc.

“Mountain Prevailing Time” or “MPT” means Mountain Standard Time or Mountain Daylight Time, as applicable in Utah on the day in question.

“MW” means megawatt.

"MWh" means megawatt hour.

“Nameplate Capacity Rating” means the maximum installed instantaneous generation capacity of the completed Facility, expressed in MW, when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the generator as set forth in a notice from Seller to PacifiCorp. The Nameplate Capacity Rating of the Facility shall not exceed 3 MW.

“NERC” means the North American Electric Reliability Corporation.

“Net Output” means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments, including Seller's load other than station use, if any. For purposes of calculating payment under this Agreement, Net Output shall be the amount of energy flowing through the Point of Delivery.

“Network Resource” is defined in the Tariff.

“Network Service Provider” means PacifiCorp Transmission, as a provider of network service to PacifiCorp under the Tariff.

“Off-Peak Hours” means all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, MPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, MPT, on Sundays and NERC designated holidays.

“On-Peak Hours” means all hours ending 07:00:00 through 22:00:00 MPT, Monday through Saturday, excluding NERC designated holidays.

“Output” means all energy produced by the Facility.

“PacifiCorp” is defined in the Recitals, and explicitly excludes PacifiCorp Transmission.

“PacifiCorp Indemnitees” is defined in Section 11.1.1.

“PacifiCorp Representatives” is defined in Section 6.10.

“PacifiCorp Transmission” means PacifiCorp, an Oregon corporation, acting in its interconnection or transmission function capacity.

“PacifiCorp's Cost to Cover” means the positive difference, if any, between (a) the sum of (i) the time weighted average of the Firm Market Price Index for each day for which the determination is being made, minus (b) the Contract Price in effect on such days, stated as an amount per MWh. If on a given day (or Contract Year in the case of calculations for the failure to meet the Minimum Annual Delivery) the difference between (a) minus (b) referenced above is zero or negative, then PacifiCorp's Cost to Cover shall be zero dollars (\$0), and Seller shall have no obligation to pay any amount to PacifiCorp on account of Section 10.2.1 with respect to such day (or Contract Year in the case of calculations for the failure to meet the Minimum Annual Delivery).

“Party” and “Parties” are defined in the Recitals.

“Permits” means the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the construction, ownership and operation of the Facility and occupancy of the Premises, and all amendments, modifications, supplements, general conditions and addenda thereto.

“Planned Outage” means NERC Event Type PO, as set forth in attached Exhibit I, and specifically excludes any Maintenance Outage or Forced Outage.

“Point of Delivery” means the point of interconnection between the Facility and the System, as specified in the Generation Interconnection Agreement and as further described in Exhibit C.

“Premises” means the real property on which the Facility is located, as more fully described on Exhibit B.

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the independent electric power generation industry for facilities of similar size and characteristics or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.

“PURPA” means the Public Utility Regulatory Policies Act of 1978.

“QF” means “Qualifying Facility,” as that term is defined in the FERC regulations in effect on the Effective Date.

“Required Facility Documents” means the Permits and other authorizations, rights and agreements now or hereafter necessary for operation, and maintenance of the Facility.

“Requirements of Law” means any applicable and mandatory (but not merely advisory) federal, state and local law, statute, regulation, rule, action, order, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“RTO” means any entity (including, but not limited to an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

“S&P” means Standard & Poors, a division of S&P Global, Inc..

“Schedule 37” means Rocky Mountain Power Electric Service Schedule No. 37 as attached in Exhibit J, and as approved by the Commission.

“Seller” is defined in the Recitals.

“Seller Indemnitees” is defined in Section 11.1.2.

“Seller's Cost to Cover” means the positive difference, if any, between (a) the Contract Price per MWh, and (b) the net proceeds per MWh actually realized by Seller from the sale to a third party of Net Output not purchased by PacifiCorp as required hereunder. If on any given day the difference between (a) minus (b) referenced above is zero or negative, then Seller's Cost to Cover shall be zero dollars with respect to such day, and PacifiCorp shall have no obligation to pay any amount to Seller on account of Section 10.2.2.

“Seller Uncontrollable Minutes” means, for the Facility in any Contract Year, the total number of minutes during such Contract Year during which the Facility was unable to deliver Net Output to PacifiCorp (or during which PacifiCorp failed to accept such delivery) due to one or more of the following events, each as recorded by Seller's SCADA and indicated by

Seller's electronic fault log: (a) an emergency or Force Majeure event; (b) to the extent not caused by Seller's actions, a curtailment in accordance with Section 4.5(b); (c) Planned Outages, but in no event exceeding 36 hours per Contract Year consistent with such operating manual; and (d) a default by PacifiCorp; provided, however, that if any of the events described above in items (a) through (d) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller's non-conformance with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

"System" means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which shall include the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generation Interconnection Agreement.

"Tariff" means the PacifiCorp FERC Open Access Transmission Tariff, as revised from time to time.

"Tax Credits" means any state, local and/or federal production tax credit, tax deduction, and/or investment tax credit (including the ITC) specific to the production of renewable energy and/or investments in renewable energy facilities.

"Term" is defined in Section 2.1.

"Transmission Provider" means PacifiCorp Transmission, including PacifiCorp's grid operations business unit.

"WECC" means the Western Electricity Coordinating Council.

## 1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity's or index's successors; (d) "herein," "hereof" and "hereunder" refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) "including" means "including, without limitation" or "including, but not limited to"; (h) all references to a particular law or statute mean that law or statute as amended from time to time; (i) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (j) the word "or" is not necessarily exclusive. Reference to "days" shall be calendar days, unless expressly stated otherwise herein.

### 1.2.2 Terms Not to be Construed For or Against Either Party. Each term hereof

shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3 Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.2.4 Examples. Example calculations and other examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

1.2.5 Interpretation with FERC Orders. Seller agrees that PacifiCorp conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, requiring the separation of PacifiCorp's transmission and merchant functions. Moreover, the Parties acknowledge that Interconnection Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the Generation Interconnection Agreement with the Interconnection Provider.

(a) The Parties acknowledge and agree that the Generation Interconnection Agreement shall be a separate and free standing contract and that the terms hereof are not binding upon the Interconnection Provider.

(b) Notwithstanding any other provision in this Agreement, nothing in the Generation Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider or Interconnection Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation hereunder. This Agreement shall not be construed to create any rights between Seller and the Interconnection Provider or between Seller and the Transmission Provider,

(c) Seller expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an Affiliate thereof. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider.

## SECTION 2 - TERM

2.1 Effective Date. This Agreement shall become effective upon the later of execution and delivery by both Parties or 11/1/2018 (the "Effective Date"), and, unless earlier terminated as provided herein, shall remain in effect until 10/31/2018 (the "Term").

### SECTION 3 - REPRESENTATIONS AND WARRANTIES

3.1 Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

3.1.1 Organization. It is duly organized and validly existing under the laws of the State of its organization.

3.1.2 Authority. It has the requisite power and authority to enter hereinto and to perform according to the terms hereof.

3.1.3 Actions. It has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. The execution and delivery hereof does not contravene any provision of, or constitute a default under, any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, or any valid order of any court, or any regulatory agency or other Governmental Authority having authority to which it is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

3.1.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of either Party's knowledge, threatened in writing against either Party or its members, with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened in writing against a Party, its members, or any Affiliate, the effect of which would materially and adversely affect the Party's performance of its obligations hereunder.

3.2 Seller's Further Representations and Warranties. Seller further represents, covenants, and warrants to PacifiCorp that:

3.2.1 Authority. Seller (a) has all required regulatory authority to make wholesale sales from the Facility; (b) has the power and authority to own and operate the Facility and be present upon the Premises for the Term; and (c) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.2 No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not and will not:

(a) contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any of Seller's members;

(b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are (i) set forth in Exhibit D or (ii) required in connection with the construction or operation of the Facility and expected to be obtained in due course;

(c) result in a breach of or constitute a default under any provision of any security issued by any of Seller's members or managers, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder, or any material agreement, instrument or undertaking to which either Seller's members or any Affiliates of Seller's members is a party or by which the property of any of Seller's members or any Affiliates of Seller's members is bound, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder.

3.2.3 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened in writing against Seller with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened in writing against Seller, the effect of which would materially and adversely affect Seller's performance of its obligations hereunder.

3.2.4 Required Facility Documents. All Required Facility Documents are listed on Exhibit D. Pursuant to the Required Facility Documents, Seller holds as of the Effective Date, and will maintain for the Term all Required Facility Documents (including, but not limited to, all material authorizations, rights and entitlements) necessary to own and operate the Facility and to deliver Net Output, Capacity Rights and Green Tags to PacifiCorp in accordance with this Agreement. Seller shall notify PacifiCorp of any additional material consent or approval that is required for the operation and maintenance of the Facility promptly after Seller makes any such determination.

3.2.5 Delivery of Energy. Seller shall hold rights sufficient to enable Seller to deliver Net Output at the Nameplate Capacity Rating from the Facility to the Point of Delivery pursuant to this Agreement throughout the Term.

3.2.6 Control of Premises. Seller has all legal rights necessary for the Seller to enter upon and occupy the Premises for the purpose of operating and maintaining the Facility for the Term. All Leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibit E. Seller shall maintain all Leases or other land grants necessary for the construction, operation and maintenance of the Facility as valid for the Term. Upon request by PacifiCorp, Seller shall provide copies of the memoranda of lease recorded in connection with the development of the Facility to PacifiCorp.



3.2.7 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts including, but not limited to, engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

3.2.8 Verification. All information relating to the Facility, its operation and output provided to PacifiCorp and contained in this Agreement has been verified by Seller and is true and accurate.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered hereinto in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter hereof.

3.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Section 3 are made as of the Effective Date. If at any time during the Term, the Seller obtains actual knowledge of any event or information that would have caused any of the representations and warranties in this Section 3 to be materially untrue or misleading at the time given, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 3 shall be given as soon as practicable after the occurrence of each such event.

#### SECTION 4 - DELIVERIES OF NET OUTPUT, CAPACITY RIGHTS AND GREEN TAGS

4.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Effective Date and continuing through the Term, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive the entire Net Output from the Facility at the Point of Delivery, including all Capacity Rights and associated Green Tags. Seller shall have the option, but not the obligation, to provide and deliver Net Output to PacifiCorp at the Point of Delivery, on a non-firm basis, during all hours, Monday through Sunday, from the Facility (the amount of energy that Seller actually delivers to PacifiCorp from the Facility, not to exceed 100 KW). Seller shall not deliver Net Output at a rate exceeding the Nameplate Capacity Rating on an hour average basis. PacifiCorp shall take all Net Output at the Point of Delivery.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, energy, Green Tags or Capacity Rights from the Facility to any party other than PacifiCorp; provided, however, that this restriction shall not apply during periods when PacifiCorp is in default hereof because it has failed to accept or purchase that Net Output as required hereunder.

4.3 Minimum and Maximum Annual Delivery. Seller shall make available from the Facility a minimum of 30,000 KWh of Net Output during each Contract Year ("Minimum Annual Delivery"), provided that such minimum for the first Contract Year (if less than a full calendar year) shall be reduced pro rata to reflect the Effective Date, and provided further that such

minimum Net Output shall be reduced pro rata to reflect any periods during a Contract Year that the Facility was prevented from generating electricity during periods constituting Seller Uncontrollable Minutes. Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 100,000 kWh of Net Output during each Contract Year ("Maximum Annual Delivery").

4.4 Title and Risk of Loss of Net Output. Seller shall deliver Net Output to the Point of Delivery and Capacity Rights and Green Tags free and clear of all liens, claims and encumbrances. Title to and risk of loss of all Net Output shall transfer from Seller to PacifiCorp upon its delivery to PacifiCorp at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by, all Output up to and at the Point of Delivery. PacifiCorp shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Output after the Point of Delivery.

4.5 Curtailment. PacifiCorp shall not be obligated to purchase, receive, pay for, or pay any damages associated with, Net Output if such Net Output is not delivered to the System or Point of Delivery due to any of the following: (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement, (b) the Transmission Provider or Network Service Provider directs a general curtailment, reduction, or redispatch of generation in the area, (which would include the Net Output) for any reason, even if such curtailment or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in order to meet its obligations to the Transmission Provider or Network Service Provider to operate within system limitations, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output. Seller shall reasonably determine the MWh amount of Net Output curtailed pursuant to this Section 4.5 after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of such curtailed energy based on the time and duration of the curtailment period. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a curtailment described in this Section 4.5.

4.6 PacifiCorp as Merchant. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission or any successor Transmission Provider.

4.7 Transfer of Title to Green Tags; Documentation of Green Tags Transfers. Title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the Output at the Facility that gives rise to such Green Tags. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Seller shall not report or otherwise claim that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp.

4.8 Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person or entity the Capacity Rights, if any. During the Term, Seller shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than PacifiCorp. PacifiCorp may at its own risk and expense report to any person or entity that Capacity Rights exclusively belong to it.

4.9 Further Assurances. At PacifiCorp's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer to PacifiCorp of the Net Output, Green Tags or Capacity Rights.

## SECTION 5 - CONTRACT PRICE; COSTS

5.1 Contract Price. For all Net Output delivered to the Point of Delivery, PacifiCorp will pay Seller the applicable non-firm energy price published in the version of Schedule 37 in effect at the time the Net Output is delivered.. Seller shall not be entitled to any compensation over and above the Contract Price for any Net Output, Green Tags, or Capacity Rights associated therewith.

5.2 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself.

5.3 Taxes. Seller shall pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Net Output or Capacity Rights up to and including, but not beyond, the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp shall pay or cause to be paid when due all such taxes imposed or levied by any Governmental Authority on the Net Output or Capacity Rights beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. The Contract Price shall not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back. In the event any taxes are imposed on a Party for which the other Party is responsible hereunder, the Party on which the taxes are imposed shall promptly provide the other Party notice thereof and such other information as such Party may reasonably request with respect to any such taxes.

5.4 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof and subject to Section 5.3, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax or charge (however characterized) to the extent payable by a generator of such energy or Environmental Attributes.

5.5 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008).

5.6 Tax Credits. Seller bears all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any Tax Credits or other tax benefits or attributes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Net Output and Green Tags, shall be effective regardless of whether the sale of Output or Net Output from the Facility is eligible for, or receives Tax Credits during the Term.

## SECTION 6 - OPERATION AND CONTROL

### 6.1 Standard of Facility Operation.

6.1.1 General. At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (a) the applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors to the functions thereof; (b) the Permits and Required Facility Documents; (c) the Generation Interconnection Agreement; (d) all Requirements of Law; (e) the requirements hereof; and (f) Prudent Electrical Practice. Seller acknowledges that it shall have no claims hereunder against PacifiCorp under this Agreement with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Transmission Provider. Seller will have no claims against PacifiCorp under this Agreement with respect to the provision of station service.

6.1.2 Qualified Operator. Seller or an Affiliate of Seller shall itself operate the Facility or cause the Facility to be operated by an entity that has at least two (2) years of experience in operation of similar facilities of comparable size to the Facility. Seller shall provide PacifiCorp at least thirty (30) days prior written notice of any change in the operator of the Facility.

### 6.1.3 Fines and Penalties.

(a) Without limiting a Party's rights under Section 6.1.3(b), each Party shall pay all fines and penalties incurred by such Party on account of noncompliance by such

Party with Requirements of Law in respect to this Agreement, except where such fines and penalties are being contested in good faith through appropriate proceedings.

(b) If fines, penalties, or legal costs are assessed against or incurred by either Party (the "Indemnified Party") on account of any action by any Governmental Authority due to noncompliance by the other Party (the "Indemnifying Party") with any Requirements of Law or the provisions hereof, or if the performance of the Indemnifying Party is delayed or stopped by order of any Governmental Authority due to the Indemnifying Party's noncompliance with any Requirements of Law, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party against any and all Liabilities suffered or incurred by the Indemnified Party as a result thereof. Without limiting the generality of the foregoing, the Indemnifying Party shall reimburse the Indemnified Party for all fees, damages, or penalties imposed on the Indemnified Party by any Governmental Authority, other person or to other utilities for violations to the extent caused by a default by the Indemnifying Party or a failure of performance by the Indemnifying Party hereunder.

6.2 Interconnection. Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Nameplate Capacity Rating at the Point of Delivery. Seller shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise.

6.3 Coordination with System. Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System.

6.4 Outages.

6.4.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during any portion of the months of December, January, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement. Seller shall provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one month, but no more than three months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it only, to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval shall not be unreasonably withheld or delayed.

6.4.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five days before the outage begins. Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp; provided, however, that Seller shall take all reasonable measures consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: June 15 through June 30, July, August, and September 1 through September 15. Notice of a proposed Maintenance Outage

shall include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give PacifiCorp notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity available to PacifiCorp as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.4.3 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any Forced Outage resulting in more than 10 percent of the Nameplate Capacity Rating of the Facility being unavailable. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. As soon as practicable, the oral report shall be confirmed in writing by notice to PacifiCorp. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.4.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform PacifiCorp, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day (except for curtailments pursuant to Section 4.5(b)) and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than 5 percent of the Nameplate Capacity Rating of the Facility.

6.4.5 Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly Net Output set forth on Exhibit A takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility.

## 6.5 Scheduling.

6.5.1 Cooperation and Standards. With respect to any and all scheduling requirements hereunder, (a) Seller shall cooperate with PacifiCorp with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder. Each Party shall comply with the applicable variable resource standards and criteria of any applicable Electric System Authority.

6.5.2 Schedule Coordination. If, as a result hereof, PacifiCorp is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement, due to Seller's lack of standing as a "scheduling coordinator" or other RTO

recognized designation, qualification or otherwise, then Seller shall acquire such RTO recognized standing (or shall contract with a third party who has such RTO recognized standing) such that PacifiCorp is no longer responsible for Seller's performance under the Generation Interconnection Agreement or RTO requirement.

6.5.3 Long-Range Forecasts. At PacifiCorp's request, for PacifiCorp's planning purposes, Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide an annual update to the expected long-term monthly Net Output.

6.6 Increase in Nameplate Capacity Rating; New Project Expansion or Development. Without limiting any restrictions herein on Nameplate Capacity Rating, if Seller elects to increase, at its own expense, the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate through any means, including replacement or modification of Facility equipment or related infrastructure, PacifiCorp shall not be required to purchase any Net Output above the Maximum Delivery Rate. If Seller or any Affiliate elects to build an expansion or additional project within one mile of the Facility (measured from the nearest generation equipment at both locations), Seller shall have no rights pursuant to this Agreement to require PacifiCorp to purchase (and PacifiCorp shall have no obligation to purchase pursuant to this Agreement) the output of any such expansion or additional facility. Any such expansion or additional facility may not materially and adversely impact the ability of either Party to fulfill its obligations pursuant hereto.

6.7 Dedicated Communication Circuit. Seller shall maintain a dedicated direct communication circuit (which may be by common carrier telephone) between PacifiCorp and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.8 Reports and Records.

6.8.1 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term. At PacifiCorp's request, Seller shall provide PacifiCorp with a copy of the electronic fault log within 30 days after the end of the calendar month to which the fault log applies.

6.8.2 Other Information to be Provided to PacifiCorp. Seller shall provide to PacifiCorp the following information concerning the Facility:

(a) Upon the request of PacifiCorp, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

(b) A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of PacifiCorp any of the technical data obtained in connection with such maintenance;

(c) At any time from the Effective Date, one year's advance notice of the termination or expiration of any material agreement, including Leases, pursuant to which the Facility or any material equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any land lease. In the event Seller has less

than one year's advance notice of such termination or expiration, Seller shall provide the notice contemplated by this Section to PacifiCorp within 15 Business Days of Seller obtaining knowledge of the termination or expiration.

6.8.3 Environmental Information. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data reasonably requested by PacifiCorp relating to environmental information under the Required Facility Documents. Seller shall further provide PacifiCorp with information relating to environmental impact mitigation measures it is taking in connection with the Facility's construction or operation that are required by any Governmental Authority. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year (this amount shall escalate at 2.5 percent per Contract Year), if any, incurred in connection with PacifiCorp's requests for the foregoing information under this Section 6.8.3. As soon as it is known to Seller, Seller shall disclose to PacifiCorp, the extent of any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises.

6.8.4 Additional Information. Seller shall provide to PacifiCorp such other information respecting the condition or operations of Seller, as such pertains to Seller's performance of its obligations hereunder, or the Facility as PacifiCorp may, from time to time, reasonably request.

6.9 Financial and Accounting Information. If PacifiCorp or one of its Affiliates determines that, under (i) the Accounting Standards Codification (ASC) 810, Consolidation of Variable Interest Entities, and (ii) Requirements of Law that it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon PacifiCorp's written request, sufficient financial and ownership information so that PacifiCorp or its Affiliate may confirm whether a variable interest does exist under ASC 810 and Requirements of Law. If PacifiCorp or its Affiliate determines that, under ASC 810, it holds a variable interest in Seller, Seller hereby agrees to provide, upon PacifiCorp's written request, sufficient financial and other information to PacifiCorp or its Affiliate so that PacifiCorp may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 and Requirements of Law. PacifiCorp shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.9. The information provided to PacifiCorp under this Section 6.9 shall be treated as Confidential Business Information if at the time the Seller provides such information to PacifiCorp the Seller provides written notice that the information is Confidential Business Information. Seller shall have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information. Information provided pursuant to this Section 6.9 is subject to PacifiCorp's rights to disclose such information pursuant to this Agreement and applicable Requirements of Law.



6.10 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide PacifiCorp and its authorized agents, employees and inspectors (“PacifiCorp Representatives”) with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any performance tests, (c) to provide tours of the Facility to customers and other guests of PacifiCorp (not more than 12 times per year), (d) for purposes of implementing Section 9.5, and (e) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp shall release Seller against and from any and all Liabilities resulting from actions or omissions by any of the PacifiCorp Representatives in connection with their access to the Facility, except to the extent that such damages are caused by the intentional or grossly negligent act or omission of Seller.

## SECTION 7 - QUALIFYING FACILITY STATUS

7.1 Seller's QF Status. Seller covenants that, during the Term and before delivering Net Output to PacifiCorp hereunder, Seller shall cause the Facility to be a QF, if applicable in accordance with FERC and PURPA requirements.

7.2 QF Facility. Seller shall provide PacifiCorp with copies of the appropriate certification (which may include a FERC self-certification) within ten (10) days of filing or receiving the certification. During the Term, Seller shall maintain its QF status, and shall not seek to change the Contract Price as a result of its status as a QF. At any time during the Term of this Agreement, PacifiCorp may require Seller, at Seller’s sole cost, to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing before a state bar in the United States, and (b) has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

## SECTION 8 - SECURITY AND CREDIT SUPPORT

8.1 Security. Seller shall have no credit support and security requirements under this Agreement provided the Facility maintains a Nameplate Capacity Rating of 100kW or less.

## SECTION 9 - METERING

9.1 Installation of Metering Equipment. Metering equipment shall be designed, furnished, installed, owned, inspected, tested, maintained and replaced as provided in the Generation Interconnection Agreement; provided, however, that PacifiCorp acting in its merchant function capacity shall be under no obligation, pursuant hereto, to bear any expense relating to such metering equipment.

9.2 Metering. Metering shall be performed at the location and in the manner specified in Exhibit C, the Generation Interconnection Agreement and as necessary to perform Seller's obligations hereunder. All quantities of Net Output purchased hereunder shall reflect the net amount of energy flowing into the System at the Point of Delivery.

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall have the right to periodically inspect, test, repair and replace the metering equipment that are provided for in the Generation Interconnection Agreement, without PacifiCorp assuming any obligations thereunder. If any of the inspections or tests disclose an error exceeding 0.5 percent, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to PacifiCorp, acting in its merchant function capacity hereunder, having any obligations to Seller, or any other person or entity, pursuant to or under the Generation Interconnection Agreement.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs (including PacifiCorp's costs) relating to all metering equipment installed to accommodate Seller's Facility.

9.5 Meter Data. Within 10 days of the Effective Date, Seller may request the Interconnection Provider or Transmission Provider in writing in a form similar to that found in Exhibit G to provide any and all meter or other data associated with the Facility or Net Output directly to PacifiCorp. Should Seller refuse to provide a release similar to that found in Exhibit G, Seller shall establish a mechanism at its expense that allows PacifiCorp, in its merchant function, to obtain all necessary meter and other data to fully perform and verify Seller's performance under this Agreement. Notwithstanding any other provision hereof, PacifiCorp shall have the right to provide such data to any Electric System Authority.

9.6 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility.

## SECTION 10 - BILLINGS, COMPUTATIONS AND PAYMENTS

10.1 Monthly Invoices. On or before the thirtieth (30) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment.

10.2 Offsets. Either Party may offset any payment due hereunder against amounts owed by the other Party pursuant hereto. Either Party's exercise of recoupment and set off rights shall not limit the other remedies available to such Party hereunder.

10.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall be provided within two years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

10.5 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Net Output delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two years after the date of such statement or payment.

## SECTION 11 - DEFAULTS AND REMEDIES

11.1 Defaults. The following events are defaults (each a "default" before the passing of applicable notice and cure periods, and an "Event of Default" thereafter) hereunder:

### 11.1.1 Defaults by Either Party.

(a) A Party fails to make a payment when due hereunder if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default.

(b) A Party (i) makes a general assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is unable to pay its debts when due.

(c) a Party breaches a representation or warranty made by it herein if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default; provided, however, that, upon written notice from the defaulting Party, the shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the initial 30 day period despite diligent efforts, (ii) the default is capable of being cured within the additional 60 day period, and (iii) the defaulting Party commences the cure within the initial 30 day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

(d) A Party otherwise fails to perform any material obligation hereunder if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided, however, that, upon written notice from the defaulting Party, this period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the initial 30 day period despite diligent efforts, (ii) the default is capable of being cured within the additional 60 day period, and (iii) the defaulting Party commences the cure within the initial 30 day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

#### 11.1.2 Defaults by Seller.

(a) Seller sells Output or Capacity Rights from the Facility to a party other than PacifiCorp in breach of Section 4.2, if Seller does not permanently cease such sale and compensate PacifiCorp for the damages arising from the breach within ten (10) days after PacifiCorp gives Seller a notice of default.

(b) PacifiCorp receives notice of foreclosure of the Facility or any part thereof by a lender, mechanic or materialman, or any other holder, of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten (10) days of the date of the notice received by PacifiCorp.

(c) Seller fails to maintain any Required Facility Documents or Permits necessary to own or operate the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from PacifiCorp; provided, however, that, upon written notice from Seller, the thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) Seller commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

(d) Seller's Abandonment of operation of the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from PacifiCorp, except to the extent caused by an event of Force Majeure or a default by PacifiCorp.

(e) Seller fails to maintain insurance as required by the Agreement and such failure continues for fifteen (15) days after Seller's receipt of written notice thereof from PacifiCorp.

(f) Seller fails to satisfy the Minimum Annual Delivery for any Contract Year.

## 11.2 Remedies for Failure to Deliver/Receive.

11.2.1 Remedy for Seller's Failure to Deliver. Upon the occurrence and during the continuation of a default of Seller under Section 11.1.2(a), Seller shall pay PacifiCorp within five Business Days after invoice receipt, an amount equal to (a) PacifiCorp's Cost to Cover multiplied by the Net Output delivered to a party other than PacifiCorp, (b) additional transmission charges, if any, reasonably incurred by PacifiCorp in moving replacement energy to the Point of Delivery or if not there, to such points in PacifiCorp's control area as are determined by PacifiCorp, and (c) any additional cost or expense incurred as a result of Seller's default under Section 11.1.2(a), as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

11.2.2 Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to receive or purchase all or part of the Net Output required to be purchased pursuant hereto and such failure is not excused under the terms hereof or by Seller's failure to perform, then Seller shall perform under Section 11.6 and PacifiCorp shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount equal to Seller's Cost to Cover multiplied by the amount of Net Output so not purchased, less amounts received by Seller pursuant to Section 11.6. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

11.2.3 Remedy for Seller's Failure to Sell/Deliver Capacity Rights or Green Tags. Seller shall be liable for PacifiCorp's actual damages in the event Seller fails to sell or deliver all or any portion of the Capacity Rights or Green Tags to PacifiCorp.

11.3 Termination and Remedies. From and during the continuance of an Event of Default, the non-defaulting Party shall be entitled to all remedies available at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than one (1) Business Day before such termination date. The notice required by this Section 11.3 may be provided in the notice of default (and does not have to be a separate notice) so long as it complies with all other terms of this Section 11.3. As a precondition to Seller's exercise of this termination right, Seller must also provide copies of such notice to the notice addresses of then-current President and General Counsel of PacifiCorp set forth in Section 22. Such copies shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested. In addition, Seller's termination notice shall state prominently therein in typefont no smaller than 14-point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER A PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions. Seller will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within the fifteen (15) Business Days of receipt of such notice. Further, from and after the date upon which Seller fails to remedy a default, and until PacifiCorp has recovered all damages incurred on account of such default by Seller, without exercising its

termination right, PacifiCorp may offset its damages against any payment due Seller. Except in circumstances in which a remedy provided for in this Agreement is described as a Party's sole or exclusive remedy, upon termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.6). The rights contemplated by this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. In the event of a termination hereof:

(a) Each Party shall pay to the other all amounts due the other hereunder for all periods prior to termination, subject to offset by the non-defaulting Party against damages incurred by such Party.

(b) The amounts due pursuant to Section 11.3(a) shall be calculated and paid within thirty (30) days after the billing date for such charges and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due hereunder.

(c) Before and after the effective date of termination, the non-defaulting Party may pursue, to the extent permitted by this Agreement, any and all legal or equitable remedies provided by law, equity or this Agreement (including Section 24.6).

(d) Without limiting the generality of the foregoing, the provisions of Sections 4.6, 5.4, 5.5, 10.3, 10.4, 10.5, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, and Section 12, Section 13, Section 23, and Section 24 shall survive the termination hereof.

**11.4 Termination of Duty to Buy.** If this Agreement is terminated because of a default by Seller, neither Seller nor Affiliate, nor any successor to Seller with respect to the ownership of the Facility or Premises, may thereafter require or seek to require PacifiCorp to make any purchases from the Facility or any electric generation facility constructed on the Premises under PURPA, or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PacifiCorp to do so.

**11.5 Termination Damages.** If this Agreement is terminated as a result of an Event of Default by one of the Parties, termination damages shall be determined. The amount of termination damages shall be calculated by the non-defaulting Party within a reasonable period after termination of the Agreement. Amounts owed pursuant to this Section 11 shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default.

**11.6 Duty/Right to Mitigate.** Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance hereof. "Commercially reasonable efforts" (a) by Seller shall include requiring Seller to (i) use commercially reasonable efforts to maximize the price for Net Output received by Seller from third parties, including

entering into an enabling agreement with, or being affiliated with, one or more power marketers of nationally recognized standing to market such Net Output not purchased or accepted by PacifiCorp (only during a period PacifiCorp is in default), to the extent permitted by Requirements of Law and the Generation Interconnection Agreement, and (b) by PacifiCorp shall include requiring PacifiCorp to use commercially reasonable efforts to minimize the price paid to third parties for energy purchased to replace Net Output not delivered by Seller as required hereunder.

11.7 Security. If this Agreement is terminated because of Seller's default, PacifiCorp may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any security held by PacifiCorp in whatever form to reduce any amounts that Seller owes PacifiCorp arising from such default.

11.8 Cumulative Remedies. Except in circumstances in which a remedy provided for in this Agreement is described as a sole or exclusive remedy, the rights and remedies provided to PacifiCorp hereunder are cumulative and not exclusive of any rights or remedies of PacifiCorp.

## SECTION 12 - INDEMNIFICATION AND LIABILITY

### 12.1 Indemnities.

12.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Seller shall release, indemnify and hold harmless PacifiCorp, its divisions, Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "PacifiCorp Indemnitees") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility or Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the PacifiCorp Indemnitees. Seller shall be solely responsible for (and shall defend and hold PacifiCorp harmless against) any damage that may occur as a direct result of Seller's breach of the Generation Interconnection Agreement.

12.1.2 Indemnity by PacifiCorp. To the extent permitted by Requirements of Law and subject to Section 12.1.5, PacifiCorp shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Seller Indemnitees") against and from any and all Liabilities actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by PacifiCorp of its obligations hereunder for or on account of (a) injury, bodily or otherwise, to, or death of, or (b) for damage to, or destruction or economic loss of property of, any person or entity within the Seller Indemnitees, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Seller Indemnitees.

12.1.3 Additional Cross Indemnity. Without limiting Sections 12.1.1 and 12.1.2, Seller shall release, indemnify and hold harmless the PacifiCorp Indemnitees from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Delivery, and PacifiCorp shall release, indemnify and hold harmless the Seller Indemnitees from and against all Liabilities related to Net Output once delivered to PacifiCorp at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the gross negligence or willful misconduct or a breach of this Agreement by any member of the PacifiCorp Indemnitees or the Seller Indemnitees, respectively, seeking indemnification hereunder.

12.1.4 No Dedication. Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party. No undertaking by one Party to the other under any provision hereof shall constitute the dedication of PacifiCorp's facilities or any portion thereof to Seller or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.1.5 Consequential Damages. EXCEPT AS PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

## SECTION 13 - INSURANCE

13.1 Required Policies and Coverages. Without limiting any Liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry the insurance coverage specified on Exhibit H during the Term or longer period if specified in Exhibit H.

## SECTION 14 - FORCE MAJEURE

14.1 Definition of Force Majeure. "Force Majeure" or "an event of Force Majeure" means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; civil disturbance; sabotage; strikes; lock-outs; work stoppages; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or PacifiCorp's ability to purchase energy or capacity at a more advantageous price than is provided hereunder; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of the Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure, (v) the imposition



upon a Party of costs or taxes allocated to such Party under Section 5, (vi) delay or failure of Seller to obtain or perform any Required Facility Document unless due to a Force Majeure event, (vii) any delay, alleged breach of contract, or failure by the Transmission Provider, Network Service Provider or Interconnection Provider unless due to a Force Majeure event, (viii) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving the Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a result of an event of Force Majeure); (ix) Seller's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to transmission owner, Transmission Provider or Interconnection Provider, unless due to a Force Majeure event; or (x) any event attributable to the use of Interconnection Facilities for deliveries of Net Output to any party other than PacifiCorp. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, steel, labor, or transportation constitute an event of Force Majeure.

14.2 Suspension of Performance. Neither Party shall be liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure during the continuation of the event of Force Majeure, for the same number of days that the event of Force Majeure has prevailed, provided that:

(e) the Party affected by the Force Majeure, shall, within five (5) days after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

(f) the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and

(g) the affected Party shall use diligent efforts to remedy its inability to perform.

14.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

14.4 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding 180 consecutive days (despite the affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the Force Majeure event, with respect to its obligations hereunder, may terminate this Agreement by giving ten (10) days prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to period following the effective date of such termination; provided, however, that this Agreement

will remain in effect to the extent necessary to facilitate the settlement of all Liabilities and obligations arising hereunder before the effective date of such termination.

#### SECTION 15 - SEVERAL OBLIGATIONS

Nothing contained herein shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties.

#### SECTION 16 - CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Wyoming, applying any choice of law rules that may direct the application of the laws of another jurisdiction.

#### SECTION 17 - PARTIAL INVALIDITY

The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms hereof shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

#### SECTION 18 - NON-WAIVER

No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

#### SECTION 19 - GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, or ownership of the Facility.

#### SECTION 20 - SUCCESSORS AND ASSIGNS

20.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

20.2 Permitted Assignments. Notwithstanding Section 20.1, either Party may, without the need for consent from the other Party (but with notice to the other Party, including the names of the assignees): (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with project financing for the Facility; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of such Party (and, with respect to Seller, Seller shall be required to transfer or assign this Agreement to any party succeeding to all or substantially all of the assets of Seller); provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of PacifiCorp without the prior written consent of PacifiCorp. Except with respect to collateral assignments for financing purposes in every assignment permitted under this Section 20.2, the assignee must agree in writing to be bound by the terms and conditions hereof and must possess the same or similar experience, and possess the same or better creditworthiness, as the assignor. PacifiCorp may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that PacifiCorp ceases to be a load-serving entity, in which event PacifiCorp shall be released from liability hereunder upon approval of PacifiCorp ceasing to be a load-serving entity by the Commission. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

## SECTION 21 - ENTIRE AGREEMENT

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. No modification hereof shall be effective unless it is in writing and executed by both Parties.

## SECTION 22 - NOTICES

22.1 Addresses and Delivery Methods. All notices, requests, statements or payments shall be made to the addresses set out below. In addition, copies of a notice of termination of this Agreement under Section 11.3 shall contain the information required by Section 11.3 and shall be sent to the then-current President and General Counsel of PacifiCorp. Notices required to be in writing shall be delivered by letter, facsimile or other tangible documentary form. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. Notice by hand delivery shall be deemed to have been given when received or hand delivered. Notice by facsimile is effective as of transmission to each and all of the telefacsimile numbers provided below for a Party, but must be followed up by notice by registered mail or overnight carrier to be effective. Notice by overnight mail shall be deemed to have been given the Business Day after it is sent, if sent for next day delivery to a domestic address by a recognized overnight delivery service (e.g., Federal Express or UPS). Notice by certified or registered mail, return receipt requested, shall be deemed to have been given upon receipt.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices:</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232  Attention: Contract Administration Suite 600 Facsimile: (503) 813-6291 Email: <a href="mailto:cntadmin@pacificorp.com">cntadmin@pacificorp.com</a>  Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	J Bar 9 LLC 3110 Southfork Road Cody, WY 82414  307-587-8578 Fax 307-587-7946  Attn: Bob Curtis  Duns: [_____]
<b>All Invoices:</b>	Attn: Back Office, Suite 1900 Facsimile: (503) 813-5580 Email: <a href="mailto:powerinvoices@pacificorp.com">powerinvoices@pacificorp.com</a>	
<b>Scheduling:</b>	Attn: Pre-Scheduling, Suite 600 Phone: (503) 813-6090 Email: <a href="mailto:ctpreschd@pacificorp.com">ctpreschd@pacificorp.com</a>	
<b>Payments:</b>	Attn: Central Cashiers Office, Suite 550 Phone: (503) 813-6826	J Bar 9 LLC 3110 Southfork Road Cody, WY 82414 307-587-8578
<b>Wire Transfer:</b>	Bank One N.A. To be provided in separate letter from PacifiCorp to Seller	
<b>Credit and Collections:</b>	Attn: Credit Manager, Suite 1900 Phone: (503) 813-7280 Facsimile: (503) 813-5609	
<b>With Additional Notices of an Event of Default or Potential Event of Default</b>	Attn: Assistant General Counsel Suite 1800	J Bar 9 LLC 3110 Southfork Road Cody, WY 82414 307-587-8578

22.2 Changes of Address. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section 22.

## SECTION 23 - CONFIDENTIALITY

23.1 Confidential Business Information. The following constitutes "Confidential Business Information," whether oral or written: (a) the Parties' proposals and negotiations concerning this Agreement, made or conducted prior to the Effective Date, (b) the actual charges billed to PacifiCorp hereunder, and (c) any information delivered by PacifiCorp to Seller prior to the Effective Date relating to the market prices of energy or Green Tags and methodologies for their determination or estimation. Seller and PacifiCorp each agree to hold such Confidential Business Information wholly confidential, except as otherwise expressly provided in this Agreement. "Confidential Business Information" shall not include information that (x) is in or enters the public domain through no fault of the Party receiving such information, or (y) was in the possession of a Party prior to the Effective Date, other than through delivery thereof as specified in subsections (a) and (c) above. A Party providing any Confidential Business Information under this Agreement shall clearly mark all pages of all documents and materials to

be treated as Confidential Business information with the term “Confidential” on the front of each page, document or material. If the Confidential Business Information is transmitted by electronic means the title or subject line shall indicate the information is Confidential Business Information. All Confidential Business Information shall be maintained as confidential, pursuant to the terms of this Section 23, for a period of two years from the date it is received by the receiving Party unless otherwise agreed to in writing by the Parties.

23.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its Affiliates, accountants, auditors, counsel, consultants, lenders, prospective lenders, employees, officers and directors), without the prior written consent of the other Party, provided that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required (i) by Requirements of Law, (ii) in order for PacifiCorp to receive regulatory recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof, and (b) notwithstanding any other provision hereof, PacifiCorp may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Sections 23.1(b) or 23.1(c). In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party shall to the extent possible promptly notify the other Party of the obligation to disclose such information.

23.3 PacifiCorp Regulatory Compliance. The Parties acknowledge that PacifiCorp is required by law or regulation to report certain information that is or could otherwise embody Confidential Business Information from time to time. Such reports include models, filings, reports of PacifiCorp's net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1, Form 12, or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, WECC, Pacific Northwest Utility Coordinating Committee, WREGIS, or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, PacifiCorp will from time to time be required to produce Confidential Business Information. PacifiCorp may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. PacifiCorp may submit Confidential Business Information in regulatory proceedings without notice to Seller.

23.4 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 23 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

23.5 News Releases and Publicity. Before Seller issues any news release or publicly distributed promotional material regarding the Facility that mentions the Facility, Seller shall first provide a copy to PacifiCorp for its review and approval. Any use of PacifiCorp's name or Berkshire Hathaway's name requires PacifiCorp's prior written consent.

## SECTION 24 - DISAGREEMENTS

24.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate any legal remedies available to the Party. All negotiations pursuant to this clause are confidential.

24.2 Mediation. Following the process set forth in Section 24.1 above, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the rules and procedures of the AAA, as amended and effective on the date a Party requests mediation. The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah. The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable mediator. The costs of the mediation, including fees and expenses, shall be borne equally by the Parties. All verbal and written communications between the Parties and issued or prepared in connection with mediation shall be deemed prepared and communicated in furtherance of settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any litigation or other proceedings for the resolution of the dispute.

24.3 Place of Contract Formation; Choice of Forum. Seller and PacifiCorp acknowledge and agree that this Agreement has been made and entered into as of the date executed by both Parties in Salt Lake City, Utah. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the United States District Court for the District of Utah in Salt Lake City, Utah, or if such court does not have jurisdiction, in the 3<sup>rd</sup> Judicial District (Salt Lake County) Court of the state of Utah. By execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein, and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.

24.4 Settlement Discussions. No statements of position or offers of settlement made in the course of the dispute process described in this Section 24 will be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or

offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

24.5 Waiver of Jury Trial. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

24.6 Specific Performance. Each Party shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of the other Party hereunder. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of the other Party hereunder, and that any liability limits contained herein shall not operate to limit the exercise of PacifiCorp's remedies in equity to cause Seller to perform its obligations hereunder. Seller agrees that it will not assert as a defense to PacifiCorp's action for specific performance of, or injunctive relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense. Seller shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets and Required Facility Documents relating to the Facility to the extent necessary to prevent a material adverse effect on PacifiCorp's right to specific performance or injunctive relief.

*[signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the Effective Date.

J BAR 9 RANCH, INC.

PACIFICORP

By:

Kim Wieland

By:

Kyle Moore

10/24/2018

Name:

Kim Wieland

Name:

Kyle Moore

Title:

CFO

Title:

Originator



## EXHIBIT A

### ESTIMATED MONTHLY NET OUTPUT

<u>Month</u>	<u>Net Output (kWh)</u>
January	9,635
February	9,245
March	8,775
April	5,189
May	2,061
June	2,364
July	763
August	904
September	1,405
October	4,878
November	7,287
December	7,909

**EXHIBIT B**  
**DESCRIPTION OF SELLER'S FACILITY**

The Facility is located in Park County, Wyoming. The location is more particularly described as follows: Section 8 and 9, T 49 N., R. 105 W. Seller's Facility consists of one (1) wind turbine generator manufactured by Northern Power System.

More specifically, the generator at the Facility is described as:

**Model:** Northwind 100

**Number of Phases:** 3

**Rated Output (kW):** 100

**Maximum kW Output:** 100 kW

**Minimum kW Output:** 3.7 at wind speed of 4 m/s kW

**Manufacturer's Guaranteed Cut-in Wind Speed:** 4 m/s

**Facility Capacity Rating:** 100 kW at wind speed of 15 m/s

**Maximum Facility Delivery Rate:** 100 kW at wind speed 17 m/s

**Maximum GIA Delivery Rate:** 100 kW

**Station service requirements, and other loads served by the Facility, if any, are describe as follows:** The Northwind 100 does not require any station service.

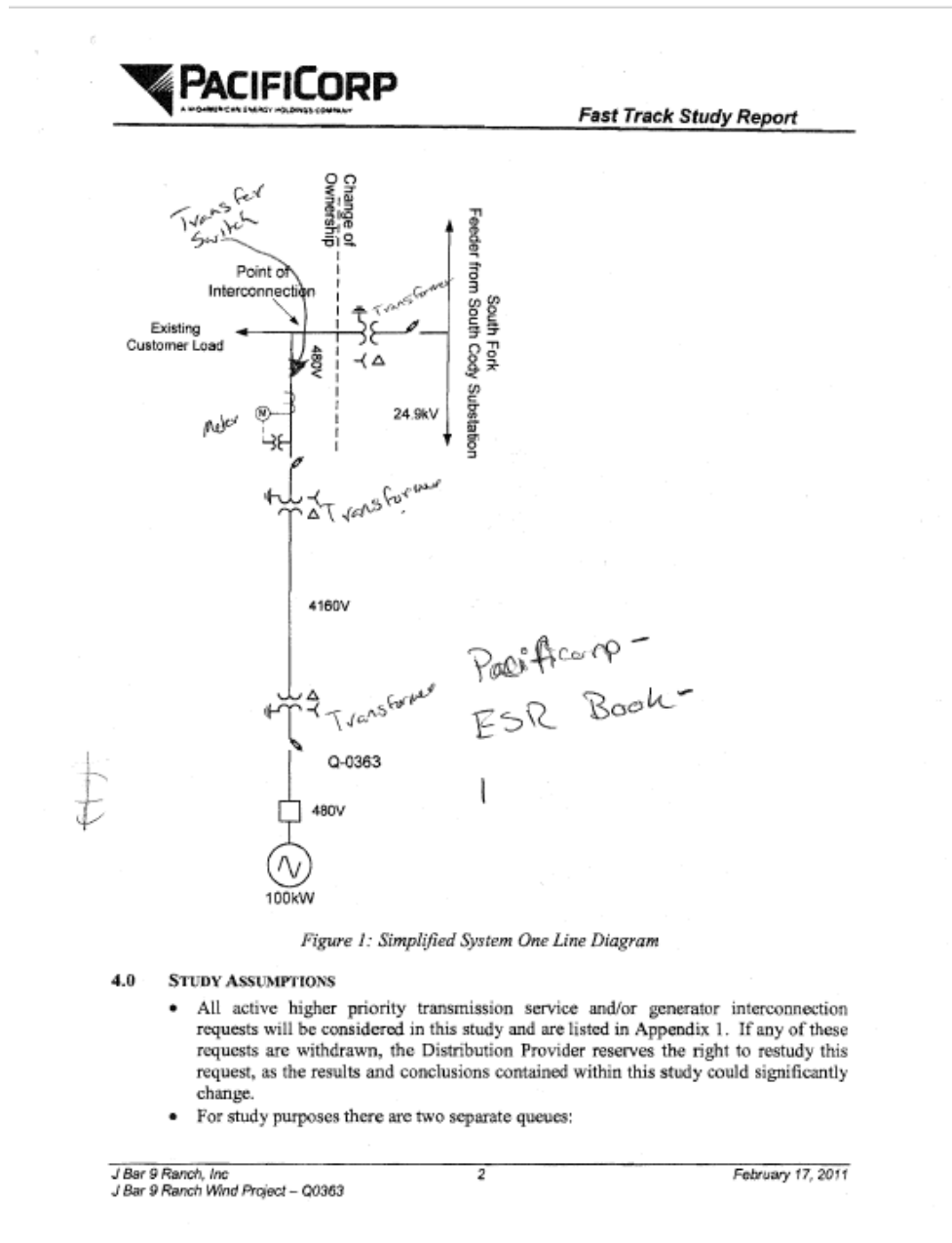
**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): PF .9

## EXHIBIT C

### SELLER'S INTERCONNECTION FACILITIES

1. The interconnection is on the low side of the 500 kVA transformer that currently services load on the Ranch behind meter # 28181358 and located near facility point 52-49-105-090680.
2. A one-line diagram prepared for the Fast Track Study is attached.



**EXHIBIT D**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

Qualifying Facility Number from FERC: Not required for projects less than 1,000 KW

The following Documents are required to complete this project:

Generation Interconnection Agreement – Provided July 28, 2011

Easements:

Land Lease: Not Required

Wind Lease: Not Required

Permits:

FAA Permit: Not Required

Park County Building Permit

Special Use Permit – 165 dated February 2, 2011

**EXHIBIT E**

**LEASES**

*On file with PacifiCorp*

**EXHIBIT F**

*(intentionally left blank)*

**EXHIBIT G**

*On file with PacifiCorp*

## **EXHIBIT H**

### **REQUIRED INSURANCE**

1.1 Without limiting any liabilities or any other obligations of Seller, Seller shall, prior to commencing Work, secure and continuously carry with insurers having an A.M. Best Insurance Reports rating of A-:VII or better such insurance as will protect Seller from liability and claims for injuries and damages which may arise out of or result from Seller's operations under the Contract and for which Seller may be legally liable, whether such operations are by Seller or a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Seller shall insure the risks associated with the Work and this Contract with minimum coverages and limits as set forth below:

1.1.1 Workers' Compensation. Seller shall comply with all applicable workers' compensation laws and shall furnish proof thereof satisfactory to Company prior to commencing Work. If Work is to be performed in Washington or Wyoming, Seller will participate in the appropriate state fund(s) to cover all eligible employees and provide a stop gap (employer's liability) endorsement. Coverage should also provide applicable federal regulations (including, without limitation, FELA, USL&H and the Jones Act).

1.1.2 Employers' Liability. Seller shall maintain employers' liability insurance with limits not less than \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.

1.1.3 Commercial General Liability. Seller shall maintain commercial general liability insurance on the most recently approved ISO policy form, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate (on a per location and/or per job basis) and shall include the following coverages:

- a. Premises and operations coverage
- b. Independent contractor's coverage
- c. Contractual liability
- d. Broad form property damage liability
- e. Personal and advertising injury liability, with the contractual exclusion removed
- f. Sudden and accidental pollution liability, as applicable

1.1.4 Business Automobile Liability. Seller shall maintain business automobile liability insurance on the most recently approved ISO policy form, or its equivalent, with a minimum single limit of \$1,000,000 each accident for bodily injury and property damage including sudden and accidental pollution liability, with respect to Seller's vehicles whether owned, hired or non-owned, assigned to or used in the performance of the Work.

1.1.5 Umbrella or Excess Liability. Seller shall maintain umbrella or excess liability insurance with a minimum limit of \$3,000,000 each occurrence/aggregate where applicable on a following form basis to be excess of the insurance coverage and limits required in employers' liability insurance, commercial general liability insurance and business automobile liability insurance above. Seller shall provide Notice to Company, if at any time the full umbrella limit required under this Contract is not available, and will purchase additional limits, if requested by Company.



1.1.6 Property Insurance. Seller shall maintain property insurance covering equipment and structures in an amount at least equal to the full replacement value for "all risks" of physical loss or damage, including coverage for earth movement, flood, boiler and machinery, and business interruption. The policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. Property insurance will be maintained in accordance with terms available in the insurance market for similar facilities.

1.2 Company does not represent that the insurance coverages specified herein (whether in scope of coverage or amounts of coverage) are adequate to protect the obligations of Seller, and Seller shall be solely responsible for any deficiencies thereof.

1.3 Except for workers' compensation and professional liability insurance, the policies required herein shall include provisions or endorsements naming Company, its parent, divisions, affiliates, subsidiary companies, co-lessees, co-venturers, officers, directors, agents, employees, servants and insurers as additional insureds or loss payees, as applicable to specific insurance coverage. The commercial general liability additional insured endorsement shall be ISO Form CG 20 10 or its equivalent.

1.4 To the extent of Seller's negligent acts or omissions, all policies required by this Contract shall include: (i) provisions that such insurance is primary insurance with respect to the interests of Company and that any other insurance maintained by Company (including self-insurance) is excess and not contributory insurance with the insurance required hereunder; and (ii) provisions that the policy contain a cross liability or severability of interest clause or endorsement in the commercial general liability and automobile liability coverage. Unless prohibited by applicable law, all required insurance policies (except professional liability) shall contain provisions that the insurer will have no right of recovery or subrogation against Company, its parent, divisions, affiliates, subsidiary companies, co-lessees or co-venturers, agents, directors, officers, employees, servants, and insurers, it being the intention of the Parties that the insurance as effected shall protect all of the above-referenced entities evidenced by waiver of subrogation wording.

1.5 A certificate of insurance shall be furnished to Company confirming the issuance of such insurance prior to commencement of Work by Seller. Should a loss arise during the term of the Contract that may give rise to a claim against Seller and/or Company as an additional insured, Seller shall deliver to Company (or cause to be delivered to Company) certified copies of such insurance policies. Seller shall not cancel or reduce limits of liability without (i) ten (10) calendar days prior written Notice to Company if canceled for nonpayment of premium; or (ii) thirty (30) calendar days prior written Notice to Company if canceled for any other reason. Lack of notification shall be considered a material breach of this Contract.

Seller shall require Subcontractors who perform Work at the Work Site to carry liability insurance (auto, commercial general liability and excess) and workers' compensation/employer's liability insurance commensurate with their respective scopes of work. Seller shall remain responsible for any claims, lawsuits, losses and expenses included defense costs that exceed any of its Subcontractors' insurance limits or for uninsured claims or losses.

**EXHIBIT I**  
**NERC EVENT TYPES**

Event Type	Description of Outages
U1	<u>Unplanned (Forced) Outage—Immediate</u> – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2	<u>Unplanned (Forced) Outage—Delayed</u> – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3	<u>Unplanned (Forced) Outage—Postponed</u> – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF	<u>Startup Failure</u> – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, Solar Array replacement or inspections are typical planned outages.)
PE	<u>Planned Outage Extension</u> – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

**EXHIBIT J**  
**WYOMING SCHEDULE 37**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**LOYD FERY**

**[an existing Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less  
and not an Intermittent Resource]**

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT ("Agreement"), entered into this 7<sup>th</sup> day of June, 2018, is between Loyd Fery, "**Seller**" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp**." (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

### RECITALS

A. Seller owns, operates and maintains a hydroelectric facility for the generation of electric power, including interconnection facilities, located in Aumsville, Marion County, Oregon with a Facility Capacity Rating of 65 - kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** ("**Facility**"); and

B. The Parties desire to enter into this Agreement to replace in its entirety the power purchase agreement dated April 8, 2018 (the "PPA"), which terminated on June 30, 2018; and

C. Seller intends to continue to deliver Net Output under this Agreement; and

D. Seller intends to continue to operate the Facility as a Qualifying Facility, and is deemed to have established commercial operation under the previous PPA; and

E. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 342,433 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

F. Seller shall (choose one) ☒ sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp ☐ sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

G. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

### Section 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 “**As-Built Supplement**” shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction on the Facility, describing the Facility as actually built.

1.2 “**Average Annual Generation**” shall have the meaning set forth in Section 4.2.

1.3 “**Billing Period**” means, unless otherwise agreed to, the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 “**CAMD**” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Green Tags.

1.5 “**Commission**” means the Oregon Public Utilities Commission.

1.6 “**Contract Price**” means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1, 5.2, and 5.3.

1.7 “**Contract Year**” means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Effective Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.

1.8 “**Credit Requirements**” means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.

1.9 “**Default Security**”, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at **Mid-Columbia** (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Oregon Standard Offer Schedule, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly

volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Oregon Standard Offer Schedule. Such amount shall be fixed at the Effective Date of this Agreement.

1.10 “**Effective Date**” of this Agreement shall be July 1, 2018, which is the date upon which the PPA terminates.

1.11 “**Energy Delivery Schedule**” shall have the meaning set forth in Section 4.5.

1.12 “**Environmental Attributes**” shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.13 “**Excess Output**” shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

1.14 “**Facility**” shall have the meaning set forth in Recital A.

1.15 “**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.16 “**FERC**” means the Federal Energy Regulatory Commission, or its successor.

1.17 “**Generation Interconnection Agreement**” means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp’s interconnection facilities required to accommodate deliveries of Seller’s Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.18 “**Green Tags**” means (1) the Environmental Attributes associated with all Net Output, together with (2) all WREGIS Certificates; and (3) the Green Tag Reporting Rights associated with such energy, Environmental Attributes and WREGIS Certificates, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified", or otherwise. One (1) Green Tag represents the Environmental Attributes made available by the generation of one (1) MWh of energy from the Facility. Provided however, that “Green Tags” do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.19 “**Green Tag Reporting Rights**” means the exclusive right of a purchaser of Green Tags to report exclusive ownership of Green Tags in compliance with federal or state law, if



applicable, and to federal or state agencies or other parties at such purchaser's discretion, and include reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

1.20 **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.21 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.22 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to operate, maintain or own the Facility as provided in this Agreement

1.23 **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.24 **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.25 **“Nameplate Capacity Rating”** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovolt-amperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.26 **“Net Energy”** means the energy component, in kWh, of Net Output.

1.27 **“Net Output”** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.28 **“Net Replacement Power Costs”** shall have the meaning set forth in Section 11.4.1.

1.29 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.30 **“On-Peak Hours”** means the hours between 6 a.m. Pacific Prevailing Time (“PPT”) and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Oregon Standard Offer Schedule.

1.31 **“Point of Delivery”** means the high side of the Seller’s step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp’s distribution/transmission system, or as otherwise specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.32 **“Prime Rate”** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.33 **“Prudent Electrical Practices”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.34 **“QF”** means **“Qualifying Facility,”** as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.35 **“Renewable Resource Deficiency Period”** means the period from 2029 through 2036.

1.36 **“Renewable Resource Sufficiency Period”** means the period from 2017 through 2028.

1.37 **“Replacement Price”** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.38 **“Required Facility Documents”** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for operation, and maintenance of the Facility consistent with the terms of this Agreement and requested in writing by PacifiCorp, including without limitation those set forth in **Exhibit C**.

1.39 **“Oregon Standard Offer Schedule”** means the Oregon Standard Avoided Cost Rates Avoided Cost Purchases From Eligible Qualifying Facilities of Pacific Power & Light

Company's Commission-approved schedules, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Oregon Standard Offer Schedule is attached as **Exhibit F**.

1.40 "**Termination Date**" shall have the meaning set forth in Section 2.4.

1.41 "**WREGIS**" means the Western Renewable Energy Generation Information System or successor organization in case WREGIS is ever replaced..

1.42 "**WREGIS Certificate**" means "Certificate" as defined by WREGIS in the WREGIS Operating Rules dated July 15, 2013.

1.43 "**WREGIS Operating Rules**" means the operating rules and requirements adopted by WREGIS, dated July 15, 2013.

## Section 2: **TERM; EFFECTIVE DATE**

2.1 After execution by both Parties, this Agreement shall become effective on the Effective Date.

2.2 By the Effective Date, Seller shall provide PacifiCorp with (a) a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement, (b) the Required Facility Documents, and (c) an executed copy of **Exhibit E** – Seller's Interconnection Request.

2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.4 Except as otherwise provided herein, this Agreement shall terminate on June 30, 2019 ("**Termination Date**").

## Section 3: **REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other

material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.

3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

3.2.1 Seller is a sole proprietorship duly organized and validly existing under the laws of Oregon.

3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.

3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and,

if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 Compliance with Ownership Requirements in Commission Proceedings No. UM 1129 and UM 1610. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Oregon Standard Offer Schedule approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request. These ownership requirements, as well as the dispute resolution provision governing any disputes over a QF's entitlement to the standard rates and standard contract with respect to the requirements, are detailed in Oregon Standard Offer Schedule.

3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
- (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.

- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

  X   Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or

       Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### Section 4: **DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase (a) all Net Output from the Facility delivered to the Point of Delivery and (b) all Green Tags associated with the output or otherwise resulting from the generation of energy by the Facility (which shall come from the Facility and from no other source), for the periods during which the Green Tags are required to be transferred to PacifiCorp under the terms of Section 5.5.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 342,433 kWh per Contract Year ("**Average Annual Generation**"). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 300,000 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Effective Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force

Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 400,000 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

4.6 [Intentionally Omitted]

## Section 5: **PURCHASE PRICES**

5.1 Seller shall have the option to select one of three pricing options: Standard Fixed Avoided Cost Prices (“Fixed Price Standard”), Renewable Fixed Avoided Cost Prices (“Fixed Price Renewable”), or Firm Market Indexed Avoided Cost Prices (“Firm Electric Market”), as published in Oregon Standard Offer Schedule. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

<u>  X  </u>	Fixed Price Standard
<u>      </u>	Fixed Price Renewable
<u>      </u>	Firm Electric Market

A copy of Oregon Standard Offer Schedule, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit F**.

5.2 (Fixed Price Standard Sellers Only). In the event Seller elects the Fixed Price Standard pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Oregon Standard Offer Schedule** during the first fifteen (15) years after the Effective Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.3 (Fixed Price Renewable Seller Only). In the event Seller elects the Fixed Price Renewable pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Oregon Standard Offer Schedule** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller 93 percent of a blended market index price for day-ahead firm energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde market indices as reported by the Intercontinental Exchange (ICE), for the On-Peak and

Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes.

5.5.1 (Fixed Price Standard Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement throughout the Term.

5.5.2 (Fixed Price Renewable Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes during the Renewable Resource Sufficiency Period, and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Scheduled Initial Delivery Date. Subject to the foregoing, Seller shall transfer the Green Tags to PacifiCorp in accordance with Section 4.5 during the Renewable Resource Deficiency Period.

Section 6: OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of any construction affecting the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six months' prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1, 5.2, and 5.3 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection



between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## Section 7: FUEL/MOTIVE FORCE

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

## Section 8: METERING

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

#### Section 9: **BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

#### Section 10: **SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

\_\_\_\_\_ Cash Escrow

\_\_\_\_\_ Letter of Credit

\_\_\_\_\_ Senior Lien

\_\_\_\_\_ Step-in Rights

  X   Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

**[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Within thirty (30) days after the Effective Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]**

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing

to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

- 10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.
- 10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.
- 10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.
- (a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.
  - (b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.
- 10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability

attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

#### Section 11: **DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.

11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.
- 11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

### 11.3 Termination.

- 11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate for a default under Section 11.1.5 unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.
- 11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.
- 11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to

provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

- 11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

#### 11.4 Damages.

- 11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

#### 11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

### Section 12: INDEMNIFICATION AND LIABILITY

#### 12.1 Indemnities.

- 12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or

arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### Section 13: **INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. No later than the Effective Date of this Agreement, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate.



If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

#### Section 14: **FORCE MAJEURE**

14.1 As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party

could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall re-commence performance of such obligation, provided that:

14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

14.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and

14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

#### Section 15: **SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### Section 16: **CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

Section 17: **PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

Section 18: **WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

Section 19: **GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

Section 20: **REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

Section 21: **SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

Section 22: **ENTIRE AGREEMENT**

22.1 Upon the Effective Date, this Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding

PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

### Section 23: **NOTICES**

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	Loyd Fery 11022 Rainwater Lane S.E. Aumsville, OR 97325 Phone: (503) 769-6110 Facsimile: (503) 769-4092
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as above)
<b>Scheduling:</b>	(same as street address above)  Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	(same as above)
<b>Payments:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as above)
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT:  NAME: PacifiCorp Wholesale	(same as above)
<b>Credit and Collections:</b>	(same as street address above)  Attn: Credit Manager, Suite 700 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	(same as above)
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above)  Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	(same as above)

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp

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

Name: Bruce Griswold

Title: Director Short Term Origination  
and QF Contracts

Seller

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

Name: Loyd Fery

Title: Owner

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**  
**[Seller to Complete]**

Seller's Facility consists of two generators. More specifically, each generator at the Facility is described as:

Generator #1

**Manufacturer:** Stirling

**Type (synchronous or inductive):** Inductive

**Model:**

**Number of Phases:** 3

**Rated Output (kW):** 50 **Rated Output (kVA):** 50

**Rated Voltage (line to line):** 480 V

**Rated Current (A):** Stator: \_\_\_\_\_ A; Rotor: \_\_\_\_\_ A

**Maximum kW Output:** \_\_\_\_\_ kW **Maximum kVA Output:** 45 kVA

**Minimum kW Output:** \_\_\_\_\_ kW

Generator #2

**Manufacturer:** World Wide

**Type (synchronous or inductive):** Inductive

**Model:** WWES 25-12-3241

**Number of Phases:** 3

**Rated Output (kW):** 15 **Rated Output (kVA):** 18.75, 25 HP

**Rated Voltage (line to line):** 480 V

**Rated Current (A):** Stator: \_\_\_\_\_ A; Rotor: \_\_\_\_\_ A

**Maximum kW Output:** 15 kW **Maximum kVA Output:** \_\_\_\_\_ kVA

**Minimum kW Output:** \_\_\_\_\_ kW

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**Facility Capacity Rating:** 55 kW at 100 percent capacity

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**Station service requirements, and other loads served by the Facility, if any, are described as follows:** Facility requires minimal station service

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**Location of the Facility:** The Facility is located in Aumsville in Marion County, Oregon. The location is more particularly described as follows:

11028 Stayton Rd.  
Aumsville, OR 97325

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): .080

## **EXHIBIT B**

### **SELLER'S INTERCONNECTION FACILITIES**

#### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.

1. Point of Delivery is at the PacifiCorp meter located at 11028 Stayton Rd. Southeast in Aumsville, Oregon

2. A single line diagram of the Facility is attached.

**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

QF Certification: Not required for projects less than 1,000 KW

Executed Interconnection Agreement: Provided October 29, 2013

Water Rights: HE 260 Issued February 20, 2001

FERC License or Exemption: Not required project is pre-FERC and grandfathered



**EXHIBIT D-1**  
**SELLER'S MOTIVE FORCE PLAN**

**A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	29,273
February	30,404
March	28,494
April	28,225
May	32,166
June	29,598
July	27,581
August	21,243
September	27,933
October	27,493
November	28,887
December	31,136

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate. Average generation is based on historic generation.

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account unscheduled repairs or maintenance and Seller's load (if any). Minimum estimate of 300,000 KWH based on historic generation.

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate. Maximum estimate of 400,000 KWH based on historic generation.

**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION**  
**OF**  
**MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*

The Motive Force Plan comprising **Exhibit D-1** was provided to PacifiCorp by Seller.

Based upon Seller's demonstrated delivery of Net Output to PacifiCorp under Previous PPAs and representations made by Seller PacifiCorp will not require an engineer's certificate at this time. PacifiCorp reserves the right in its discretion to require the Seller to provide the following from a Licensed Professional Engineer:

1. A certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the date of the request from PacifiCorp; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement.
2. A certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling.
3. A certificate addressed to PacifiCorp stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents.

Such documents shall be provided to PacifiCorp within 30 days of a request by PacifiCorp.

**EXHIBIT E**  
**Seller Authorization to Release Generation Data to PacifiCorp**

See Attached Letter

**EXHIBIT F**  
**OREGON STANDARD OFFER SCHEDULE and PRICING SUMMARY TABLE**

<b>Calendar Year</b>	<b>On-Peak Contract Price in ¢/kWh</b>	<b>Off-Peak Contract Price in ¢/kWh</b>
<b>2018</b>	<b>2.47</b>	<b>1.92</b>
<b>2019</b>	<b>2.53</b>	<b>1.97</b>

**EXHIBIT G**  
**INTENTIONALLY OMITTED**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**NORWEST ENERGY 4, LLC**

**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and  
not an Intermittent Resource]**

**AND**

**PACIFICORP**

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## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 20<sup>th</sup> day of May, 2015, is between NorWest Energy 4, LLC, "**Seller**" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp**." (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

### RECITALS

A. Seller intends to construct, own, operate and maintain the **Bonanza** photo voltaic solar facility for the generation of electric power, including interconnection facilities, located in Bonanza, Klamath County, Oregon with a Facility Capacity Rating of 6,000 -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** ("**Facility**"); and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on November 18, 2016 ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on December 31, 2016 ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 13,622,800 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall (choose one) ☒ sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp ☐ sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 **"As-built Supplement"** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **"Average Annual Generation"** shall have the meaning set forth in Section 4.2.

1.3 **"Billing Period"** means, unless otherwise agreed to, the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 **"Commercial Operation Date"** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.4.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.4.2 The Facility has completed Start-Up Testing;

1.4.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;

1.4.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).



- 1.4.5 Seller has complied with the security requirements of Section 10.
- 1.4.6 PacifiCorp has received an executed copy of **Exhibit F**—Seller’s Interconnection Request.
- 1.5 “**Commission**” means the Oregon Public Utilities Commission.
- 1.6 “**Contract Price**” means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1 and 5.2.
- 1.7 “**Contract Year**” means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.
- 1.8 “**Credit Requirements**” means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.
- 1.9 “**Default Security**”, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at Mid-Columbia (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.
- 1.10 “**Effective Date**” shall have the meaning set forth in Section 2.1.
- 1.11 “**Energy Delivery Schedule**” shall have the meaning set forth in Section 4.5.
- 1.12 “**Environmental Attributes**” shall have the meaning set forth in Section 5.5.
- 1.13 “**Excess Output**” shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.
- 1.14 “**Facility**” shall have the meaning set forth in Recital A.
- 1.15 “**Facility Capacity Rating**” means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.
- 1.16 “**FERC**” means the Federal Energy Regulatory Commission, or its successor.

1.17 **“Generation Interconnection Agreement”** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp’s interconnection facilities required to accommodate deliveries of Seller’s Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.18 **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.19 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.20 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.21 **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.22 **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.23 **“Nameplate Capacity Rating”** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.24 **“Net Energy”** means the energy component, in kWh, of Net Output.

1.25 **“Net Output”** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.26 **“Net Replacement Power Costs”** shall have the meaning set forth in Section 11.4.1.

1.27 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.28 **"On-Peak Hours"** means the hours between 6 a.m. Pacific Prevailing Time ("PPT") and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.29 **"Point of Delivery"** means the high side of the Seller's step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp's distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.30 **"Prime Rate"** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.31 **"Prudent Electrical Practices"** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.32 **"QF"** means **"Qualifying Facility,"** as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.33 **"Replacement Price"** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller's failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.34 **"Required Facility Documents"** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.35 **"Schedule 37"** means the Schedule 37 of Pacific Power & Light Company's Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit G**.

1.36 **"Scheduled Commercial Operation Date"** shall have the meaning set forth in Recital C.

1.37 **"Scheduled Initial Delivery Date"** shall have the meaning set forth in Recital B.

1.38 **"Start-Up Testing"** means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.39 **"Termination Date"** shall have the meaning set forth in Section 2.4.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (**"Effective Date"**).

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By July 31<sup>st</sup>, 2015, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on November 17, 2031 (**"Termination Date"**).

## **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.

- 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
  - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a limited liability company duly organized and validly existing under the laws of Oregon.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
  - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general

principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Compliance with Partial Stipulation in Commission Proceeding No. UM-1129. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request.
- 3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:
- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
  - (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.

- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

\_\_\_\_\_ Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or

  X   Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase all Net Output from the Facility delivered to the Point of Delivery.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 13,622,800 kWh per Contract Year ("**Average Annual Generation**"). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 9,344,600 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-

rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 14,693,800 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

## **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of four pricing options: Fixed Avoided Cost Prices (“Fixed Price”), Firm Market Indexed Avoided Cost Prices (“Firm Electric Market”), Gas Market Indexed Avoided Cost Prices (“Gas Market”), or Banded Gas Market Indexed Avoided Cost Prices (“Banded Gas Market”), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility’s contract. Seller has selected the following (Seller to initial one):

<u>  X  </u>	Fixed Price
<u>      </u>	Firm Electric Market
<u>      </u>	Gas Market
<u>      </u>	Banded Gas Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit G**.

5.2 (Fixed Price Sellers Only). In the event Seller elects the Fixed Price payment method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller market-based rates, using the following pricing option (Seller to initial one):

<u>      </u>	Firm Electric Market
<u>      </u>	Gas Market
<u>      </u>	Banded Gas Market

5.3 If the Seller elects a gas market indexed price option, the index shall be the Opal Gas Market Index as provided in Schedule 37. In the event that Platt ceases to publish the Opal Gas Market Index, the Company shall replace the index with a similar gas index.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller a blended market index price for day-ahead non-firm energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde market



indices as reported by Intercontinental Exchange, for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes. PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement. Environmental Attributes include, but are not limited to, Green Tags, Green Certificates, Renewable Energy Credits (RECs) and Tradable Renewable Certificates (TRCs) (as those terms are commonly used in the regional electric utility industry) directly associated with the production of energy from the Seller's Facility.

## **SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six month's prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1 and 5.2 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or

by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

## **SECTION 8: METERING**

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection

agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

## **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## **SECTION 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

\_\_\_\_\_ Cash Escrow

\_\_\_\_\_ Letter of Credit

\_\_\_\_\_ Senior Lien

  X   Step-in Rights

\_\_\_\_\_ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

**[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

**[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]**

10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).

10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4.

Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

(a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

(b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such

notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

- 11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.
- 11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;
- 11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.
- 11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

11.2 Notice; Opportunity to Cure.

- 11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.
- 11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

### 11.3 Termination.

- 11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.
- 11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.
- 11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by

subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

- 11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

11.4 Damages.

- 11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.



## **SECTION 12: INDEMNIFICATION AND LIABILITY**

### **12.1 Indemnities.**

12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

## **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

- 14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and
- 14.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and
- 14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

## **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

## **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

## **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

## **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

## **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

## **SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

## **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender

as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

## **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown that may have arisen prior to the Effective Date.

## **SECTION 23: NOTICES**

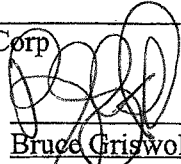

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	Cypress Creek Renewables Attn: Asset Management Division 3250 Ocean Park Blvd, Suite 355, Santa Monica, CA 90405 (310) 581.6299
<b>All Invoices:</b>	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	Same
<b>Scheduling:</b>	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	Same
<b>Payments:</b>	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	Same
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	

Notices	PacifiCorp	Seller
<b>Credit and Collections:</b>	(same as street address above) Attn: Credit Manager, Suite 1900 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	Same
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	Cypress Creek Renewables Attn: Jerome O'Brien 3250 Ocean Park Blvd, Suite 355, Santa Monica, CA 90405 973-220-1530

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp By:  Name: <u>Bruce Griswold</u> Title: <u>Director, Short-Term Origination and</u> <u>OF Contracts</u> Date: <u>May 29, 2015</u>	NorWest Energy 4, LLC By:  Name: <u>Matt McGovern</u> Title: <u>President</u> Date: <u>6/3/2015</u>
---	--

BWS 5-11-2015

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**  
**[Seller to Complete]**

Seller's Facility consists of a 6.0 MWac solar photovoltaic project including PV panels, inverters, and tracking system. More specifically, the inverter at the Facility is described as:

**Number of Inverters: 8**

**Model:** SMA Sunny Central 750CP-US

**Number of Phases: 3**

**Rated Output (kW): 750**

**Rated Output (kVA): 750kVA**

**Rated Voltage (line to line): 360 Vac**

**Maximum kW Output: 825 kW      Maximum kVA Output: 825 kVA**

**Minimum kW Output: 0 kW**

**Facility Annual Degradation Rate: 0.77%**

---

**Facility Capacity Rating:    6,000    kW.**

---

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating:

The maximum output is 6,600 kVA@25°C. The output de-rates with increased temperature to 6,000 kVA@50°C.

---

**Station service requirements, and other loads served by the Facility, if any, are described as follows:** Station service loads for the Inverters are approximately 353 kWh per year.

Transformer: - 80 % , Tracker Motor:- 10 % , Data Acquisition and Aux Loads: - 10 %

---

Values above are percentage loss of Total output and losses are already accounted for in the expected output in Exhibit D-1.

---

**Location of the Facility:** The Facility is to be constructed in the vicinity of Bonanza in Klamath County, Oregon . The location is more particularly described as follows:

GPS: 42°12'9.94"N, 121°21'13.59"W

Parcel ID: \_Parcel 2 of 48-06\_\_\_\_\_

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): ----- Power factor requirements will meet PacifiCorp standard interconnection procedures.

A more detailed and updated Exhibit A will be provided per section 6.1

## **EXHIBIT B**

### **SELLER'S INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

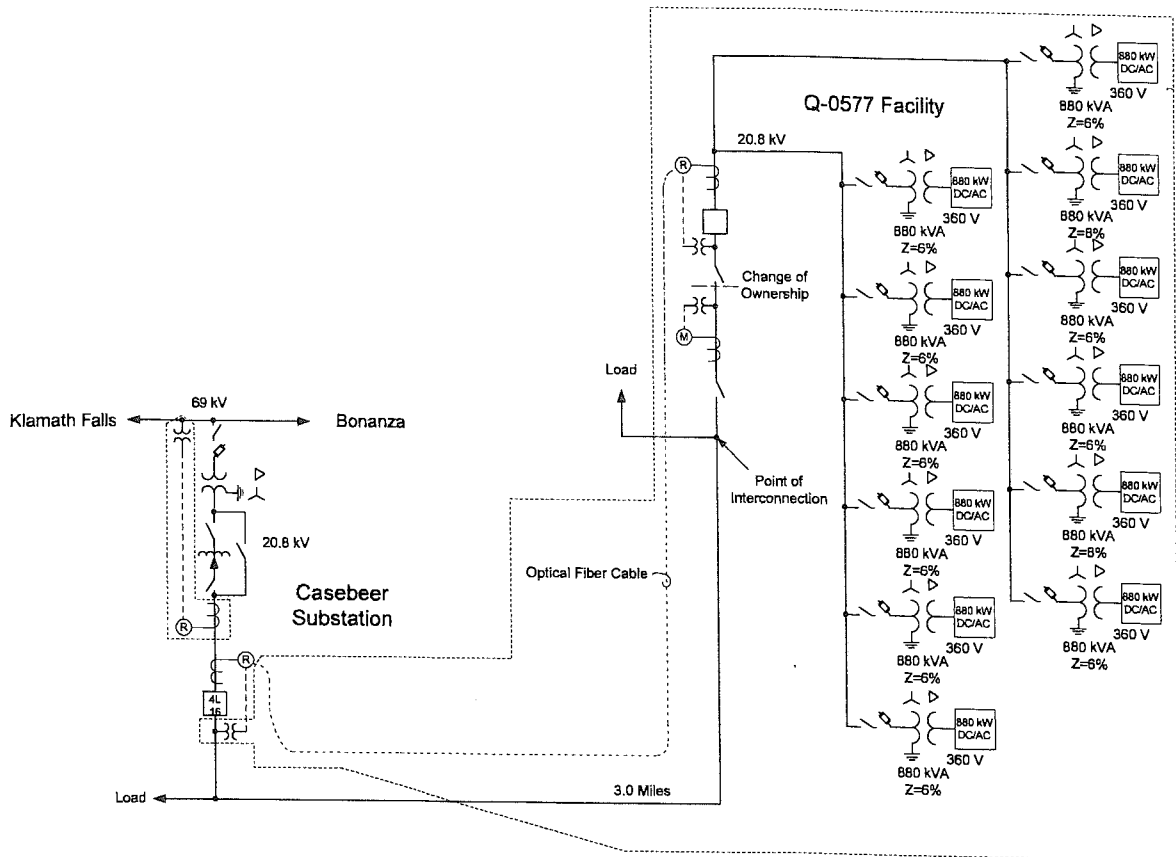
Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.

The point of delivery and point of metering are at the high side of the step-up transformer at the Point of Interconnection, located on Circuit

1. The project is located on Circuit 4L16, Langell Valley out of the Casebeer substation. The metering will be installed at the Point of Interconnection. Delivery will be at the Change of Ownership identified in PacifiCorp's one-line diagram from the System Impact Study Q0577.
2. The project site map and one-line diagram are attached.









bstation Substation  
bstation

© 2014 Google

Google

Image Date: 07/20/13 6201157763 N 101522000 42°W Play 1:21 ft

**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

QF Certification: QF14-728-000

Interconnection Agreement: Due July 31st, 2015

Fuel Supply Agreement, if applicable: NA

Purchase Agreement: Between Oregon Solar Land Holding and Robert Fore dated May 13<sup>th</sup>, 2014

Electric Service Agreement:

Permits:

- Conditional Use Permit or alternative zoning approval as applicable by the local jurisdiction
- Building Permit
- Electrical Permit (as applicable)
- 1200C Construction Stormwater General Permit (as applicable)

**REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN OR STEP-IN RIGHTS:**

Deed or Lease to Facility Premises

Preliminary Title Report of Premises

Proof of ownership of Facility

Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.

**ASSIGNMENT AND ASSUMPTION  
OF Purchase and Sale Agreement**

**THIS ASSIGNMENT AND ASSUMPTION OF Purchase and Sale Agreement between Robert Fore and Oregon Solar Land Holdings** (this "Assignment") made this 4<sup>th</sup> day of August, 2014 (the "Effective Date"), by and between Oregon Solar Land Holdings a Oregon limited liability company ("Assignor"), and NorWest Energy 4, LLC an Oregon limited liability company ("Assignee").

**RECITALS:**

**WHEREAS** Solexus Development ("Solexus") entered into that certain Purchase and Sale Agreement dated May 13<sup>th</sup>, 2014 with Robert Fore (the "Agreement") for the sale of land located at Parcel 2 of LP 48-06 near the City of Bonanza, Klamath County, OR and

**WHEREAS** Solexus assigned the Agreement to Assignor on the June 2<sup>nd</sup>, 2014 and

**WHEREAS** Assignor desires to assign, transfer and convey all right, title, and interest in the Agreement to Assignee;

**NOW THEREFORE**, in consideration of the foregoing recitals, parties hereto agree as follows:

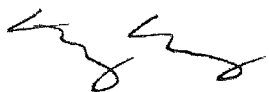
1. As of the Effective Date, Assignor hereby assigns, transfers and conveys to Assignee, all of Assignor's right, title and interest in, to, and under the Agreement, as of the Effective Date.
2. This Assignment shall inure to the benefit of, and be binding upon, the respective legal representatives, successors, and assigns of the parties. This Assignment shall be governed by and construed under the laws of the State of North Carolina. This Assignment contains the entire agreement as to the assignment of the Agreement between the parties, and may not be changed, modified, or terminated

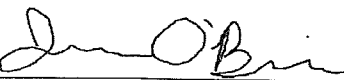
orally, or in any other manner other than by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the Effective Date.

**Oregon Solar Land Holdings, LLC**

**NorWest Energy 4, LLC**

By  \_\_\_\_\_

By  \_\_\_\_\_

Name: Troy Snyder

Name: Jerome O'Brien

Title: for TLS Capital

Title: Authorized Person

its Member

**ASSIGNMENT AND ASSUMPTION**  
**OF Purchase and Sale Agreement for Bonanza, OR Property**

**THIS ASSIGNMENT AND ASSUMPTION OF Purchase and Sale Agreement for Bonanza, OR Property** (this "Assignment") made this   2nd   day of   June  , 2014 (the "Effective Date"), by and between Solexus Development, LLC a Missouri limited liability company ("Assignor"), and Oregon Solar Land Holdings a Oregon limited liability company ("Assignee").

**RECITALS:**

**WHEREAS** Assignor entered into that certain **Purchase and Sale Agreement for Bonanza, OR Property** dated 5/13/14 with Robert Fore (the "Agreement") for the purchase of land located at Parcel 2 of LP 48-06 and

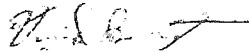
**WHEREAS** Assignor desires to assign, transfer and convey all right, title, and interest in the Agreement to Assignee;

**NOW THEREFORE**, in consideration of the foregoing recitals, parties hereto agree as follows:

1. As of the Effective Date, Assignor hereby assigns, transfers and conveys to Assignee, all of Assignor's right, title and interest in, to, and under the Agreement, as of the Effective Date.
2. This Assignment shall inure to the benefit of, and be binding upon, the respective legal representatives, successors, and assigns of the parties. This Assignment shall be governed by and construed under the laws of the State of North Carolina. This Assignment contains the entire agreement as to the assignment of the Agreement between the parties, and may not be changed, modified, or terminated orally, or in any other manner other than by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the Effective Date.

**Solexus Development, LLC**



By \_\_\_\_\_

Name: David Bunge

Title: President

**Oregon Solar Land Holdings, LLC**



By \_\_\_\_\_

Name: David Bunge

Title: Managing Member



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Sole Agreement &amp; Form to Solexus



## FINAL AGENCY ACKNOWLEDGMENT

Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent to the following agency relationships in this transaction: (1) Robert H. Bacon (Name of Selling Licensee) of Summit Real Estate (Name of Real Estate Firm) is the agent of (check one):  
☐ Buyer exclusively ("Buyer Agency"); ☐ Seller exclusively ("Seller Agency"); ☒ Both Buyer and Seller ("Disclosed Limited Agency").  
 (2) \_\_\_\_\_ (Name of Listing Licensee) of \_\_\_\_\_ (Name of Real Estate Firm) is the agent of (check one): ☐ Seller exclusively ("Seller Agency"); ☐ Both Buyer and Seller ("Disclosed Limited Agency").  
 (3) If both parties are each represented by one or more Licensees in the same Real Estate Firm, and Licensees are supervised by the same principal broker in that Real Estate Firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited agent for both Buyer and Seller as more fully explained in the Disclosed Limited Agency Agreement that have been reviewed and signed by Buyer, Seller and Licensee(s).  
 Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgment at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this Final Agency Acknowledgment shall not constitute acceptance of this Agreement or any terms therein.  
 Print Solexus Development of ASST Date 3/31/14  
 Buyer \_\_\_\_\_ Print \_\_\_\_\_ Date 4/15/14  
 Seller Robert Bacon Print Robert Bacon Date \_\_\_\_\_  
 Seller \_\_\_\_\_ Print \_\_\_\_\_ Date \_\_\_\_\_

VACANT LAND REAL ESTATE SALE AGREEMENT  
 This Agreement is intended to be a legal and binding contract.

If it is not understood, seek competent legal advice before signing. Time is of the essence of this Agreement.

1. DEFINITIONS: All references in this Agreement to "Licensee" and "Firm" shall refer to Buyer's and Seller's real estate agents licensed in the State of Oregon and the respective real estate companies with which they are affiliated. Licensee(s) and Firm(s) identified in the Final Agency Acknowledgment Section above are not parties to this Agreement, except as may be expressly applicable. Unless otherwise provided herein: (1) Time calculated in days after the date Buyer and Seller have signed this Agreement shall start on the first full business day after the date of Seller's signature indicating acceptance of Buyer's offer or counteroffer, or Buyer's signature indicating acceptance of Seller's counteroffer; (2) Written notices required or permitted under this Agreement to be delivered to Buyer or Seller may be delivered to their respective Licensees with the name effect as if delivered to that Buyer or Seller; (3) A "business day" shall mean Monday through Friday, except recognized legal holidays as enumerated in ORS 187.010 and 187.020.

2.1 PRICE/PROPERTY DESCRIPTION: Buyer (print name(s)) Solexus Development

offers to purchase from Seller (print name(s)) Robert Bacon the following described real property (hereinafter "the Property") situated in the State of Oregon, County of Clatsop and commonly known or identified as (parcel street address, city, zip code, tax identification number, lot/block description, etc.) Parcel 2 of land partition 48-06, S-3911-0000-0201, McCarty Lane, Seaside, Or. 97132

(Buyer and Seller agree that if it is not provided herein, a complete legal description as provided by the title insurance company in accordance with Section 5, below, shall, where necessary, be used for purposes of legal identification and conveyance of title.)

for the Purchase Price (in U.S. currency) of \$ 2,000.00 A \$ 140,000.00  
 on the following terms: Earnest money herein receipted for \$ 2,000.00  
 on \_\_\_\_\_, as additional earnest money, the sum of \$ \_\_\_\_\_ C \$ \_\_\_\_\_  
 at or before Closing, the balance of down payment \$ \_\_\_\_\_ D \$ \_\_\_\_\_ E \$ 138,000.00  
 at Closing and upon delivery of ☒ DEED ☐ CONTRACT the balance of the Purchase Price F \_\_\_\_\_ (Lines B, C, D and E should equal Line A)

Buyer Initials RBDate 3/31/14Seller Initials RBDate 4/15/14

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LINE WITH THIS SYMBOL ← REQUIRE A SIGNATURE OF BUYER AND/OR SELLER AND DATE  
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CREF 006

VACANT LAND REAL ESTATE SALE AGREEMENT - Page 1 of 6

form to Solexus

Summit Real Estate 3190 Highway 70 Umatilla, OR 97623  
 Phone: (541) 545-1510

Fax: (541) 545-6049

Robert Bacon

Produced with software by realSign 18571 Pilsen Rd, Pilsen, Michigan 48220 [www.realsign.com](http://www.realsign.com)



Sale Agreement # Fore to Solexus

2. BALANCE OF PURCHASE PRICE. (Select A or B)

A. ☒ This is an all cash transaction. Buyer to provide verification ("Verification") of readily available funds as follows (select only one): ☐ Buyer has attached a copy of the Verification with the submission of this Agreement to Seller or Listing Licensee. ☒ Buyer will provide Seller or Listing Licensee with the Verification within 10 business days (five [5] if not filled in) following mutual acceptance of this Agreement; or ☐ Other (Describe): \_\_\_\_\_  
 Seller may notify Buyer or Buyer's Licensee, in writing, of Seller's unconditional disapproval of the Verification within \_\_\_\_\_ business days (five [5] if not filled in) ("Disapproval Period") following its receipt by Seller or Listing Licensee, in which case, all earnest money deposits shall be promptly refunded and this transaction shall be terminated. If Seller fails to provide Buyer or Listing Licensee with written unconditional disapproval of the Verification by Midnight of the Disapproval Period, Seller shall be deemed to have approved the Verification. If Buyer fails to submit a Verification within a time frame selected above, unless the parties agree otherwise in writing, all earnest money deposits shall be promptly refunded and this transaction shall be terminated.

B. ☐ Balance of Purchase Price to be financed as follows (Select only one): ☐ Conventional; ☐ Other (Describe): \_\_\_\_\_ (hereinafter "Loan Program"). Buyer agrees to seek financing through a lending institution ("Lender") participating in the Loan Program identified above.

Pre-Approval Letter. ☐ Buyer has attached a copy of a Pre-Approval Letter from Buyer's Lender or mortgage broker; ☐ Buyer does not have a Pre-Approval Letter at the time of making this offer; ☐ Buyer agrees to secure a Pre-Approval Letter as follows: \_\_\_\_\_

3.1 FINANCING CONTINGENCIES. If Buyer is financing any portion of the Purchase Price, this transaction is subject to the following financing contingencies: (1) Buyer and the Property to qualify for the loan from Lender; (2) Lender's appraisal shall not be less than the Purchase Price; and, (3) Other (Describe): \_\_\_\_\_

All Financing Contingencies are solely for Buyer's benefit and may be waived by Buyer in writing at any time.

3.2 FAILURE OF FINANCING CONTINGENCIES. If Buyer receives actual notification that any Financing Contingencies identified above have failed or otherwise cannot occur, Buyer shall promptly notify Seller, and the parties shall have \_\_\_\_\_ business days (two [2] if not filled in) following the day of Seller's receipt of such notification to either (a) Terminate this transaction by signing a Termination Agreement (OREF-057) or such other similar form as may be provided by Escrow; or (b) Reach a written mutual agreement upon such price and terms that will permit this transaction to continue. Neither Seller nor Buyer is required under the preceding provision (b) to reach such agreement. If (a) or (b) fail to occur within the time period identified herein, this transaction shall be automatically terminated and all earnest money shall be promptly refunded to Buyer. Buyer understands that upon termination of this transaction, Seller shall have the right to immediately place the Property back on the market for sale upon any price and terms as Seller determines, in Seller's sole discretion.

3.3 BUYER REPRESENTATION REGARDING FINANCING: As of the date of signing this Agreement, Buyer makes the following representations to Seller:

(1) Buyer shall apply for a loan not later than \_\_\_\_\_ business days (three [3] if not filled in) following the date Buyer and Seller have signed this Agreement, and will thereafter complete all reasonably necessary papers in a timely manner and exercise best efforts (including payment of all application, appraisal and processing fees, where applicable) to obtain the loan;  
 (2) Buyer shall make a good faith effort to secure the ordering of the Lender's appraisal no later than expiration of the Inspection Contingency Period in Section 11.2 of this Agreement, or if the Professional Inspection Addendum (OREF-058) is used, expiration of the Inspection Period.  
 (3) Buyer currently has liquid and available funds for the earnest money deposit and down payment, sufficient to Close the transaction described herein, and is not relying upon any contingent source of funds (e.g., from loans, gifts, sale or Closing of other property, 401K disbursements, etc.), except as follows (describe): \_\_\_\_\_

(4) Buyer authorizes Buyer's Lender or mortgage broker to provide non-confidential information to Listing and Selling Licensees regarding Buyer's loan application status.

(5) Buyer shall promptly notify Seller or Seller's Licensee if, after signing this Agreement, Buyer substitutes another lender for any reason. Buyer shall not be permitted to select a Loan Program different than the one selected in Section 2.2 (B) above, without Seller's advance written consent.

(6) Buyer agrees to keep Seller promptly informed of all other material non-confidential developments regarding Buyer's financing and the timing of Closing.

3.4 INSURANCE. If the Property is located in a designated flood zone, Buyer acknowledges that flood insurance may be required as a condition of the new loan. Buyer is encouraged to promptly verify the availability and cost of property/casualty/flood insurance that will be secured for the Property.

4. ADDITIONAL PROVISIONS: This offer to purchase contingent on a 9 month Due Diligence

Buyer Initials DAVE Date 3/31/14

Seller Initials IRE Date 4/15/14

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Period, see Addendum 1.

For additional provisions, see Addendum

5. **TITLE INSURANCE:** Unless otherwise provided herein, this transaction is subject to Buyer's review and approval of a preliminary title report and the recorded covenants, conditions and restrictions ("the Report and CC&Rs") showing the condition of title to the Property. (If not fully understood, Buyer should immediately contact the title insurance company for further information or seek competent legal advice. Neither the Listing nor Selling Licensee is qualified to advise on specific legal or title issues.) Upon signature and acceptance of this Agreement by Buyer and Seller, Seller will, at Seller's sole expense, promptly order the Report and CC&Rs from an Oregon title insurance company and furnish them to Buyer. Upon receipt of the Report and CC&Rs, Buyer shall have \_\_\_\_\_ business days (five [5] if not filled in) within which to notify Seller, in writing, of any matters disclosed in the Report and CC&Rs which is/are unacceptable to Buyer ("the Objections"). Buyer's failure to timely object, in writing, to any matters disclosed in the Report and/or CC&Rs shall constitute acceptance of the Report and/or CC&Rs. However, Buyer's failure to timely object shall not relieve Seller of the duty to convey marketable title pursuant to Section 6 below. If, within \_\_\_\_\_ business days (five [5] if not filled in) following receipt of the Objections, if any, Seller fails to remove or correct the matters identified in the Objections, or does not give written assurances reasonably satisfactory to Buyer that they will be removed or corrected, all earnest money shall be promptly refunded to Buyer and this transaction shall be terminated. This contingency is solely for Buyer's benefit and may be waived by Buyer in writing. Within thirty (30) days after Closing, Seller shall furnish to Buyer an owner's standard form policy of title insurance insuring marketable title in the Property to Buyer in the amount of the purchase price, free and clear of the Objections and all other title exceptions agreed to be removed as part of this transaction. (Note: This Section 5 provides that Seller will pay for Buyer's standard owner's policy of title insurance. In some areas of the country, such a payment might be regarded as a "seller concession." Under the amended Real Estate Settlement Procedures Act ("RESPA"), effective on January 1, 2010 there are limitations, regulations and disclosure requirements on "seller concessions" unless the product or service paid by the Seller was one customarily paid by the Seller. In Oregon, sellers customarily and routinely pay for their buyer's standard owner's policy of title insurance. Accordingly, unless the terms of this Section 5 are modified in writing by Buyer and Seller, the parties acknowledge, agree and so instruct Escrow, that in this transaction, Seller's payment of Buyer's standard owner's policy of title insurance is ~~not~~ a "seller concession" under RESPA or any other federal or state law.)

6. **DEED:** Seller shall convey marketable title to the Property by statutory warranty deed (or good and sufficient personal representative's or trustee's or similar legal fiduciary's deed, where applicable) free and clear of all liens of record, except property taxes which are a lien but not yet payable, zoning ordinances, building and use restrictions, reservations in Federal patents, assessments of record which affect the Property, covenants, conditions and restrictions of record, and those matters accepted by Buyer pursuant to Section 5 above.

7. **SELLER-CARRIED FINANCING (E.G. LAND SALE CONTRACT/TRUST DEED/MORTGAGE/OPTION AGREEMENTS, RENT-TO-OWN, ETC.):** Note: State and federal laws and regulations provide that under certain circumstances, offering or negotiating the terms of seller-carried financing must be performed by a Mortgage Loan Originator (see, ORS86A.200(4)), and the terms of such financing may have to comply with certain consumer protection disclosures rules. Your real estate licensee is not qualified to provide these services or to advise you in this regard. Legal advice is strongly recommended. If this transaction is to include a land sale contract, trust deed, mortgage or option agreement between Buyer and Seller, the parties shall agree upon the terms and conditions of such document not later than \_\_\_\_\_ business days (ten [10] if not filled in) after the date Buyer and Seller have signed and accepted this Sale Agreement. Upon failure of Buyer and Seller to reach agreement as to the terms and conditions of the document within said time period, this transaction shall automatically terminate, all parties shall cooperate in the signing such documentation reasonably necessary to effect a termination of this transaction and a refund of all deposits, if any, to Buyer. **Caveat:** The additional documents identified in this Section 7 can have legally binding consequences, and Buyer and Seller are strongly encouraged to secure competent legal advice before entering into such agreements. If Escrow (as defined in Section 12) is instructed to prepare the note and trust deed or mortgage to be used in this transaction, state statute requires that Buyer and Seller receive from Escrow, at least three (3) days prior to Closing (as defined in Section 12), a statutory notice and a copy of the proposed documents. This requirement cannot be waived by Buyer or Seller without the approval of both of their respective Oregon-licensed attorneys.

8. **SELLER REPRESENTATIONS:** Subject to other written disclosures made by Seller as a part of this transaction, Seller makes the following representations to Buyer:

(1) The Property is served by and/or connected to (check all that apply): ☐ a public sewer system; ☐ an on-site sewage system; ☐ a public water system; ☐ a private well and/or shared well; ☐ other (e.g., surface springs, cistern, etc.) described: \_\_\_\_\_ ☒ none of the preceding.

(2) The Property will be in substantially its present condition at the time Buyer is entitled to possession.

(3) Seller has no notice of any liens or assessments to be levied against the Property.

(4) Seller has no notice from any governmental agency of a condemnation, environmental, zoning or similar proceeding, existing or planned, which could detrimentally affect the use, development, or value of the Property.

(5) Seller knows of no material defects in or about the Property.

Buyer Initials DMB Date 3/3/14

Seller Initials REI Date 4/15/14

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153 Seller has no notice from any governmental agency of any violation of law relating to the Property.

154 Seller has no knowledge of any of the following matters affecting the use or operation of the Property: (a) past or present non-  
 155 resource uses (e.g., cemeteries, landfills, dumps, etc.); (b) unrecorded access easements or agreements (e.g., for harvesting, fishing,  
 156 hunting, livestock movement and pasture, etc.); (c) state or federal agreements/requirements regarding crops, grazing, reforestation,  
 157 etc.; (d) supplier agreements, production processing commitments or other similar contracts.

158 (8) Well(s), water source(s), and/or water district resources have been adequate under Seller's current usage of the Property.

159 (9) Water rights (e.g., irrigation, agricultural), for not less than 0 acres, have been utilized and applied for beneficial use within the  
 160 last five (5) years and are current and shall be transferred to Buyer at Closing. Water rights may be subject to certain conditions. Buyer  
 161 should verify compliance with appropriate agency.

162 (10) Seller knows of no material discrepancies between visible lines of possession and use (such as existing fences, hedges,  
 163 landscaping, structures, driveways, and other such improvements) currently existing on the Property offered for sale and the legal  
 164 description of the Property.

165 (11) Seller is not a "foreign person" under the Foreign Investment in Real Property Tax Act ("FIRPTA") as defined in this Agreement.

166 Seller agrees to promptly notify Buyer if, prior to Closing, Seller receives actual notice of any event or condition which could result in  
 167 making any previously disclosed material information relating to the Property substantially misleading or incorrect. These  
 168 representations are made to the best of Seller's knowledge. Seller may have made no investigations. Exceptions to Items (1) through (11)  
 169 are:

170 Buyer acknowledges that the above representations are not warranties regarding the condition of the Property and are not a substitute  
 171 for, nor in lieu of, Buyer's own responsibility to conduct a thorough and complete independent investigation, including the use of  
 172 professionals where appropriate, regarding all material matters bearing on the condition of the Property, its value and its suitability for  
 173 Buyer's intended use. Neither the Listing nor Selling Licensee shall be responsible for conducting any inspection or investigation of any  
 174 aspects of the Property.

175 9. "AS-IS": Except for Seller's express written agreements and written representations contained herein, and Seller's Property  
 176 Disclosure, if any, Buyer is purchasing the Property "AS-IS," in its present condition and with all defects apparent or not apparent.

177 10. PRIVATE WELL: Does the Property contain a Private Well? ☐ Yes ☒ No If the property contains a private well, the OREF-082 Private  
 178 Well Addendum will be attached to this Sale Agreement.

## INSPECTIONS:

(CHECK ONLY ONE BOX)

177 11.1 ENVIRONMENTAL HEALTH CONDITIONS: The following list identifies some, but not all, environmental conditions that may be found in and  
 178 around all real property that may affect health: Asbestos, carbon monoxide, electric and magnetic fields, formaldehyde, lead and other  
 179 contaminants in drinking water and well water, lead based paint, mold and mildew, radon, and leaking underground storage tanks. If Buyer has any  
 180 concerns about these conditions or others, Buyer is encouraged to secure the services of a professional inspector, consultant, or health expert for  
 181 information and guidance. Neither the listing nor selling licensees are experts in environmental health hazards or conditions. For additional  
 182 information, go to the Oregon Association of Realtors' Buyer advisory at: <http://www.oregonrealtors.org> and the Oregon Public Health Division at  
 183 <http://public.health.oregon.gov/Pages/home.aspx>

184 11.2 INSPECTIONS: Buyer understands that it is advisable to have a complete inspection of the Property by qualified professional(s),  
 185 relating to such matters as soil condition/compaction/stability, environmental issues, survey, zoning, availability of utilities, and  
 186 suitability for Buyer's intended purpose. Neither the Listing nor Selling Licensee is qualified to conduct such inspections and shall not  
 187 be responsible to do so. For further details, Buyer is encouraged to review the Buyer Advisory at "<http://www.oregonrealtors.org>".

188 ☒ PROFESSIONAL INSPECTIONS: At Buyer's expense, Buyer may have the Property and all elements and systems thereof inspected by  
 189 one or more professionals of Buyer's choice. Provided, however, Buyer must specifically identify in this Agreement any desired inspections which  
 190 may include testing or removal of any portion of the Property including radon and mold. Buyer understands that Buyer is responsible for the  
 191 restoration of the Property following any inspection(s)/test(s) performed by Buyer or on Buyer's behalf. Buyer shall have 90 business days (ten  
 192 [10] if not filled in), after the date Buyer and Seller have signed this Agreement, (hereinafter "the Inspection Period") in which to complete  
 193 all inspections and negotiate with Seller regarding any matters disclosed in any inspection report. However, during the Inspection Period,  
 194 Seller shall not be required to modify any terms of this Agreement already reached with Buyer. Unless a written and signed modification  
 195 is reached, at any time during the Inspection Period, Buyer may notify Seller or Listing Licensee, in writing, of Buyer's unconditional disapproval

Buyer Initials DMHDate 5/15/14Seller Initials REIDate 5/15/14

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of the Property based on any inspection report(s), in which case, all earnest money deposits shall be promptly refunded and this transaction shall be terminated. Buyer shall promptly provide a copy of all reports to Seller only if requested by Seller. If Buyer fails to provide Seller or Listing Licensee with written unconditional disapproval of any inspection report(s) by midnight of the final day of the Inspection Period, Buyer shall be deemed to have accepted the condition of the Property. Note that if, prior to expiration of the Inspection Period, written agreement is reached with Seller regarding ALL Buyer's requested repairs, the Inspection Period shall automatically terminate, unless the parties agree otherwise in writing.

☒ **ALTERNATIVE INSPECTION PROCEDURES: OREF-050 PROFESSIONAL INSPECTION ADDENDUM OR OTHER INSPECTION ADDENDUM** 1 is attached to this Agreement.  
☐ **BUYER'S WAIVER OF INSPECTION OF CONTINGENCY:** Buyer represents to Seller and all Licensees and Firms that Buyer is fully satisfied with the condition of the Property and all elements and systems thereof and ~~knowingly and voluntarily~~ elects to waive the right to have any inspections performed as a contingency to the Closing of the transaction. Buyer's election to waive the right of inspection is solely Buyer's decision and at Buyer's own risk.

**12. ESCROW:** This transaction shall be Closed at First American Title ("Escrow"), a neutral escrow located in the State of Oregon. Costs of Escrow shall be shared equally between Buyer and Seller, unless otherwise provided herein. Unless otherwise provided herein, the parties agree as follows: Seller authorizes Listing Firm to order a preliminary title report and owner's title policy at Seller's expense and further authorizes Escrow to pay out of the cash proceeds of sale the expense of furnishing such policy, Seller's recording fees, Seller's Closing costs and any encumbrances on the Property payable by Seller on or before Closing. Buyer shall deposit with Escrow sufficient funds necessary to pay Buyer's recording fees, Buyer's Closing costs, and lender's fees, if any. Real estate fees, commissions or other compensation for professional real estate services provided by Listing and/or Selling Firms shall be paid at Closing in accordance with the listing agreement, buyer service agreement or other written agreement for compensation.  
**13. CLOSING:** Closing shall occur on a date mutually agreed upon by Buyer and Seller, but in no event later than December 1, 2014 ("the Closing Deadline"). The terms "Closed", "Closing" or "Closing Date" shall mean when the deed or contract is recorded and funds are available to Seller. Buyer and Seller acknowledge that for Closing to occur by the Closing Deadline, it may be necessary to execute documents and deposit funds in Escrow prior to that date. ~~Caveat: Section 7 above requires those (3) days prior to the Closing Deadline if Escrow is to prepare a note and a deed of trust or mortgage.~~

**14. POSSESSION:** Seller shall deliver possession of the Property to Buyer (select one):  
 (1) ☒ by 5:00 p.m. on Closing;  
 (2) ☐ by                      a.m. ☐ p.m.                      days after Closing;  
 (3) ☐ by                      a.m. ☐ p.m. on the                      day of                     .

**15. PRORATIONS:** Prorations for rent, current year's taxes, interest on assumed obligations, and other prepaid expenses attributable to the Property shall be as of: (check one) ☒ the Closing Date; ☐ date Buyer is entitled to possession; or ☐                     .

**16. ESCROW DEPOSIT:** Escrow is hereby instructed by Buyer and Seller as follows: (1) Upon your receipt of a copy of this Agreement marked "rejected" by Seller or of Listing Firm's written advice that the offer is "rejected" by Seller, you are to refund all earnest money to Buyer. (2) Upon your receipt of a copy of this Agreement signed by Buyer and Seller set up an escrow account and proceed with Closing in accordance with the terms of this Agreement. If you determine that the transaction cannot be Closed for any reason (whether or not there is then a dispute between Buyer and Seller), you are to hold all earnest money deposits until you receive written instructions from Buyer and Seller, or a final ruling from a court or arbitrator, as to disposition of such deposits.

**17. EARNEST MONEY PAYMENT/REFUND:** If (1) Seller does not approve this Agreement; or (2) Seller signs and accepts this Agreement but fails to furnish marketable title; or (3) Seller fails to complete this transaction in accordance with this Agreement, or perform any other act as herein provided; or (4) any condition which Buyer has made an express contingency in this Agreement (and has not been otherwise waived) fails through no fault of Buyer, then all earnest money shall be promptly refunded to Buyer. However, acceptance by Buyer of the refund shall not constitute a waiver of other legal remedies available to Buyer. If Seller signs and accepts this Agreement and title is marketable; and (1) Buyer has misrepresented Buyer's financial status; or (2) Buyer's bank does not pay, when presented, any check given as earnest money; or (3) Buyer fails to redeem, when due, any note given as earnest money; or (4) Buyer fails to complete this transaction in accordance with this Agreement, or perform any other act as herein provided, then all earnest money paid or agreed to be paid shall be paid to Seller either as liquidated damages or as otherwise allowed under Oregon law, and this transaction shall be terminated. It is the intention of the parties that Seller's sole remedy against Buyer for Buyer's failure to Close this transaction shall be limited to the amount of earnest money paid or agreed to be paid herein.

Buyer Initials                      Date 4/15/14

Seller Initials                      Date 4/15/14

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**19. BINDING EFFECT/CONSENT:** This Agreement is binding upon the heirs, personal representatives, successors and assigns of Buyer and Seller. However, Buyer's rights under this Agreement or in the Property are not assignable without prior written consent of Seller.

**19.1 SELLER ADVISORY: OREGON STATE TAX WITHHOLDING OBLIGATIONS.** Subject to certain exceptions, Escrow is required to withhold a portion of Seller's proceeds if they are a non-resident individual or corporation as defined under Oregon law. Buyer and Seller agree to execute and deliver, as appropriate, any instrument, affidavit or statement, and to perform any acts reasonable or necessary to carry out the provisions of Oregon law.

**19.2 SELLER/BUYER ADVISORY: FIRPTA TAX WITHHOLDING OBLIGATIONS.** Seller is advised that upon Closing, Federal law, known as the Foreign Investment in Real Property Tax Act ("FIRPTA"), allows an escrow company, if they agree, to withhold a portion of Seller's proceeds if the real property is located within the United States and Seller is a "foreign person." A "foreign person" includes a non-resident alien individual, foreign corporation, foreign partnership, foreign trust and foreign estate. The amount deducted from Seller's proceeds is ten percent (10%) of the gross sales price and is required to be delivered over to the Internal Revenue Service ("IRS") within twenty (20) days of the closing of the transaction. Buyer may become responsible for payment if FIRPTA applies and Escrow is not instructed to withhold the funds. FIRPTA will not apply to this transaction so long as: (a) The sale price is \$300,000 or less; (b) The Property is to be used by Buyer as a residence; and, (c) Buyer is an individual. Where applicable, Buyer and Seller agree to execute and deliver, as appropriate, any instrument, affidavit or statement, reasonably requested by Escrow to carry out the provisions of FIRPTA. NOT AT SECTION 8 OF THIS AGREEMENT, SELLER REPRESENTS THAT SELLER IS NOT A "FOREIGN PERSON" HEREINAFTER "SELLER'S NON-FIRPTA STATUS". IF SELLER IS UNSURE, SELLER SHOULD FIRST CONFER WITH SELLER'S TAX COUNSEL OR CPA BEFORE ENTERING INTO THIS TRANSACTION. IN SUBMITTING THIS OFFER, BUYER REPRESENTS THAT BUYER HAS NO KNOWLEDGE, INFORMATION OR BELIEF THAT SELLER IS A FOREIGN PERSON OR THAT THIS TRANSACTION IS SUBJECT TO FIRPTA. SELLER ACKNOWLEDGES THAT BUYER, LISTING AND SELLER LICENSEES, THEIR RESPECTIVE FIRMS AND ESCROW, ITS AGENTS, EMPLOYEES AND REPRESENTATIVES, SHALL HAVE THE ABSOLUTE RIGHT TO RELY UPON SELLER'S REPRESENTATION OF SELLER'S NON-FIRPTA STATUS AT SECTION 8 ABOVE. THIS RIGHT OF RELIANCE SHALL CONTINUE THROUGH THE CLOSING DATE AND THEREAFTER, UNLESS SELLER HAS DISCLOSED OTHERWISE IN A WRITTEN COUNTER-OFFER OR ADDENDUM TO THIS SALE AGREEMENT. IF AT ANY TIME DURING THIS TRANSACTION, IT IS DETERMINED THAT SELLER'S REPRESENTATION OF SELLER'S NON-FIRPTA STATUS WAS INCORRECT FOR ANY REASON, SELLER AND BUYER HEREBY APPOINT AND INSTRUCT ESCROW TO ACT AS THE QUALIFIED SUBSTITUTE FOR BUYER AS DEEMED BY THE IRS FOR PURPOSES OF PREPARING THE NECESSARY PAPERWORK, WITHHOLDING THE NECESSARY FUNDS, AND REMITTING THE SAME TO THE IRS. IF FOR ANY REASON, ESCROW DECLINES TO ACT AS A QUALIFIED SUBSTITUTE, ESCROW IS REQUESTED TO PROMPTLY NOTIFY SELLER AND BUYER IN A TIMELY MANNER SO THEY MAY MAKE OTHER ARRANGEMENTS PRIOR TO THE SCHEDULED CLOSING. SELLER AND BUYER ACKNOWLEDGE THAT IF FIRPTA APPLIES TO THE TRANSACTION, ESCROW'S ROLE AS A QUALIFIED SUBSTITUTE MAY RESULT IN A DELAY IN CLOSING THIS TRANSACTION, UNLESS OTHERWISE PROVIDED IN THIS SALE AGREEMENT OR ANY SUBSEQUENT SIGNED WRITTEN ADDENDUM BETWEEN SELLER AND BUYER. CONFIRMATION OF SELLER'S NON-FIRPTA STATUS IS NOT A CONTINGENCY IN THIS TRANSACTION.

**20. APPROVED USES:** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FREE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010. TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010."

**21. IRC 1031 EXCHANGE:** In the event Buyer or Seller elects to complete an IRC 1031 exchange in this transaction, the other party agrees to cooperate with them, and the accommodator, if any, in a manner necessary to complete the exchange, so long as it will not delay the Close of escrow or cause additional expense or liability to the cooperating party. Unless otherwise provided herein, this provision shall not become a contingency to the Closing of this transaction.

**22. LEVY OF ADDITIONAL PROPERTY TAXES:** The Property, (check one) ☐ is ☒ is not specially assessed for property taxes (e.g., farm, forest or other) in a way which may result in levy of additional taxes in the future. If it is specially assessed, Seller represents that the Property is current as to income or other conditions required to preserve its deferred tax status. If, as a result of Buyer's actions or the Closing of this transaction, the Property either is disqualified from special use assessment or loses its deferred property tax status, unless otherwise specifically provided in this Agreement, Buyer shall be responsible for and shall pay when due, any deferred and/or additional taxes and interest which may be levied against the Property and shall hold Seller completely harmless therefrom. However, if as a result of Seller's actions prior to Closing, the Property either is disqualified from its entitlement to special use assessment or loses its deferred property tax status, Buyer may, at Buyer's sole

Buyer Initials DLB Date 3/27/14Seller Initials RF Date 4/15/14

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Sale Agreement # Fore to Solexus

Section, promptly terminate this transaction and receive a refund of all deposits paid by Buyer in anticipation of Closing; or Close this transaction and Seller responsible to pay into escrow all deferred and/or additional taxes and interest which may be levied or recaptured against the Property. Seller shall hold Buyer completely harmless herefrom. The preceding shall not be construed to limit Buyer's or Seller's available remedies or damages arising from a breach of this Section 22.

### DISPUTE RESOLUTION INVOLVING BUYERS AND SELLERS ONLY

299 23. **DISPUTE RESOLUTION BETWEEN BUYER AND SELLER:** Buyer and Seller agree that all claims, controversies and disputes between  
300 them, including those for resolution (hereinafter collectively referred to as "Claims"), relating directly or indirectly to this transaction, shall be  
301 resolved in accordance with the procedures set forth herein, which shall expressly survive Closing or earlier termination of this Agreement.  
302 Provided, however, the following matters shall not constitute Claims: (1) any proceeding to collect, interpret or enforce any mortgage, trust deed,  
303 land sale contract or recorded construction lien; or (2) a forcible entry and detainer action (eviction). The filing in court for the issuance of any  
304 provisional process or similar remedy described in the Oregon or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty  
305 to utilize the dispute resolution procedures specified herein. In the event of any suit, action or arbitration relating to the enforcement or interpretation  
306 of this Agreement, the matter shall be governed exclusively by Oregon law, and venue shall be placed in the State of Oregon for all purposes.

307 24. **SMALL CLAIMS BETWEEN BUYER AND SELLER:** Notwithstanding the following Sections, Buyer and Seller agree that all Claims that are  
308 within the jurisdiction of the Small Claims Court shall be brought and decided there, in lieu of mediation, arbitration or litigation in any other forum.

309 25. **MEDIATION BETWEEN BUYER AND SELLER:** If Buyer or Seller were represented in this transaction by a Licensee whose principal  
310 broker is a member of the National Association of REALTORS®, all Claims shall be submitted to mediation in accordance with the procedures of the  
311 Home Seller/Buyer Dispute Resolution System of the National Association of REALTORS®, or other organization-adopted mediation  
312 program (collectively "the System"). Provided, however, if Licensee's principal broker is not a member of the National Association of REALTORS®  
313 or the System is not available through the principal broker's Association of REALTORS®, then all Claims shall be submitted to mediation either  
314 through: (1) the special mediation program administered by Arbitration Service of Portland ("ASP"), or (2) any other impartial private mediator(s) or  
315 program(s) so long as such services are available in the county where the Property is located, as selected by the party first filing for mediation.

316 26. **ARBITRATION BETWEEN BUYER AND SELLER:** All Claims between Buyer and Seller that have not been resolved by mediation, or  
317 otherwise, shall be submitted to final and binding private arbitration in accordance with Oregon laws. Filing for arbitration shall be treated the same  
318 as filing in court for purposes of meeting any applicable statutes of limitation or for purposes of filing a lis pendens. Buyer or Seller may file Claims  
319 either with ASP or, alternatively, with any other professional arbitration service that has existing rules of arbitration, provided that the selected  
320 alternative service also uses arbitrators who are in good standing with the Oregon State Bar, with expertise in real estate law and who can conduct  
321 the hearing in the county where the Property is located. The arbitration service in which the Claim is first filed shall handle the case to its  
322 conclusion. BY CONSENTING TO THIS PROVISION BUYER AND SELLER ARE AGREEING THAT DISPUTES ARISING UNDER THIS  
323 AGREEMENT SHALL BE HEARD AND DECIDED BY ONE OR MORE NEUTRAL ARBITRATORS AND BUYER AND SELLER ARE GIVING UP  
324 THE RIGHT TO HAVE THE MATTER TRIED BY A JUDGE OR JURY. THE RIGHT TO APPEAL AN ARBITRATION DECISION IS LIMITED  
325 UNDER OREGON LAW.

326 27. **ATTORNEY FEES IN CLAIMS BETWEEN BUYER AND SELLER:** The prevailing party in any suit, action or arbitration (excluding those  
327 Claims filed in Small Claims Court) between Buyer and Seller shall be entitled to recovery of all reasonable attorney fees and costs and  
328 disbursements as defined in ORCP 68 (including all filing and mediator fees paid in mediation). Provided, however, if a mediation service was  
329 available to Buyer or Seller when the Claim arose, the prevailing party shall not be entitled to any award of attorney fees unless it is established to  
330 the satisfaction of the arbitrator(s) or judge that the prevailing party offered or agreed in writing to participate in mediation prior to, or promptly upon,  
331 the filing in arbitration or court.

### DISPUTE RESOLUTION INVOLVING LICENSEES OR FIRMS

332 28. **SMALL CLAIMS COURT AND ARBITRATION:** All claims, controversies or disputes relating to this transaction, including those for  
333 resolution, in which a Licensee or Firm identified in the Final Agency Acknowledgment Section above is named or included as a party, shall be  
334 resolved exclusively as follows: (1) If within the jurisdictional limit of Small Claims Court, the matter shall be brought and decided there, in lieu of  
335 arbitration or litigation in any other forum. (2) All other claims, controversies or disputes involving such Licensee or Firm shall be resolved through  
336 final and binding arbitration using the arbitration selection process described in Section 26, above. Filing for arbitration shall be treated the same  
337 as filing in court for purposes of meeting any applicable statutes of limitation or for purposes of filing a lis pendens. This Section 28 shall be in lieu  
338 of litigation involving such Licensee or Firm in any other forum. Such Licensee or Firm may voluntarily participate in formal or informal mediation at  
339 any time, but shall not be required to do so under this Section 28. This Section 28 shall not apply to those matters in which: (a) The claim,  
340 controversy or dispute is exclusively between REALTORS® and is otherwise required to be resolved under the Professional Standards Arbitration  
341 provisions of the National Association of REALTORS®; (b) Licensee or Firm has agreed to participate in alternative dispute resolution in a prior  
342 written listing, service or fee agreement with Buyer or Seller, or (c) Licensee or Firm is Buyer or Seller in this transaction (in which case, Sections  
343 23-27 shall apply). This Section 28 shall expressly survive Closing or earlier termination of this Agreement. In the event of any suit, action or  
344 arbitration relating to the enforcement or interpretation of this Agreement, the matter shall be governed exclusively by Oregon law, and venue shall  
345 be placed in the State of Oregon for all purposes. In the event that one or more Licensees and/or Firms have been named or included in any

Buyer Initials MB/S Date 4/14/14

Seller Initials RF Date 4/15/14

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LINE WITH THIS SYMBOL ← REQUIRE A SIGNATURE OF BUYER AND/OR SELLER AND DATE

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VACANT LAND REAL ESTATE SALE AGREEMENT - Page 7 of 9

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fore to solexus





Sale Agreement # Foxe to Solexus

346 claims, controversies or disputes that also include Buyer and/or Seller, the alternative dispute resolution and attorney fee provisions of  
347 Sections 23-27 above shall continue to apply to Buyer and/or Seller, and this Section 28 shall apply exclusively to Licensees and/or Firms.

348 29. RECEIPT FOR EARNEST MONEY: Selling Firm acknowledges receipt of earnest money from Buyer in the sum of \$ 2,000.00

349 evidenced by ☐ CASH ☒ CHECK ☐ PROMISSORY NOTE payable as follows:

350 ☐ \_\_\_\_\_ business ☐ calendar (check one) days after mutual acceptance of this Agreement; or

351 ☐ on or before \_\_\_\_\_;

352 ☐ Other form of Earnest Money: \_\_\_\_\_

353 30. EARNEST MONEY INSTRUCTIONS: Buyer instructs Selling Firm, and Selling Firm agrees, to handle the earnest money as follows  
354 (check all that apply):

355 ☒ Hold any earnest money that is in the form of a check undeposited pending mutual acceptance of this Agreement and all agreed-upon counter  
356 offers, after which time deposit it as provided herein within three (3) banking days. ☐ Deposit any earnest money funds redeemed under a  
357 promissory note with \_\_\_\_\_ ☐ Deposit in Selling Firm's client trust account, and

358 thereafter/or ☒ Deposit with Escrow. In the event the earnest money is deposited in Selling Firm's trust account or with Escrow (collectively "the  
359 Deposit Holder"), and the Deposit Holder has arranged to have interest on such deposit transferred to a qualified public benefit corporation for  
360 distribution to organizations and individuals for first time home-buying assistance and development of affordable housing pursuant to ORS  
361 686.241(5) or ORS 696.578(3), all parties acknowledge and agree that any interest accruing on the earnest money so deposited shall be  
362 transferred in accordance with this provision. The preceding sentence shall be subject to any other statutes or regulations governing the  
363 disposition of earnest money deposits.

364 SELLING LICENSEE AND SELLING FIRM SHALL HAVE NO FURTHER LIABILITY WITH RESPECT TO EARNEST MONEY WHICH THE  
365 PARTIES HAVE AUTHORIZED TO BE TRANSFERRED TO A THIRD PARTY.

366 Selling Firm Summit Real Estate Selling Licensee Signature \_\_\_\_\_

367 Office Address \_\_\_\_\_ Phone \_\_\_\_\_ FAX \_\_\_\_\_

368 31. COUNTERPARTS/DELIVERY: This Agreement may be signed in multiple counterparts with the same legal effect as if all parties signed the  
369 same document. This shall mean that delivery (e.g., transmissions manually by facsimile, electronic mail, overnight mail, first-class regular or  
370 certified mail, etc.) of a legible true copy of a signed original of this Agreement, including but not limited to all addenda, counter offers, and legal  
371 notices required thereunder, shall be treated the same as delivery of the original document.

372 32. AGREEMENT TO PURCHASE: Buyer agrees to purchase the Property upon the terms and conditions set forth in this Agreement.  
373 Buyer acknowledges receipt of a completely filled in copy of this Agreement which Buyer has fully read and understands. Buyer  
374 acknowledges that Buyer has not relied upon any oral or written statements made by Seller or any Licensee, which are not expressly  
375 contained in this Agreement. Neither Seller nor any Licensee(s) warrant the square footage of any structure or the size of any land being  
376 purchased. If square footage or land size is a material consideration, all structures and land should be measured by Buyer prior to  
377 signing or should be made an express contingency in this Agreement.

378 Deed or contract shall be prepared in the name of Solexus Development or assignees  
379 This offer shall automatically expire on (insert date) \_\_\_\_\_ at \_\_\_\_\_ ☐ a.m. ☐ p.m. (the "Offer Deadline"), if  
380 not accepted by that time.

381 Buyer may withdraw this offer before the Offer Deadline any time prior to Seller's acceptance. If Seller accepts this offer after the Offer Deadline, it  
382 shall not be binding upon Buyer unless accepted by Buyer in writing within 7 business days (two [2] if not filled in) after the date of Seller's  
383 acceptance, so indicating at Section 35 below. This offer may be accepted by Seller only in writing.

384 Buyer [Signature] Date 4/15/14 \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

385 Buyer \_\_\_\_\_ Date \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

386 Address \_\_\_\_\_ Zip \_\_\_\_\_

387 Phone Home \_\_\_\_\_ Work \_\_\_\_\_ E-mail \_\_\_\_\_ Fax \_\_\_\_\_

Buyer Initials DAN Date 4/15/14

Seller Initials RF Date 4/15/14

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Sole Agreement # Fore to Solexus

NOTICE: ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE. THIS DOCUMENT IS NOT TO BE RELEASED TO THE PUBLIC OR TO ANY OTHER PERSON OR ENTITY WITHOUT THE WRITTEN AUTHORIZATION OF THE NATIONAL ARCHIVES. ANY RELEASE OF THIS DOCUMENT TO THE PUBLIC OR TO ANY OTHER PERSON OR ENTITY WITHOUT THE WRITTEN AUTHORIZATION OF THE NATIONAL ARCHIVES IS PROHIBITED.

388 This offer was submitted to Seller for signature on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.  
 389 By \_\_\_\_\_ (Licensee(s) presenting offer).

390 33. AGREEMENT TO SELL / ACKNOWLEDGEMENTS / DISPOSITION OF EARNEST MONEY. Seller accepts Buyer's offer. Seller  
 391 acknowledges receipt of a completely filled-in copy of this Agreement, which Seller has fully read and understands. Seller  
 392 acknowledges that Seller has not relied upon any oral or written statements of Buyer or of any Licensee(s) which are not expressly  
 393 contained in this Agreement. Seller instructs that all earnest money distributable to Seller pursuant to Section 17 above, shall be  
 394 disbursed as follows after deduction of any title insurance and Escrow cancellation charges: (check one) ☐ First to Listing Firm to the  
 395 extent of the agreed commission just as if the transaction had been Closed, with residue to Seller, or ☐ \_\_\_\_\_  
 396 \_\_\_\_\_

387 Seller \_\_\_\_\_ Date \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.  
 Robert Fore

398 Seller \_\_\_\_\_ Date \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

399 Address \_\_\_\_\_ Zip \_\_\_\_\_  
 400 Phone Home \_\_\_\_\_ Work \_\_\_\_\_ E-mail \_\_\_\_\_ Fax \_\_\_\_\_

401 34. REJECTION/COUNTER OFFER: SELECT ONE: ☒ Seller does not accept the above offer, but makes the attached counter offer. ☐ Seller  
 402 rejects Buyer's offer.

403 Seller \_\_\_\_\_ Date 4/15/14 1213 a.m. ☒   
 Robert Fore

404 Seller \_\_\_\_\_ Date \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

405 Address \_\_\_\_\_ Zip \_\_\_\_\_  
 406 Phone Home \_\_\_\_\_ Work \_\_\_\_\_ E-mail \_\_\_\_\_ Fax \_\_\_\_\_

407 35. BUYER'S ACKNOWLEDGMENT: Buyer acknowledges receipt of a copy of Seller's written response to this Agreement. If Seller's response  
 408 is an acceptance of Buyer's offer that occurred after the Offer Deadline identified at Section 32 above, Buyer (select only one) ☐ agrees ☐ does  
 409 not agree, to be bound thereby. (The failure to check either box shall constitute rejection of Seller's acceptance after the Offer Deadline.)

410 Buyer \_\_\_\_\_ Date \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.  
 Solexus Development

411 Buyer \_\_\_\_\_ Date \_\_\_\_\_ a.m. \_\_\_\_\_ p.m.

## 36. FIRMS/LICENSEES:

412 Selling Licensee Robert R. Bacon \_\_\_\_\_ Selling Firm Summit Real Estate  
 413 Selling Firm Office Address \_\_\_\_\_  
 414 Phone \_\_\_\_\_ Phone \_\_\_\_\_ E-mail \_\_\_\_\_  
 415 Fax \_\_\_\_\_  
 416 \_\_\_\_\_  
 417 \_\_\_\_\_

418 Listing Licensee \_\_\_\_\_ Listing Firm \_\_\_\_\_  
 419 Listing Firm Office Address \_\_\_\_\_  
 420 Phone \_\_\_\_\_ Phone \_\_\_\_\_ E-mail \_\_\_\_\_  
 421 Fax \_\_\_\_\_  
 422 \_\_\_\_\_  
 423 \_\_\_\_\_

Buyer Initials \_\_\_\_\_ / \_\_\_\_\_ Date \_\_\_\_\_

Seller Initials RF Date 4/15/14

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Sale Agreement Fore to Solatus

388 This offer was submitted to Seller for signature on the \_\_\_\_\_ (day of \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m. / p.m.  
389 By \_\_\_\_\_ (Licensee(s) presenting offer).

390 33. AGREEMENT TO SELL / ACKNOWLEDGEMENTS / DISPOSITION OF EARNEST MONEY. Seller accepts Buyer's offer. Seller  
391 acknowledges receipt of a completely filled-in copy of this Agreement, which Seller has fully read and understands. Seller  
392 acknowledges that Seller has not relied upon any oral or written statements of Buyer or of any Licensee(s) which are not expressly  
393 contained in this Agreement. Seller instructs that all earned money distributable to Seller pursuant to Section 17 above, shall be  
394 disbursed as follows after deduction of any title insurance and escrow cancellation charges: (check one) ☐ First to Listing Firm to the  
395 extent of the agreed commission just as if the transaction had been closed, with residue to Seller, or ☐

396  
397 Seller \_\_\_\_\_ Date \_\_\_\_\_ a.m. / p.m.  
398 Robert Fore  
399 Seller \_\_\_\_\_ Date \_\_\_\_\_ a.m. / p.m.

400 Address \_\_\_\_\_ Zip \_\_\_\_\_  
401 Phone Home \_\_\_\_\_ Work \_\_\_\_\_ E-mail \_\_\_\_\_ Fax \_\_\_\_\_

402 34. REJECTION/COUNTER OFFER: SELECT ONE: ☒ Seller does not accept the above offer, but makes the attached counter offer. ☐ Seller  
403 rejects Buyer's offer.

404 Seller \_\_\_\_\_ Date 4/15/14 12:13 a.m. ☒  
405 Robert Fore  
406 Seller \_\_\_\_\_ Date \_\_\_\_\_ a.m. / p.m.

407 Address \_\_\_\_\_ Zip \_\_\_\_\_  
408 Phone Home \_\_\_\_\_ Work \_\_\_\_\_ E-mail \_\_\_\_\_ Fax \_\_\_\_\_

409 35. BUYER'S ACKNOWLEDGMENT: Buyer acknowledges receipt of a copy of Seller's written response to this Agreement. If Seller's response  
410 is an acceptance of Buyer's offer that occurred after the Offer Deadline identified in Section 32 above, Buyer (select only one) ☐ agrees ☐ does  
411 not agree, to be bound thereby. (The failure to check either box shall constitute rejection of Seller's acceptance after the Offer Deadline.)

412 Solatus Development, OR Assignee  
413 Buyer \_\_\_\_\_ Date 5/13/14 9:00 a.m. ☒

#### 36. FIRMS/LICENSEES:

414 Selling Licensee Robert A. Bacon Selling Firm Summit Real Estate  
415 Selling Firm Office Address \_\_\_\_\_ E-mail \_\_\_\_\_  
416 Phone \_\_\_\_\_ Phone \_\_\_\_\_  
417 Fax \_\_\_\_\_

418 Listing Licensee \_\_\_\_\_ Listing Firm \_\_\_\_\_  
419 Listing Firm Office Address \_\_\_\_\_ E-mail \_\_\_\_\_  
420 Phone \_\_\_\_\_ Phone \_\_\_\_\_  
421 Fax \_\_\_\_\_

422

Buyer Initials \_\_\_\_\_ Date \_\_\_\_\_

Seller Initials RE Date 4/15/14

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**EXHIBIT D-1  
SELLER'S MOTIVE FORCE PLAN**

**MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

The average estimated generation is 13,622.8 MWh with an annual linearized degradation rate of 0.71% identified in the module power output schedule of the Canadian Solar warranty. The data was post-processed to account for a 3.4% Inverter clipping loss, 1.5% availability loss and a 1.4% AC loss to the POI.

**Month Net Yield Year 1  
(MWh)**

January	574.9
February	887.1
March	1,143.2
April	1,232.5
May	1,415.6
June	1,485.2
July	1,585.3
August	1,517.7
September	1,368.7
October	1,158.5
November	670.9
December	583.2

PV SYST Total + Post Processing	13,622.8 MWh
---------------------------------	--------------

**A. MINIMUM ANNUAL DELIVERY CALCULATION**

The Minimum Annual Delivery of the facility is based on the estimated most adverse natural conditions reasonably expected. To calculate this, the P99 results identified in the PVsyst report was used with the subtraction of the assumed availability loss, AC collector system loss and a 25% contingency.

Minimum estimated first-year generation is 9,344.6 MWh.

Subsequent years are subject to the 0.71% module degradation factor.

**B. MAXIMUM ANNUAL DELIVERY CALCULATION**

The Maximum Annual Delivery of the facility is based on the estimated probability model identified in the PVsyst report. The P1 results identified in the PVsyst report are used with the subtraction of the assumed availability loss and AC collector system loss.

Maximum estimated first-year generation is 14,693.8 MWh.

Subsequent years are subject to the 0.71% module degradation factor.



**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION**  
**OF**  
**MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*



www.RRCcompanies.com

7662 SW Mohawk St.  
Tualatin, OR 97062  
503.342.4064

April 10, 2015  
Chris Norqual  
Cypress Creek Renewables  
3250 Ocean Park Blvd, Ste. 355  
Santa Monica, CA 90405  
(310) 581.6299 Office

Dear Chris,

RRC is providing this production yield estimate to Cypress Creek Renewables for the Bonanza Solar Facility. The estimate provides the likely maximum, and minimum and typical Net Output of the Facility. The assumptions used in the estimate are documented within the attached PVsyst modeling report, assuming the installation of the Canadian Solar Modules. The data from PVsyst was post-processed, as discussed below, to provide these values.

#### **MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

The average estimated generation is 13,622.8 MWh with an annual linearized degradation rate of 0.71% identified in the module power output schedule of the Canadian Solar warranty. The data was post-processed to account for a 3.4% Inverter clipping loss, 1.5% availability loss and a 1.4% AC loss to the POI.

<b>Month</b>	<b>Net Yield Year 1 (MWh)</b>
January	574.9
February	887.1
March	1,143.2
April	1,232.5
May	1,415.6
June	1,485.2
July	1,585.3
August	1,517.7
September	1,368.7
October	1,158.5
November	670.9
December	583.2
<b>PV SYST Total + Post Processing</b>	<b>13,622.8 MWh</b>

**TABLE 1. TYPICAL MONTHLY DELIVERY SCHEDULE - P50 WITH POST PROCESSING LOSSES**

#### A. MINIMUM ANNUAL DELIVERY CALCULATION

The Minimum Annual Delivery of the facility is based on the estimated most adverse natural conditions reasonably expected. To calculate this, the P99 results identified in the PVsyst report was used with the subtraction of the assumed available loss, AC collector system loss and a 25% contingency.

Minimum estimated first-year generation is 9,344.6 MWh.

Subsequent years are subject to the 0.71% module degradation factor.

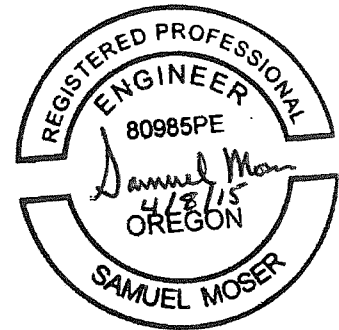
#### B. MAXIMUM ANNUAL DELIVERY CALCULATION

The Maximum Annual Delivery of the facility is based on the estimated probability model identified in the PVsyst report. The P1 results identified in the PVsyst report are used with the subtraction of the assumed available loss and AC collector system loss.

Maximum estimated first-year generation is 14,693.8 MWh.

Subsequent years are subject to the 0.71% module degradation factor.

Regards,



Samuel Moser

Attached:      1. PVSYST Bonanza, Pages 1-6  
                    2. Canadian Solar Datasheet, Pages 1-2

## Grid-Connected System: Simulation parameters

Project : **Bonanza\_Pro prospector\_TGY**Geographical Site **Bonanza\_Pro prospector\_TGY**Country **United States**

Situation Latitude 42.2°N Longitude 121.3°W  
 Time defined as Legal Time Time zone UT-8 Altitude 1438 m

Albedo 0.20

Meteo data: **Bonanza\_Pro prospector\_TGY** TMY - NREL: ProspectorSimulation variant : **Bonanza\_Pro prospector\_TGY**

Simulation date 10/04/15 18h26

## Simulation parameters

Collector Plane Orientation Tilt 30° Azimuth 0°

20 Sheds Pitch 9.25 m Collector width 3.95 m

Inactive band Top 0.00 m Bottom 0.00 m

Shading limit angle Gamma 18.72 ° Occupation Ratio 42.7 %

Shadings electrical effect Cell size 15.6cm Strings in width 2

Models used Transposition Perez Diffuse Imported

Horizon Free Horizon

Near Shadings Mutual shadings of sheds Electrical effect

## PV Array Characteristics

PV module Si-poly Model **CS6X - 305P**

Manufacturer Canadian Solar Inc.

Number of PV modules In series 19 modules In parallel 1450 strings

Total number of PV modules Nb. modules 27550 Unit Nom. Power 305 Wp

Array global power Nominal (STC) **8403 kWp** At operating cond. 7503 kWp (50°C)

Array operating characteristics (50°C) U mpp 609 V I mpp 12316 A

Total area Module area **52864 m²** Cell area 48281 m²Inverter Model **Sunny Central 750CP-US**

Manufacturer SMA

Characteristics Operating Voltage 545-820 V Unit Nom. Power 750 kWac

Inverter pack Nb. of inverters 8 units Total Power 6000 kWac

## PV Array loss factors

Array Soiling Losses

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
7.6%	5.0%	3.5%	1.8%	0.5%	0.6%	1.0%	1.1%	0.8%	0.9%	2.7%	5.0%

Thermal Loss factor U<sub>c</sub> (const) 25.0 W/m²K U<sub>v</sub> (wind) 1.2 W/m²K / m/s

Wiring Ohmic Loss Global array res. 0.84 mOhm Loss Fraction 1.5 % at STC

LID - Light Induced Degradation Loss Fraction 1.3 %

Module Quality Loss Loss Fraction 0.0 %

Module Mismatch Losses Loss Fraction 0.5 % at MPP



### Grid-Connected System: Simulation parameters (continued)

Incidence effect, user defined profile

10°	20°	30°	40°	50°	60°	70°	80°	90°
1.00	1.00	1.00	1.00	1.00	0.99	0.92	0.73	0.00

**User's needs :**

Unlimited load (grid)

## Grid-Connected System: Main results

**Project :** Bonanza\_Pro prospector\_TGY

**Simulation variant :** Bonanza\_Pro prospector\_TGY

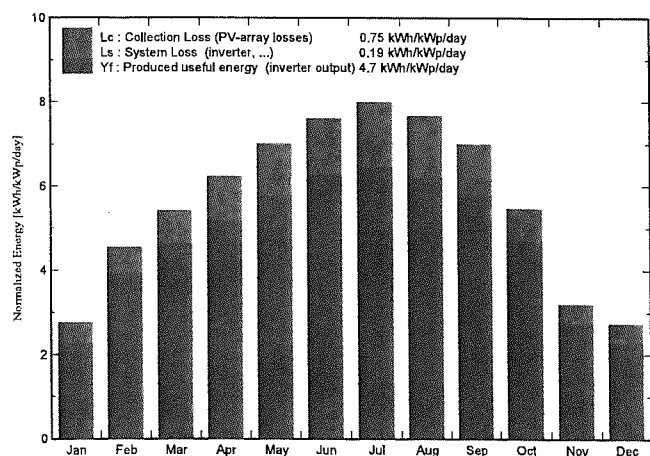
### Main system parameters

PV Field Orientation	System type	<b>Grid-Connected</b>	
PV modules	Sheds disposition, tilt	30°	azimuth 0°
PV Array	Model	CS6X - 305P	Pnom 305 Wp
Inverter	Nb. of modules	27550	Pnom total <b>8403 kWp</b>
Inverter pack	Model	Sunny Central 750CP-US	Pnom 750 kW ac
User's needs	Nb. of units	8.0	Pnom total <b>6000 kW ac</b>
	Unlimited load (grid)		

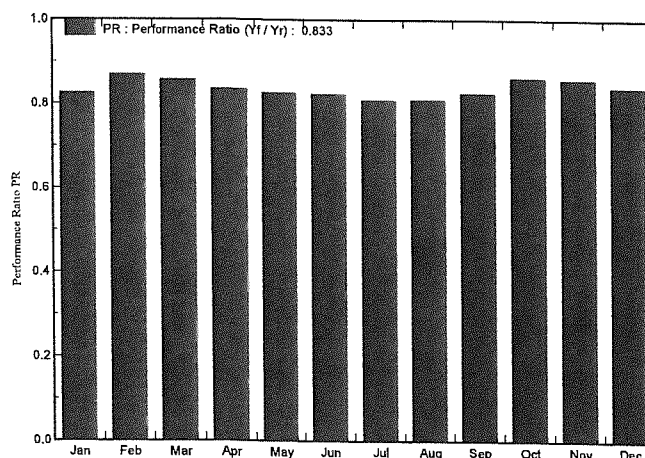
### Main simulation results

System Production	<b>Produced Energy</b>	<b>14407 MWh/year</b>	Specific prod.	1715 kWh/kWp/year
	<b>Performance Ratio PR</b>	<b>83.3 %</b>		

**Normalized productions (per installed kWp): Nominal power 8403 kWp**



**Performance Ratio PR**



### Bonanza\_Pro prospector\_TGY

#### Balances and main results

	GlobHor kWh/m²	T Amb °C	GlobInc kWh/m²	GlobEff kWh/m²	EArray MWh	E_Grid MWh	EffArrR %	EffSysR %
January	52.0	0.25	85.6	75.2	621	594	13.71	13.13
February	82.6	0.94	127.3	116.6	969	930	14.40	13.82
March	132.4	1.77	168.0	156.1	1259	1210	14.18	13.62
April	167.7	6.75	186.9	176.1	1364	1311	13.81	13.27
May	215.1	11.61	217.1	207.4	1570	1508	13.68	13.14
June	238.0	14.87	228.1	218.1	1643	1579	13.62	13.10
July	252.1	19.69	247.7	236.6	1751	1684	13.38	12.86
August	219.5	18.13	237.6	227.2	1682	1617	13.39	12.88
September	169.1	16.21	210.0	201.9	1515	1457	13.65	13.12
October	115.2	9.38	169.4	163.0	1277	1227	14.26	13.70
November	60.8	5.83	95.9	89.0	721	692	14.23	13.65
December	47.5	-1.72	84.8	75.0	625	598	13.95	13.35
Year	1752.0	8.68	2058.3	1942.3	14996	14407	13.78	13.24

Legends:	GlobHor	Horizontal global irradiation	EArray	Effective energy at the output of the array
	T Amb	Ambient Temperature	E_Grid	Energy injected into grid
	GlobInc	Global incident in coll. plane	EffArrR	Effic. Eout array / rough area
	GlobEff	Effective Global, corr. for IAM and shadings	EffSysR	Effic. Eout system / rough area

## Grid-Connected System: Loss diagram

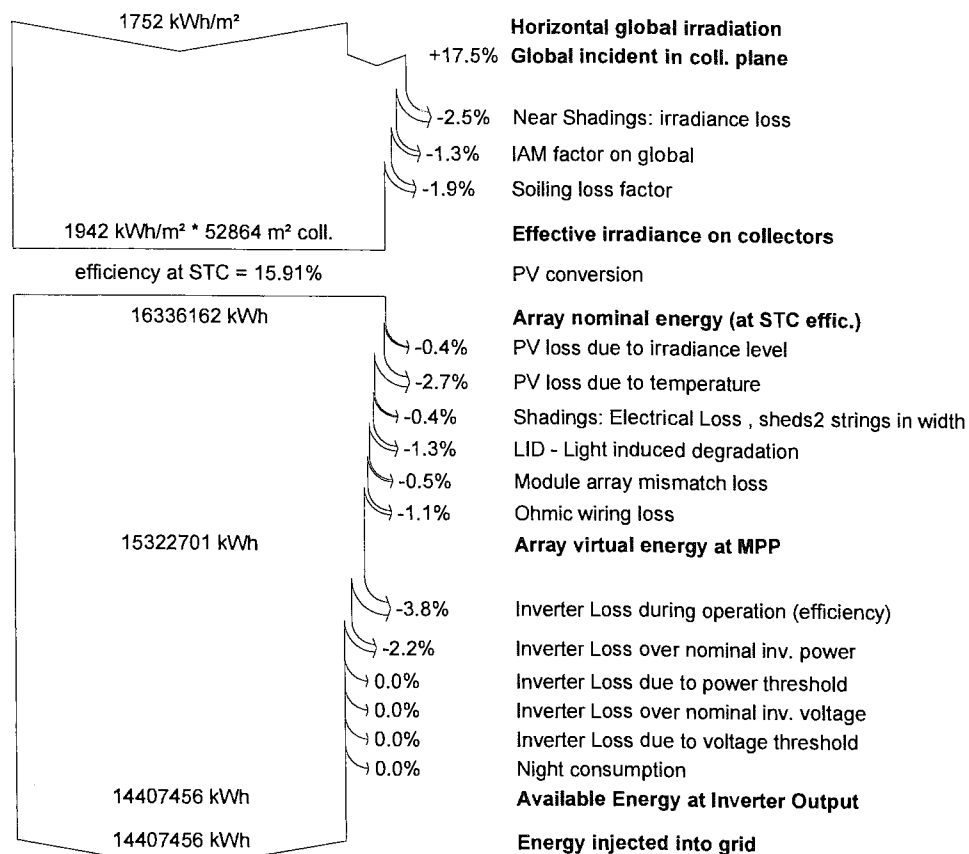
**Project :** Bonanza\_Pro prospector\_TGY

**Simulation variant :** Bonanza\_Pro prospector\_TGY

### Main system parameters

	System type	<b>Grid-Connected</b>		
PV Field Orientation	Sheds disposition, tilt	30°	azimuth	0°
PV modules	Model	CS6X - 305P	Pnom	305 Wp
PV Array	Nb. of modules	27550	Pnom total	<b>8403 kWp</b>
Inverter	Model	Sunny Central 750CP-US	Pnom	750 kW ac
Inverter pack	Nb. of units	8.0	Pnom total	<b>6000 kW ac</b>
User's needs	Unlimited load (grid)			

### Loss diagram over the whole year



## Grid-Connected System: P50 - P90 evaluation

**Project :** Bonanza\_Pro prospector\_TGY

**Simulation variant :** Bonanza\_Pro prospector\_TGY

### Main system parameters

	System type	<b>Grid-Connected</b>	
PV Field Orientation	Sheds disposition, tilt	30°	azimuth 0°
PV modules	Model	CS6X - 305P	Pnom 305 Wp
PV Array	Nb. of modules	27550	Pnom total <b>8403 kWp</b>
Inverter	Model	Sunny Central 750CP-US	Pnom 750 kW ac
Inverter pack	Nb. of units	8.0	Pnom total <b>6000 kW ac</b>
User's needs	Unlimited load (grid)		

### Evaluation of the Production probability forecast

The probability distribution of the system production forecast for different years is mainly dependent on the meteo data used for the simulation, and depends on the following choices:

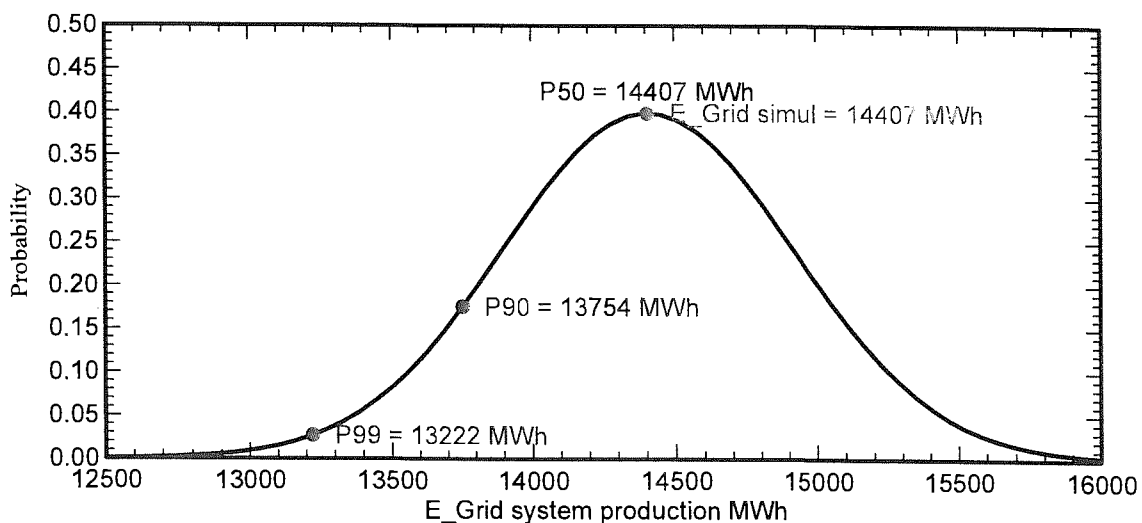
Meteo data source	NREL: Prospector		
Meteo data	Kind	Not defined	Year 1995
Specified Deviation	Year deviation from aver.	3 %	
Year-to-year variability	Variance	2.5 %	

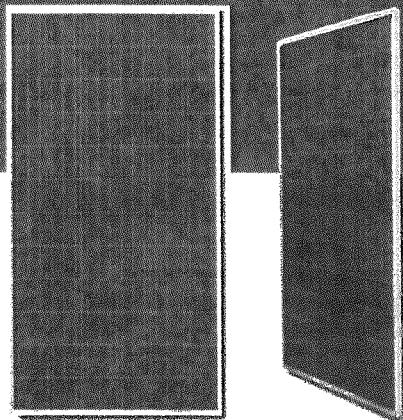
The probability distribution variance is also depending on some system parameters uncertainties

Specified Deviation	PV module modelling/parameters	2.0 %	
	Inverter efficiency uncertainty	0.5 %	
	Soiling and mismatch uncertainties	1.0 %	
	Degradation uncertainty	1.0 %	
Global variability (meteo + system)	Variance	3.5 %	(quadratic sum)

Annual production probability	Variability	<b>509381 kWh</b>
	<b>P50</b>	<b>14407456 kWh</b>
	<b>P90</b>	<b>13754284 kWh</b>
	<b>P99</b>	<b>13221936 kWh</b>

### Probability distribution





## MAX POWER

**CS6X-300 | 305 | 310P**

### THE BEST IN CLASS

Canadian Solar's modules are the best in class in terms of power output and long term reliability. Our meticulous product design and stringent quality control ensure our modules deliver an exceptionally high PV energy yield in live PV system as well as in PVsyst's system simulation. Our accredited in-house PV testing facilities guarantee all module component materials meet the highest quality standards possible.

### PRODUCT | KEY FEATURES



Excellent module efficiency  
up to 16.16%



High performance at low irradiance  
above 96.0%



Positive power tolerance up to 5w



High PTC rating up to 91.94%



Anti-glare module surface available



IP67 junction box  
long-term weather endurance

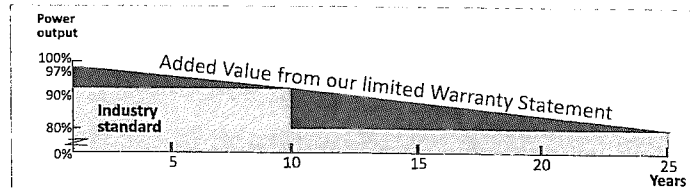


Heavy snow load up to 5400pa



Salt mist, ammonia and blown sand  
resistance, for seaside, farm and  
desert environment

### PRODUCT | WARRANTY & INSURANCE



25 Year Industry leading linear power output warranty  
10 Year Product warranty on materials and workmanship

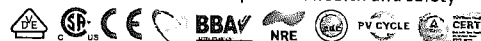


Canadian Solar provides 100% non-cancellable, immediate warranty  
insurance

### PRODUCT & MANAGEMENT SYSTEM | CERTIFICATES\*

IEC 61215 / IEC 61730: VDE / CE / MCS / SIL / KEMCO / CEC AU / CQC / INMETRO  
UL 1703 / IEC 61215 performance: CEC listed (US) / FSEC (US Florida)  
UL 1703: CSA | IEC 61701 ED2: VDE | IEC 62716: TUV | IEC 60068-2-68: SGS  
PV CYCLE (EU) | UNI9177 Reaction to Fire: Class 1

ISO9001:2008 | Quality management system  
ISO16949:2009 | The automotive industry quality management system  
ISO14001:2004 | Standards for environmental management system  
QC080000:2012 | The certificate for hazardous substances process management  
OHSAS 18001:2007 | International standards for occupational health and safety



\*Please contact your sales representative for the entire list of certificates applicable to your products

### CANADIAN SOLAR INC.

Founded in 2001 in Canada, Canadian Solar Inc., (NASDAQ: CSIQ) is the world's TOP 3 solar power company. As a leading manufacturer of solar modules and PV project developer with about 6 GW of premium quality modules deployed around the world in the past 13 years, Canadian Solar is one of the most bankable solar companies in Europe, USA, Japan and China. Canadian Solar operates in six continents with customers in over 90 countries and regions. Canadian Solar is committed to providing high quality solar products, solar system solutions and services to customers around the world.



## ELECTRICAL DATA | STC

Electrical Data	CS6X-300P	CS6X-305P	CS6X-310P
Nominal Maximum Power (P <sub>max</sub> )	300 W	305 W	310 W
Optimum Operating Voltage (V <sub>mp</sub> )	36.1 V	36.3 V	36.4 V
Optimum Operating Current (I <sub>mp</sub> )	8.30 A	8.41 A	8.52 A
Open Circuit Voltage (V <sub>oc</sub> )	44.6 V	44.8 V	44.9 V
Short Circuit Current (I <sub>sc</sub> )	8.87 A	8.97 A	9.08 A
Module Efficiency	15.63 %	15.90 %	16.16 %
Operating Temperature	-40 °C~+85 °C		
Maximum System Voltage	1000 V (IEC) / 1000 V (UL) / 600 V (UL)		
Maximum Series Fuse Rating	15 A		
Application Classification	Class A		
Power Tolerance	0 ~ +5 W		

\* Under Standard Test Conditions (STC) of irradiance of 1000W/m<sup>2</sup>, spectrum AM 1.5 and cell temperature of 25°C.

## ELECTRICAL DATA | NOCT

Electrical Data	CS6X-300P	CS6X-305P	CS6X-310P
Nominal Maximum Power (P <sub>max</sub> )	218 W	221 W	225 W
Optimum Operating Voltage (V <sub>mp</sub> )	32.9 V	33.1 V	33.2 V
Optimum Operating Current (I <sub>mp</sub> )	6.61 A	6.68 A	6.77 A
Open Circuit Voltage (V <sub>oc</sub> )	41.0 V	41.2 V	41.3 V
Short Circuit Current (I <sub>sc</sub> )	7.19 A	7.27 A	7.36 A

\* Under Nominal Operating Cell Temperature (NOCT), irradiance of 800 W/m<sup>2</sup>, spectrum AM 1.5, ambient temperature 20°C, wind speed 1 m/s.

## MODULE | MECHANICAL DATA

Specification	Data
Cell Type	Poly-crystalline, 6inch
Cell Arrangement	72 (6 x 12)
Dimensions	1954 x 982 x 40mm (76.93 x 38.7 x 1.57in)
Weight	22kg (48.5 lbs)
Front Cover	3.2mm tempered glass
Frame Material	Anodized aluminium alloy
J-BOX	IP67, 3 diodes
Cable	4mm <sup>2</sup> (IEC)/4mm <sup>2</sup> &12AWG 1000 V(UL1000V)/12AWG(UL600V), 1150mm/1300mm**
Connectors	MC4 or MC4 comparable
Standard Packaging	24pcs, 608kg (quantity and weight per pallet)
Module Pieces per container	528pcs (40'HQ)

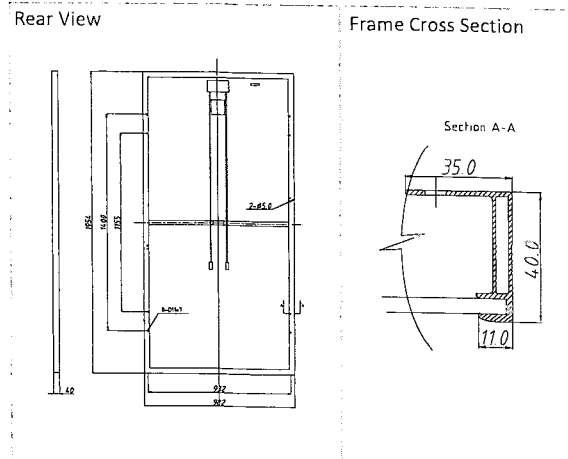
## TEMPERATURE CHARACTERISTICS

Specification	Data
Temperature Coefficient (P <sub>max</sub> )	-0.43 %/°C
Temperature Coefficient (V <sub>oc</sub> )	-0.34 %/°C
Temperature Coefficient (I <sub>sc</sub> )	0.065 %/°C
Nominal Operating Cell Temperature	45±2 °C

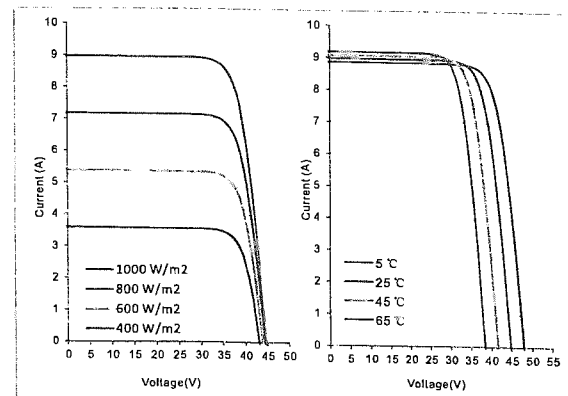
## PERFORMANCE AT LOW IRRADIANCE

Industry leading performance at low irradiance, +96.5% module efficiency from an irradiance of 1000W/m<sup>2</sup> to 200W/m<sup>2</sup> (AM 1.5, 25 °C)

## MODULE | ENGINEERING DRAWING



## CS6X-305P | I-V CURVES



## Partner Section

As there are different certification requirements in different markets, please contact your sales representative for the specific certificates applicable to your products. The specification and key features described in this Datasheet may deviate slightly and are not guaranteed. Due to on-going innovation, research and product enhancement, Canadian Solar Inc. reserves the right to make any adjustment to the information described herein at any time without notice. Please always obtain the most recent version of the datasheet which shall be duly incorporated into the binding contract made by the parties governing all transactions related to the purchase and sale of the products described herein.

\*\*The CS6X with cable of 1300mm is only for Canadian market.

## EXHIBIT E

### START-UP TESTING

Start-Up Testing shall consist of the Quality Assurance/Quality Control plans and procedures developed by the EPC Contractor.

Contractor shall submit to Owner a final copy of its quality assurance/quality control (QA/QC) plan for review not later than 45 days after contract execution for Owner review and comment.

The QA/QC program shall include, but is not limited to, such procedures and systems as the following:

- Road construction
- Rebar and conduit placement
- Concrete placement and testing
- All wire insulation testing—Megger testing or very low frequency testing
- Mechanical system—trackers, mounting structures, tracker controls
- Factory testing of inverters and transformers by the manufacturer
- PV source open-circuit measurements—VOC at combiner boxes
- Fuse tests
- Termination pull testing
- All visual inspections
- Grounding continuity testing
- Earth-ground resistivity testing
- PV module inspection and manufacturer documentation of factory test per the manufacturer's existing program
- Metering and instrumentation calibration testing
- Step-up transformer field testing
- Inverter phase rotation and matching with utility
- Relay settings/transfer trip/etc. at the point of interconnection to Owner
- Other Contractor-prescribed procedures

All QA/QC testing procedures onsite shall be witnessed and documented by a qualified representative of Contractor. Owner shall observe and witness QA/QC as necessary and at its discretion. A qualified field engineer/QA representative of Contractor shall date and sign documentation indicating completion and acceptance of each onsite QA/QC test procedures.

Following installation, Contractor shall provide a proposed commissioning and startup plan for the Plant.

Contractor shall coordinate with Owner to develop an acceptable commissioning plan that includes a checkout and startup procedure. This work will assure: that systems are activated in a manner that is safe for personnel as well as for the equipment, that Contractor work is complete and according to the contract documents, and that the systems perform as required by the contract documents and are ready to be turned over to Owner. As the construction and installation of the systems nears completion, Contractor shall prepare punch lists and conduct system walk-downs, sub-system and system checkouts, startups, testing, and turnovers.

The final approved Commissioning Procedures shall, at minimum, include the following:

- Safety plan during startup and commissioning
- Review of all QA/QC testing on the DC and AC sides of inverters
- Detailed procedure for PV Plant startup, including switching sequencing
- Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected
- Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.
- Testing the system control and monitoring system to verify that it is performing correctly
- Testing the communication system for offsite monitoring

- Testing the Plant metering and protective relaying in conjunction with the utility during energization procedures
- Detailed procedure for interface and initialization with the grid
- Documentation of successful startup and commissioning procedure
- Written notification submitted by Contractor to Owner that the completion of Commissioning has occurred

Upon successful completion of energizing and startup, the Plant will be considered operable.



**EXHIBIT F**  
**Seller Authorization to Release Generation Data to PacifiCorp**

See attached letter

**Seller Authorization to Release Generation Data to PacifiCorp**

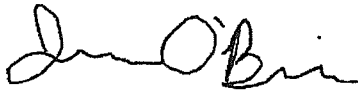
Norwest Energy 4, LLC  
3250 Ocean Park Boulevard, Suite 355  
Santa Monica, CA 90405

Transmission Services  
Attn: Senior Vice President, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

**RE: Bonanza / OGIQ0577 Interconnection Request**

Dear Sir:

Norwest Energy 4, LLC hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Bonanza/OGIQ0577's generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group. Norwest Energy 4, LLC acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.



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Name: Jerome O'Brien

Title: Vice President

Date: January 15, 2015

**EXHIBIT G**  
**SCHEDULE 37 and PRICING SUMMARY TABLE**

Year	On-Peak	Off-Peak
	¢/kWh	¢/kWh
2016	6.04	3.69
2017	6.32	3.91
2018	6.66	4.21
2019	6.99	4.50
2020	6.94	4.41
2021	7.23	4.65
2022	7.67	5.04
2023	7.92	5.24
2024	7.89	5.16
2025	8.09	5.32
2026	8.39	5.57
2027	8.66	5.78
2028	8.88	5.95
2029	9.07	6.09
2030	9.20	6.16
2031	9.35	6.25

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 1

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

For power purchased from Qualifying Facilities with a nameplate capacity of 10,000 kW or less or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 10,000 kW or less. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

**Definitions****Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

**On-Peak Hours or Peak Hours**

On-peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005, the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April and for the period between the last Sunday in October and the first Sunday in November.

**Off-Peak Hours**

All hours other than On-Peak.

**West Side Gas Market Index**

The monthly indexed gas price shall be the average of the price indexes published by Platts in "Inside FERC's Gas Market Report" monthly price report for Northwest Pipeline Corp. Rock Mountains, Northwest Pipeline Corp. Canadian Border, and Rockies/Northwest Stanfield, OR.

**Excess Output**

Excess output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-peak Price as described and calculated under pricing option 5 for all Excess Output.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 2

**Same Site**

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

**Person(s) or Affiliated Person(s)**

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit. A unit of Oregon local government may also be a "passive investor" if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

**Shared Interconnection and Infrastructure**

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

**Dispute Resolution**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract. Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution.

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 3

**Pricing Options****1. Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under either the Firm Market Indexed, the Banded Gas Market Indexed or the Gas Market Indexed Avoided Cost pricing option.

**2. Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2012 through 2015), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Prices are available for a term of up to 20 years.

**3. Banded Gas Market Indexed Avoided Cost Prices**

Fixed prices apply during the resource sufficiency period (2012 through 2015), thereafter a portion of avoided cost prices are indexed to actual monthly West Side Gas Market Index prices. The remaining portion of avoided cost prices will be fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. The gas indexed portion of the avoided cost prices are banded to limit the amount that prices can vary with changes in gas prices. Prices are available for a term of up to 20 years.

**4. Firm Market Indexed Avoided Cost Prices**

Firm market index avoided cost prices are available to Qualifying Facilities that contract to deliver firm power. Monthly on-peak / off-peak prices paid are a blending of Intercontinental Exchange (ICE) Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

**5. Non-firm Market Index Avoided Cost Prices**

Non- Firm market index avoided cost prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 4

**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of three Pricing Options as specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the fixed prices as provided in this tariff. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

**Gas Market Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.696 to get actual gas price in cents/kWh. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Banded Gas Indexed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at On-Peak and Off-Peak prices calculated each month.

To calculate the Off-Peak price, multiply the West Side Gas Market Index price in \$/MMBtu by 0.696 to get actual gas price in cents/kWh. This price is banded such that the actual gas price shall be no lower than the Gas Market Index Floor nor greater than the Gas Market Index Ceiling as listed in the price section of this tariff. The Off-Peak Energy Adder is added to the actual gas price to get the Off-Peak Price.

The On-Peak price is the Off-Peak price plus the On-Peak Capacity Adder.

**Firm Market Indexed and Non-firm Market Index Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the market prices calculated at the time of delivery. The definition of On-Peak and Off-Peak is as defined in the definitions section of this tariff.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 5

**Avoided Cost Prices**
**Pricing Option 1 – Fixed Avoided cost Prices ¢/kWh**

Deliveries During Calendar Year	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)
2012	3.09	2.32
2013	3.72	2.62
2014	4.13	2.80
2015	4.39	2.99
2016	6.04	3.69
2017	6.32	3.91
2018	6.66	4.21
2019	6.99	4.50
2020	6.94	4.41
2021	7.23	4.65
2022	7.67	5.04
2023	7.92	5.24
2024	7.89	5.16
2025	8.09	5.32
2026	8.39	5.57
2027	8.66	5.78
2028	8.88	5.95
2029	9.07	6.09
2030	9.20	6.16

(continued)



**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 6

**Avoided Cost Prices (Continued)**
**Pricing Option 2 – Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries During Calendar Year	Fixed Prices		Gas Market Index		Forecast	Estimated Prices (3)	
	On-Peak	Off-Peak	On-Peak	Off-Peak	West Side Gas	On-Peak	Off-Peak
	Energy	Energy	Capacity	Energy	Market Index	Energy	Energy
	Price	Price	Adder (1)	Adder	Price (2) \$/MMBtu	Price	Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
			Avoided Firm Capacity Costs / (0.876 * 88.6% * 57%)	Total Avoided Energy Costs - ((e) * 0.696)		(g) + (c)	((e) * 0.696) + (d)
2012	3.09	2.32	Market Based Prices 2012 through 2015				
2013	3.72	2.62					
2014	4.13	2.80					
2015	4.39	2.99					
2016			2.36	0.44	\$4.66	6.042	3.685
2017			2.40	0.47	\$4.95	6.316	3.914
2018			2.45	0.47	\$5.38	6.660	4.212
2019			2.49	0.47	\$5.79	6.988	4.496
2020			2.53	0.47	\$5.66	6.943	4.409
2021			2.58	0.48	\$5.98	7.225	4.645
2022			2.63	0.50	\$6.53	7.667	5.041
2023			2.67	0.52	\$6.78	7.916	5.242
2024			2.72	0.53	\$6.66	7.885	5.163
2025			2.77	0.54	\$6.87	8.093	5.322
2026			2.82	0.55	\$7.21	8.385	5.565
2027			2.87	0.57	\$7.49	8.655	5.781
2028			2.93	0.60	\$7.69	8.877	5.948
2029			2.98	0.62	\$7.85	9.070	6.086
2030			3.04	0.64	\$7.92	9.197	6.156
2031			3.10	0.64	\$8.06	9.348	6.246
2032			3.16	0.65	\$8.21	9.526	6.365
2033			3.22	0.66	\$8.37	9.705	6.484
2034			3.29	0.68	\$8.53	9.902	6.616

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2011 IRP.  
(2) A heat rate of 0.696 is used to adjust gas prices from \$/MMBtu to ¢/kWh  
(3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.  
Actual prices will be calculated each month using actual index gas prices.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices (Continued)**
**Pricing Option 3 – Banded Gas Market Indexed Avoided Cost Prices ¢/kWh**

Deliveries	Fixed Prices		Banded Gas Market Index				Forecast	Estimated Prices (3)	
During	On-Peak	Off-Peak	On-Peak	Off-Peak	Gas Market Index		West Side Gas	On-Peak	Off-Peak
Calendar	Energy	Energy	Capacity	Energy	Floor	Ceiling	Market Index Price (2)	Energy	Energy
Year	Price	Price	Adder (1)	Adder	90%	110%	\$/MMBtu	Price	Price
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
			Avoided Firm Capacity Costs / (0.876 * 88.6% * 57%)	Total Avoided Energy Costs - ((e) * 0.696)	(g) * 0.696 * 90%	(g) * 0.696 * 110%		(i) + (c)	MIN(MAX((g) * 0.696), (e)), (f) + (d))
2012	3.09	2.32	Market Based Prices 2010 through 2013						
2013	3.72	2.62							
2014	4.13	2.80							
2015	4.39	2.99							
2016			2.36	0.44	2.92	3.57	\$4.66	6.04	3.69
2017			2.40	0.47	3.10	3.79	\$4.95	6.32	3.91
2018			2.45	0.47	3.37	4.12	\$5.38	6.66	4.21
2019			2.49	0.47	3.63	4.43	\$5.79	6.99	4.50
2020			2.53	0.47	3.55	4.33	\$5.66	6.94	4.41
2021			2.58	0.48	3.75	4.58	\$5.98	7.23	4.65
2022			2.63	0.50	4.09	5.00	\$6.53	7.67	5.04
2023			2.67	0.52	4.25	5.19	\$6.78	7.92	5.24
2024			2.72	0.53	4.17	5.10	\$6.66	7.89	5.16
2025			2.77	0.54	4.30	5.26	\$6.87	8.09	5.32
2026			2.82	0.55	4.52	5.52	\$7.21	8.39	5.57
2027			2.87	0.57	4.69	5.73	\$7.49	8.66	5.78
2028			2.93	0.60	4.82	5.89	\$7.69	8.88	5.95
2029			2.98	0.62	4.92	6.01	\$7.85	9.07	6.09
2030			3.04	0.64	4.96	6.06	\$7.92	9.20	6.16
2031			3.10	0.64	5.05	6.17	\$8.06	9.35	6.25
2032			3.16	0.65	5.14	6.29	\$8.21	9.53	6.37
2033			3.22	0.66	5.24	6.41	\$8.37	9.71	6.48
2034			3.29	0.68	5.34	6.53	\$8.53	9.90	6.62

- (1) Avoided Firm Capacity Costs are equal to the fixed costs of a SCCT as identified in the Company's 2011 IRP.
- (2) A heat rate of 0.696 is used to adjust gas prices from \$/MMBtu to ¢/kWh
- (3) Estimated avoided cost prices based upon forecast West Side Gas Market Index prices.  
Actual prices will be calculated each month using actual index gas prices.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Example of Gas Pricing Options available to the Qualifying Facility**

An example of the two gas pricing options using different assumed gas prices is provided at the end of this tariff.

**Qualifying Facilities Contracting Procedure**

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

**1. Qualifying Facilities up to 10,000 kW**

**APPLICATION:** To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement****A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions (i.e., fixed, deadband, gas indexed);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Oregon Public Utilities Commission in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**B. Procedures (continued)**

- 5 After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**II. Process for Negotiating Interconnection Agreements (continued)****A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

**B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Example of Gas Pricing Options given Assumed Gas Prices ¢/kWh**

Banded Gas Market Index												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Gas Market Index		Assumed Gas Price \$/MMBtu	Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price	
			Floor 90%	Ceiling 110%		Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	
					(e) x 0.696				(b) + (g)		(a) + (j)	
2016	2.36	0.44	2.92	3.57	\$2.00	1.39	2.92	Floor	3.36	5.72	3.69	6.04
					\$4.00	2.78	2.92	Floor	3.36	5.72		
					\$5.00	3.48	3.48	Actual	3.92	6.28		
					\$7.00	4.87	3.57	Ceiling	4.01	6.37		
					\$10.00	6.96	3.57	Ceiling	4.01	6.37		

Gas Market Method												
Year	Prices Listed in the Tariff				Example using assumed Gas Prices						Compared to Fixed Prices	
	On-Peak Capacity Adder	Off-Peak Energy Adder	Fuel Index		Assumed Gas Price \$/MMBtu	Actual Energy Price	Fuel Index		Price Paid to QF		Off-Peak Price	On-Peak Price
			Floor 90%	Ceiling 110%			Floor / Ceiling Component	Type of Price	Off-Peak Price	On-Peak Price		
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
						(e) x 0.696			(b) + (f)	(a) + (j)		
2016	2.36	0.44	Not Relevant		\$2.00	1.39	Not Relevant		1.83	4.19	3.69	6.04
					\$4.00	2.78			3.22	5.58		
					\$5.00	3.48			3.92	6.28		
					\$7.00	4.87			5.31	7.67		
					\$10.00	6.96			7.40	9.76		

**ADDENDUM A**  
**Jury Trial Waiver**

PacifiCorp and Norwest Energy 4, LLC are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum A to the PPA is entered into by and between PacifiCorp and Norwest Energy 4, LLC and is intended to be interpreted and applied to the PPA.

*Whereas*, the Parties for their respective business purposes have an interest in not presenting a dispute to a jury for trial should a dispute arise between the Parties;

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

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

This Addendum A to the PPA is executed and made effective this 29<sup>th</sup> day of May, 2015.

PacifiCorp

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

Name: Bruce Griswold

Title: Director, Short-Term Origination  
and QF Contracts

Norwest Energy 4, LLC

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

Name: Matt McGovern

Title: President



**POWER PURCHASE AGREEMENT**

**BETWEEN**

**NORWEST ENERGY 9, LLC**

**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and  
not an Intermittent Resource]**

**AND**

**PACIFICORP**

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EXHIBIT A:	DESCRIPTION OF SELLER'S FACILITY
EXHIBIT B:	SELLER'S INTERCONNECTION FACILITIES
EXHIBIT C:	REQUIRED FACILITY DOCUMENTS
EXHIBIT D-1:	SELLER'S MOTIVE FORCE PLAN
EXHIBIT D-2:	ENGINEER'S CERTIFICATION OF MOTIVE FORCE PLAN
EXHIBIT E:	START-UP TESTING
EXHIBIT F:	SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO PACIFICORP
EXHIBIT G:	SCHEDULE 37 AND PRICING SUMMARY TABLE
EXHIBIT H:	GREEN TAG ATTESTATION AND BILL OF SALE

## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 30<sup>th</sup> day of June, 2015, is between Norwest Energy 9, LLC, "**Seller**" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp**." (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

### RECITALS

A. Seller intends to construct, own, operate and maintain the **Pendleton** solar photo voltaic facility for the generation of electric power, including interconnection facilities, located in Pendleton, Umatilla County, Oregon with a Facility Capacity Rating of 6,000 -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B ("Facility")**; and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on November 18, 2016 ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on December 31, 2016 ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 12,066,700 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall (choose one) ☒ sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp ☐ sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

### SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings:

1.1 **“As-built Supplement”** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **“Average Annual Generation”** shall have the meaning set forth in Section 4.2.

1.3 **“Billing Period”** means, unless otherwise agreed to, the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 **“CAMD”** means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Green Tags.

1.5 **“Commercial Operation Date”** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.5.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.5.2 The Facility has completed Start-Up Testing;

1.5.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;

1.5.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).

1.5.5 Seller has complied with the security requirements of Section 10.

1.5.6 PacifiCorp has received an executed copy of **Exhibit F**—Seller's Interconnection Request.

1.6 **"Commission"** means the Oregon Public Utilities Commission.

1.7 **"Contract Price"** means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1, 5.2, and 5.3.

1.8 **"Contract Year"** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time ("PPT") on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.

1.9 **"Credit Requirements"** means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) "Baa3" or greater by Moody's, or (2) "BBB-" or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.

1.10 **"Default Security"**, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at **Mid-Columbia** (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller's average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.

1.11 **"Effective Date"** shall have the meaning set forth in Section 2.1.

1.12 **"Energy Delivery Schedule"** shall have the meaning set forth in Section 4.5.

1.13 **"Environmental Attributes"** shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water.

Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.14 **“Excess Output”** shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

1.15 **“Facility”** shall have the meaning set forth in Recital A.

1.16 **“Facility Capacity Rating”** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.17 **“FERC”** means the Federal Energy Regulatory Commission, or its successor.

1.18 **“Generation Interconnection Agreement”** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp’s interconnection facilities required to accommodate deliveries of Seller’s Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.19 **“Green Tags”** means (1) the Environmental Attributes associated with all Net Output, together with (2) all WREGIS Certificates; and (3) the Green Tag Reporting Rights associated with such energy, Environmental Attributes and WREGIS Certificates, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified", or otherwise. One (1) Green Tag represents the Environmental Attributes made available by the generation of one (1) MWh of energy from the Facility. Provided however, that “Green Tags” do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.20 **“Green Tag Reporting Rights”** means the exclusive right of a purchaser of Green Tags to report exclusive ownership of Green Tags in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, and include reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

1.21 **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.22 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.23 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.24 **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.25 **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.26 **“Nameplate Capacity Rating”** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.27 **“Net Energy”** means the energy component, in kWh, of Net Output.

1.28 **“Net Output”** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.29 **“Net Replacement Power Costs”** shall have the meaning set forth in Section 11.4.1.

1.30 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.31 **“On-Peak Hours”** means the hours between 6 a.m. Pacific Prevailing Time (“PPT”) and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.32 **“Point of Delivery”** means the high side of the Seller’s step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp’s distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.33 **“Prime Rate”** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time

quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.34 **“Prudent Electrical Practices”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.35 **“QF”** means **“Qualifying Facility,”** as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.36 **“Renewable Resource Deficiency Period”** means the period from 2024 through 2040.

1.37 **“Renewable Resource Sufficiency Period”** means the period from 2014 through 2023.

1.38 **“Replacement Price”** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.39 **“Required Facility Documents”** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.40 **“Schedule 37”** means the Schedule 37 of Pacific Power & Light Company’s Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit G**.

1.41 **“Scheduled Commercial Operation Date”** shall have the meaning set forth in Recital C.



1.42 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.43 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.44 “**Termination Date**” shall have the meaning set forth in Section 2.4.

1.45 “**WREGIS**” means the Western Renewable Energy Generation Information System or successor organization in case WREGIS is ever replaced.

1.46 “**WREGIS Certificate**” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules dated July 15, 2013.

1.47 “**WREGIS Operating Rules**” means the operating rules and requirements adopted by WREGIS, dated July 15, 2013.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (“**Effective Date**”).

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

By December 31, 2015 Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on November 17, 2031 (“**Termination Date**”).

## **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

- 3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.
  - 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
  - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a limited liability company duly organized and validly existing under the laws of Oregon.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
  - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy,

insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Compliance with Ownership Requirements in Commission Proceedings No. UM 1129 and UM 1610. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request. These ownership requirements, as well as the dispute resolution provision governing any disputes over a QF's entitlement to the standard rates and standard contract with respect to the requirements, are detailed in Schedule 37.
- i. Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

- a. Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
- b. Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- c. Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- d. Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- e. **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

_____	Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or
___X___	Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

## **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase (a) all Net Output from the Facility delivered to the Point of Delivery and (b) all Green Tags associated with the output or otherwise resulting from the generation of energy by the Facility (which shall come from the Facility and from no other source), for the periods during which the Green Tags are required to be transferred to PacifiCorp under the terms of Section 5.5.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 12,066,700 kWh per Contract Year (“**Average Annual Generation**”). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 7,851,600 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 13,600,300 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

4.6 Transfer of Title to Green Tags; Documentation of Green Tags Transfers. Subject to the Green Tags ownership as defined in Section 5.5, title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the Net Output at the Facility that gives rise to such Green Tags. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the 10th day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale in the form attached as **Exhibit H** for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program or successor organization in case the Center for Resource Solutions is replaced by another party over the life of the contract. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags, except that when Seller is required to transfer Green Tags to PacifiCorp under Section 5.5, PacifiCorp will pay all fees

required by WREGIS relating to the Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller will use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of WREGIS Certificates to PacifiCorp, and transfer such WREGIS Certificates to PacifiCorp, in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form approved by PacifiCorp, enter into a Qualified Reporting Entity Services Agreement with a third-party authorized to act as a Qualified Reporting Entity, or elect to act as its own WREGIS-defined Qualified Reporting Entity. Seller shall promptly give PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by CAMD, upon notification by CAMD that any transfer contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp. Without limiting the generality of PacifiCorp's ownership of the Green Tag Reporting Rights, PacifiCorp may report under such program that such Green Tags purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfer. Seller shall reasonably cooperate in any registration by PacifiCorp of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which PacifiCorp may wish to register or maintain registration of the Facility by providing copies of all such information as PacifiCorp reasonably required for such registration.

## **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of three pricing options: Standard Fixed Avoided Cost Prices ("Fixed Price Standard"), Renewable Fixed Avoided Cost Prices ("Fixed Price Renewable"), or Firm Market Indexed Avoided Cost Prices ("Firm Electric Market"), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility's contract. Seller has selected the following (Seller to initial one):

_____	Fixed Price Standard
___X___	Fixed Price Renewable
_____	Firm Electric Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit G**.

5.2 (Fixed Price Standard Seller Only). In the event Seller elects the Fixed Price Standard pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.3 (Fixed Price Renewable Seller Only). In the event Seller elects the Fixed Price Renewable pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak

rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller 93 percent of a blended market index price for day-ahead firm energy at MidColumbia, California Oregon Border (COB), Four Corners and Palo Verde market indices as reported by the Intercontinental Exchange (ICE), for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes

5.5.1 (Fixed Price Standard Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement throughout the Term.

5.5.2 (Fixed Price Renewable Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes during the Renewable Resource Sufficiency Period, and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Scheduled Initial Delivery Date. Subject to the foregoing, Seller shall transfer the Green Tags to PacifiCorp in accordance with Section 4.5 during the Renewable Resource Deficiency Period.

**SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six months' prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1, 5.2, and 5.3 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating

or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.



## **SECTION 8: METERING**

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

## **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## **SECTION 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

\_\_\_\_\_ Cash Escrow

\_\_\_\_\_ Letter of Credit

\_\_\_\_\_ Senior Lien

  X   Step-in Rights

\_\_\_\_\_ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

### **[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

### **[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

### **[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller

shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]**

**10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).**

Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

PacifiCorp shall give Seller ten (10) calendar days' notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.

11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

## 11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

## 11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

11.3.2 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price

from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

#### 11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

#### 11.4.2 Recoupment of Damages.

Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.

Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

### **SECTION 12: INDEMNIFICATION AND LIABILITY**

#### 12.1 Indemnities.

Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of

injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an

insurance company or companies rated not lower than “B+” by the A.M. Best Company the insurance coverage specified below:

Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

#### **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or



availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and

the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

## **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

## **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

## **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the

Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

#### **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

#### **SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

#### **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

### **SECTION 23: NOTICES**


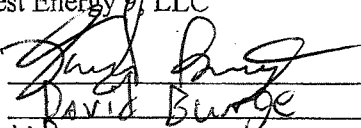
23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	Cypress Creek Renewables Attn: Asset Management Division 3250 Ocean Park Blvd, Suite 355, Santa Monica, CA 90405 (310) 581.6299
<b>All Invoices:</b>	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	Same
<b>Scheduling:</b>	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	Same
<b>Payments:</b>	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	Same
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	
<b>Credit and Collections:</b>	(same as street address above) Attn: Credit Manager, Suite 700 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	Same
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029 Facsimile: (503) 813-7252	Jerome O'Brien Cypress Creek Renewables 3250 Ocean Park Blvd,

Notices	PacifiCorp	Seller
		Suite 355, Santa Monica, CA 90405 973-220-1530

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp	NorWest Energy <sup>9</sup> LLC
By: 	By: 
Name: <u>Bruce Griswold</u>	Name: <u>DAVID Burge</u>
Title: <u>Director, Short-Term Origination and</u>	Title: <u>VP</u>
<u>QF Contracts</u>	Date: <u>6/29/15</u>
Date: <u>June 30, 2015</u>	

BWS 6-23-2015

## **ADDENDUM A**

### **Jury Trial Waiver**

PacifiCorp and NorWest Energy 9, LLC ("NWE 9") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum A to the PPA is entered into by and between PacifiCorp and NWE 9 and is intended to be interpreted and applied to the PPA.

*Whereas*, the Parties for their respective business purposes have an interest in not presenting a dispute to a jury for trial should a dispute arise between the Parties;

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

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

This Addendum A to the PPA is executed and made effective this 30<sup>th</sup> day of June, 2015.

PacifiCorp

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

Name: Bruce Griswold

Title: Director, Short-Term Origination  
and QF Contracts

NorWest Energy 9, LLC

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

Name: David Bunge

Title: VP

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**  
**[Seller to Complete]**

Seller's Facility consists of a 6.0 MWac solar photovoltaic project including PV panels, inverters, and fixed tilt system. More specifically, the inverter at the Facility is described as:

**Number of Inverters: 3**

**Model:** SMA - SC-2200-US

**Number of Phases: 3**

**Rated Output (kW): 2000**

**Rated Output (kVA): 2200kVA**

**Rated Voltage (line to line): 385 Vac**

**Maximum kW Output: 2000 kW    Maximum kVA Output: 2000 kVA**

**Minimum kW Output: 0 kW**

**Facility Annual Degradation Rate: 0.77%**

---

**Facility Capacity Rating:   6,000   kW.**

---

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating:

The maximum output is 6,600 kVA@25°C. The output de-rates with increased temperature to 6,000 kVA@50°C.

---

**Station service requirements, and other loads served by the Facility, if any, are described as follows:** Station service loads for the Inverters are approximately 353 kWh per year.

Transformer: -   80   % , Tracker Motor:-   0   %, Data Acquisition and Aux Loads: -   20   %

---

Values above are percentage loss of Total output and losses are already accounted for in the expected output in Exhibit D-1.

---

**Location of the Facility:** The Facility is to be constructed in the vicinity of Pendleton in Umatilla County, Oregon . The location is more particularly described as follows:

GPS: 45°40'46.40"N, 118°51'12.80"W

Parcel ID: 2N320500-00318 and 2N320600-00100A2

**Power factor requirements:** Rated Power Factor (PF) or reactive load (kVAR): Power factor requirements will meet PacifiCorp standard interconnection procedures.

A more detailed and updated Exhibit A will be provided per section 6.1

## **EXHIBIT B**

### **SELLER'S INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery
  2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.
- 
1. Point of Interconnection, located on Circuit 5W201, State Hospital, out of Buckaroo substation. The metering will be installed at the Point of Interconnection. Delivery will be at the Change of Ownership identified in PacifiCorp's one-line diagram from the System Impact Study Q0586.
  2. The project site map and one-line diagram are attached.



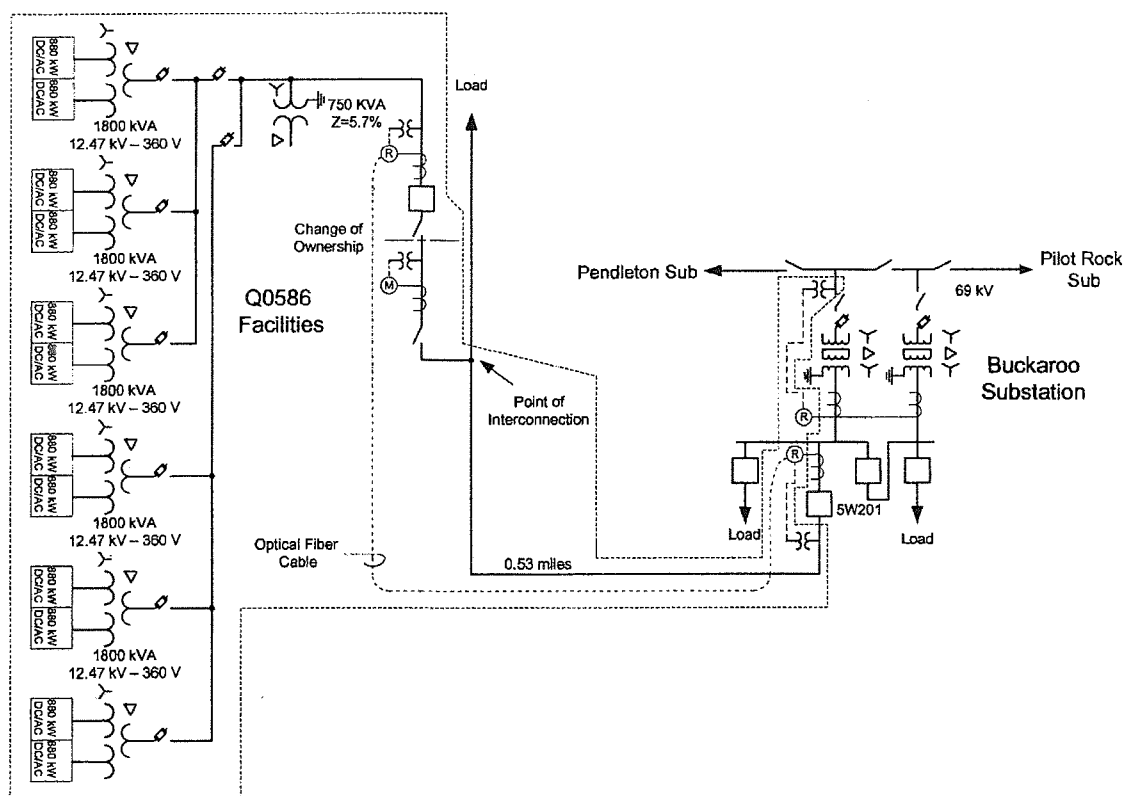


Figure 1: System One Line Diagram

*Journal of Management Education* 36(7) 809-824

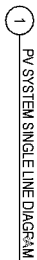
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- FOR USE IN SYSTEM CONFIGURATION.  
2011 STANDARDS.  
PERFORMANCE MAY VARY UPON FINAL DESIGN.  
PROGRAMMED IN SERIES. FINAL  
VERSION SHALL BE IN COMPLIANCE WITH

**Abstract**

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SPECIFICATIONS	SCHEDULE
AT AND OPERATING VOLTAGE 1,000 VDC	
2.08KVAC	
(P) 385 V	
CURRENT 3,900 A	
UL 1741 UL1988	
FMT	
TD	
NOMINAL VOLTAGE 37A	
600V AC FRONT RUSHING LOOP FEED	
EFFECTIVE LINK IN SERIES WITH CURRENT	
2-POSITION, 200A, INTEGRATED LOAD BREAK	
AIR-BREAK SWITCH	





**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

QF Certification: QF14-723-000

Interconnection Agreement: Due December 31, 2015

Fuel Supply Agreement, if applicable: NA

Solar Ground Lease: between Oregon Solar Land Holding and City of Pendleton dated July 1<sup>st</sup>, 2014

Retail Electric Service Agreement

Permits:

- Conditional Use Permit or alternative zoning approval as applicable by the local jurisdiction
- Building Permit
- Electrical Permit (as applicable)
- 1200C Construction Stormwater General Permit (as applicable)

**REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN OR STEP-IN RIGHTS:**

Deed or Lease to Facility Premises

Preliminary Title Report of Premises

Proof of ownership of Facility

Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.

**ASSIGNMENT AND ASSUMPTION  
OF Ground Lease Agreement**

**THIS ASSIGNMENT AND ASSUMPTION OF Ground Lease Agreement between the City of Pendleton and Oregon Solar Land Holdings** (this "Assignment") made this 1st day of August, 2014 (the "Effective Date"), by and between Oregon Solar Land Holdings a Oregon limited liability company ("Assignor"), and NorWest Energy 9, LLC an Oregon limited liability company ("Assignee").

**RECITALS:**

**WHEREAS** Assignor entered into that certain Ground Lease Agreement dated July 1<sup>st</sup> with the City of Pendleton (the "Agreement") for the lease of land located along Airport Rd, in the City of Pendleton, Umatilla County, OR and

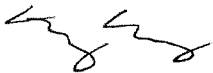
**WHEREAS** Assignor desires to assign, transfer and convey all right, title, and interest in the Agreement to Assignee;

**NOW THEREFORE**, in consideration of the foregoing recitals, parties hereto agree as follows:

1. As of the Effective Date, Assignor hereby assigns, transfers and conveys to Assignee, all of Assignor's right, title and interest in, to, and under the Agreement, as of the Effective Date.
2. This Assignment shall inure to the benefit of, and be binding upon, the respective legal representatives, successors, and assigns of the parties. This Assignment shall be governed by and construed under the laws of the State of Oregon. This Assignment contains the entire agreement as to the assignment of the Agreement between the parties, and may not be changed, modified, or terminated orally, or in any other manner other than by an agreement in writing signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the Effective Date.

**Oregon Solar Land Holdings, LLC**

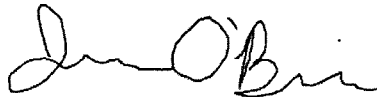
By  \_\_\_\_\_

Name: Troy Snyder

Title: For TLS Capital,

its Member

**NorWest Energy 9, LLC**

By  \_\_\_\_\_

Name: Jerome O'Brien

Title: Authorized Person

## SOLAR GROUND LEASE

1. **Effective Date.** The effective date of this lease is July 1, 2014.

2. **Parties.**

2.1 The parties to this lease are the City of Pendleton, an Oregon municipal corporation (hereinafter "Landlord") and Oregon Solar Land Holdings LLC, an Oregon domestic limited liability company (hereinafter "Tenant").

2.2 Unless indicated otherwise below, the parties may be reached at the following addresses and phone numbers for any and all purposes of this lease:

**Landlord:**

Steve Chrisman, Airport  
Director Eastern Oregon  
Regional Airport 2016 Airport  
Road  
Pendleton, OR 97801  
(541) 276-7754

**Tenant:**

Troy Snyder  
Oregon Solar Land Holdings LLC  
932 NE Stafford St  
Portland, OR 97211  
(503) 816-6880

3. **Recitals.**

3.1 Tenant desires to build and operate an approximately 10 megawatt solar photovoltaic electrical power generation facility. Before Tenant can obtain the necessary agreements from a utility company, Tenant must demonstrate that it has acquired a site where the facility can be built. As a result, Tenant desires to obtain a long-term lease for suitable land.

3.2 Landlord has bare industrial land which it wishes to lease on a productive and long-term basis, and which may meet the requirements for Tenant's facility. Landlord is supportive of the development of such facilities, but requires assurances that the facility will be designed and operated in a responsible manner that does not conflict with Landlord's other interests.

3.3 Tenant believes that the investigation and approval of a site for its facility will likely take several months. Tenant does not wish to be committed to a long-term lease if the development of Tenant's facility at Landlord's site proves to be impracticable.

4. **Premises to be Leased.** The "Premises" which is the subject of this lease is 65 acres (more or less) of undeveloped land located within a 90 acre (more or less) area that has historically been leased for grazing. The legal description of the grazing allotment is attached as Exhibit A. As further described in section 7, below, the specific location of the 65 acres within that allotment will be determined during the Due Diligence Period. Prior to the Commencement Date (as defined below) the parties shall append an Exhibit B to this lease,

providing the specific legal description of the Premises. For the purposes of a more general description, the land is located in the City of Pendleton, west of Airport Road and NW N Avenue, immediately north of Interstate 84, and south of a line extending west from NW K Avenue. The land lies within Umatilla County tax lots 2N320500- 00318 and 2N320600- 00100A2.

5.1 "Intended Use". Tenant shall use the Premises for the purpose of constructing and operating an approximately 10 megawatt solar photovoltaic electrical power generating facility. Tenant shall construct and operate that facility in a manner that is consistent with customary practices in the commercial solar power generation industry. Tenant is not authorized to use the premises for other purposes.

5.2 Alterations. Tenant may, at its expense, remove any existing improvements on the Premises, and make any alterations, additions, improvements and changes to the Premises that it deems reasonably necessary in the operation of its business without the consent of Landlord, including without limitation installation of fencing, security devices and/or signage; provided that such alterations, additions, improvements or changes are made in compliance with applicable laws. Landlord agrees to sign any permit applications and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises. Except in the case of the Landlord's election to take possession at the end of the lease (described below), any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Premises by or for Tenant shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times remain the property of Tenant, and shall be removed at Tenant's expense by it at the expiration or earlier termination of this Lease.

5.3 Compliance with *Instrument of Transfer*. The United States of America conveyed the Premises to Landlord by *Instrument of Transfer* dated July 13, 1948, as authorized by Public Law 80-311 ( 63 Stat. 700), as amended. The *Instrument of Transfer* is recorded in Book 192, Page 1 of the Deed Records of Umatilla County, Oregon. The *Instrument of Transfer* reserves certain rights to the United States of America, including (but not limited to) the right of the Federal Aviation Administration to impose regulations and restrictions on the Premises. Tenant acknowledges said limitations and consents to perform its obligations consistently with the terms and conditions of the *Instrument of Transfer*. Landlord reserves the right to terminate this lease, with or without fault of the tenant, if continuation of this lease prevents Landlord's compliance with the restrictions of its title. Any recapture of the premises by the United States of America in accordance with the terms of the *Instrument of Transfer* shall not give either party claim against the other.

5.4 Compliance With All Laws. Tenant shall, at its own expense, promptly observe and comply with all applicable present and future laws, ordinances, requirements, orders, directions, rules, and regulations of federal, state, county, and city governments and of all other governmental authorities having or claiming jurisdiction, directly or indirectly, over the



Premises or any part thereof, whether the same are in force at the commencement of this lease or may in the future be passed, enacted, or directed. Without limiting the generality of the foregoing, Tenant shall also procure each and every permit, license, certificate, or other authorization now or hereafter required in connection with the lawful and proper use of the Premises.

5.5 Compliance With Environmental Laws. The following paragraphs supplement the preceding subsection without limiting it.

A. The term "Environmental Laws" means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including but not limited to the Resource Conservation and Recovery Act (RCRA) (42 USC §6901, et seq.); the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 USC §6601, et seq.); the Toxic Substances Control Act (15 USC §2601, et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.); the Clean Water Act (33 USC §1251, et seq.); the Clean Air Act (42 USC §7401, et seq.); amendments to the foregoing; and any rules and regulations promulgated thereunder.

B. The term "Hazardous Substances" means any hazardous, toxic, infectious, or radioactive substance, waste, or material as defined or listed by any Environmental Laws and includes, without limitation, any hazardous material, hazardous substance, ultra hazardous material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product, and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

C. Tenant may use or otherwise handle on the Premises only Hazardous Substances that are typically used or sold in the prudent and safe operation of such business as this lease authorizes Tenant to engage in on the Premises. Tenant may store those Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant must comply with the environmental laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances, and Tenant must take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Tenant shall not dispose of any Hazardous Substances on the Premises. When this lease expires or terminates, Tenant must remove all Hazardous Substances from the Premises.

5.6 Waste, Nuisance, Disrepair and Debris Prohibited. Tenant shall be responsible for the repair and maintenance of the entire Premises. At no time will Tenant commit, suffer to be committed, or allow or permit others to commit, any waste on or with respect to the Premises or any nuisance. Tenant will maintain the premises in good order and repair. Tenant shall maintain the Premises free of trash and debris.

5.7 Upon giving 24 hour notice to Tenant, Landlord or its designee may enter upon the premises at reasonable times for the purpose of inspection of the premises or to determine whether the terms of this lease are being violated. No notice is required in case of emergency.

**6. Rent.**

6.1 Initial Rental Rate. On or before the Effective Date, Tenant shall pay Landlord an initial rent payment of \$500.00. If Tenant does not begin construction of Tenant's facility by the first anniversary of the Effective Date, Tenant shall pay Landlord a rent payment of \$9,750.

6.2 Rental Rate. The "Commencement Date" is the earlier of: 1) the date that Tenant begins construction of tenant's solar photovoltaic electrical power generating facility on the Premises, or 2) the second anniversary of the Effective Date. On the Commencement Date, the Rental Rate shall become \$500.00 per acre of the Premises as determined by Tenant's Survey (described below), excluding any portions of the Premises identified by Tenant as unsuitable for placement of solar panels.

6.3 Payment Schedule. Following the Commencement Date, rent shall be payable on a semi-annual basis.

A. The first semi-annual payment will be due on the Commencement Date and shall equal the Rental Rate, prorated for the number of days from the Commencement Date until the following January 15 or July 15, whichever is first in time after the Commencement Date. The amount of the first semi-annual payment shall then be reduced by the remaining prorated value of the initial rent payment, if any.

B. The second semi-annual payment of rent will be on either July 15 or January 15 whichever is first in time after the Commencement Date ("Second Rent Payment Date") and shall equal one-half of the Annual Rental Rate.

C. Subsequent payments of one-half of the Annual Rental Rate will be due every six (6) months after the Second Rent Payment Date.

6.4 Escalation of Annual Rental Rate. Beginning on the first annual anniversary of the Second Rent Payment Date and each anniversary date thereafter, the Annual Rental Rate payable hereunder shall increase by two and one half percent (2.5%).

6.5 Due Date. Tenant shall pay all rent on or before the due date, as described above without notice or on demand, and without deduction or setoff of any amount except as expressly provided otherwise in this Lease. Rent is deemed paid when it is actually received by Landlord. If Tenant fails to pay Landlord any rent or other sum payable by Tenant within ten business days following the Due Date, Tenant will pay to Landlord, in addition to the amount due, a late fee of 5% of the amount due. The parties agree that this late fee represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment.

Collection of the late charge will not be considered a waiver of default nor of any other right or remedy.

**7. Due Diligence Period.**

7.1 The "Due Diligence Period" is the period of time from the Effective Date until the Commencement Date.

7.2 Tenant shall use the Due Diligence Period to perform any tasks that are necessary to complete prior to beginning construction, such as investigating the condition of the premises, surveying the premises, finalizing construction plans, obtaining financing, obtaining a power purchasing agreement and obtaining any required regulatory or other approvals.

7.3 Survey of Premises. During the Due Diligence Period, Tenant shall obtain a survey of the Premises. The survey shall show the outer boundary of the land to be used by Tenant's facility, as well as any areas within that boundary which Tenant deems unsuitable for placement of solar panels. Tenant shall promptly provide a copy of the survey to Landlord. The parties shall append and Exhibit B to this Lease incorporating the legal description contained in the survey.

7.4 Livestock Grazing. The Premises are part of a 90 acre parcel of land ("Grazing Allotment") which Landlord leases for livestock grazing. During the Due Diligence Period, Landlord may continue leasing the entire Grazing Allotment for livestock grazing. On or before the Commencement Date, Landlord shall assure that an appropriate fence has been constructed to keep any livestock within the portion of the Grazing Allotment that is not occupied by the Premises, and that no livestock are on the Premises.

**7.5 Discretionary Termination.**

A. Not later than 60 days prior to the Commencement Date, Tenant shall deliver for Landlord's review the completed design specifications and plans for construction of Tenant's Facility, including the architectural components, structural systems and foundations, on-site civil engineering, mechanical and plumbing systems, electrical systems, specifications for materials, fire and safety systems, telecommunication systems, landscaping, drainage and related components, features, and systems. Tenant's Facility shall be designed according to industry best practices and shall meet all local and state permitting requirements. In the event the design specifications and plans do not meet local and state permitting requirements, Landlord may terminate this lease by giving written notice to Tenant. Tenant shall have 90 days from the date of written notice to redesign the Facility in order to comply with permitting requirements. If the Tenant is unable to redesign the Facility in order to comply with permitting requirements, the Landlord may terminate this lease.

B. If Tenant determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever, Tenant may terminate this lease by giving written notice to Landlord no later than 30 days prior to the Commencement Date.

7.6 **Inspections and Testing.** During the Due Diligence Period, Tenant shall be entitled to conduct, at its own expense, such inspections and testing of the Premises as Tenant shall reasonably determine in its sole discretion (including without limitation, one or more environmental audits) and to physically inspect and review the Premises, which investigation shall be of such scope as Tenant shall determine. If Tenant decides to terminate this lease prior to the Commencement Date and Tenant's inspections have altered the Premises in any way, the lease shall not terminate until Tenant restores the Premises (and any other land of Landlord impacted by Tenant's use of the Premises) to substantially the condition it had on the Effective Date.

8. **Term of Lease.** This Lease shall commence on the Effective Date and shall end at 11:59 P.M. local time on the last day of the two hundred and fortieth (240th) full calendar month following the Commencement Date, unless sooner terminated as herein provided. Tenant shall have the right to extend the initial two hundred forty (240) month Term for up to two (2) additional successive "Renewal Terms" of five (5) years each by providing Landlord with written notice of Tenant's desire to extend the Term for the applicable Renewal Term prior to the Expiration Date (or prior to the expiration of the first Renewal Term, as applicable).

9. **Expiration or Earlier Termination of Lease.**

9.1 **Termination During Due Diligence Period.** As provided above, under specific conditions either Landlord or Tenant may terminate this Lease during the Due Diligence Period.

9.2 **Tenant's Loss of Power Purchase Agreement.** In the event that its power purchase agreement (or other agreement under which Tenant provides power generated at the Premises to a third party) is terminated for any reason whatsoever, Tenant may terminate this Lease by 30 day written notice to Landlord.

9.3 **Force Majeure.** If either party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by: 1) any legal requirement not attributable to an act or omission of the party, 2) any act of God, fire or other casualty, flood, storm, explosion, accident, epidemic, war, civil disorder, strike, or other labor difficulty, 3) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation, or 4) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of the party of any kind. If a condition excusing a party's performance continues for more than fifteen (15) days, then the other party may terminate this Lease by 30 days' notice to the excused party.

9.4 Default. As described below, Landlord shall have the right to terminate this Lease in the event of Default by Tenant.

9.5 Surrender of Premises at Expiration or Termination.

A. Surrender of Possession. Upon the expiration or prior termination of this Lease, Tenant will surrender and deliver the Premises to the possession and use of Landlord without fraud or delay, free and clear of all lettings and occupancies other than subleases to which Landlord has specifically consented, and free and clear of all liens and encumbrances other than those, if any, currently existing or created or suffered by Landlord, without any payment or allowance whatever by Landlord on account of any remaining improvements on the Premises.

B. Removal of Improvements. Prior to the expiration or earlier termination of this Lease, Tenant shall restore the Premises (and any other land of Landlord impacted by Tenant's use of the Premises) to substantially its condition as of the Effective Date using prudent engineering practices and removing Tenant's Property (including, without limitation, all fencing, roads, solar panels and mounting, and other improvements or alterations) and any electrical or communication or other utility poles, lines and connections (unless such lines and connections are used in connection with other property owned by Landlord and Landlord gives reasonable written notice to Tenant identifying the specific lines and connections to remain on the Premises). Tenant shall also remove any utility easements or other encumbrances Tenant has placed on the Premises. The removal and restoration shall be completed in a manner that does not materially and adversely affect the use of the Premises for livestock grazing purposes.

C. Optional Surrender of Improvements. Notwithstanding the foregoing, prior to the expiration or earlier termination of this Lease Landlord may, by written notice to Tenant, elect to purchase the improvements installed by Tenant (or some portion thereof) at Fair Market Value. Such election shall take effect on the date of expiration or termination of the Lease, in which case Tenant shall be relieved of the duty to remove the designated improvements. If Landlord makes such an election, Tenant may, prior to expiration or termination of the Lease, remove any furniture, records or equipment furnished by or at the expense of Tenant as long as the removal will not injure the Premises or the improvements or necessitate changes in or repairs to them. Tenant will pay or cause to be paid to Landlord the cost of repairing any damage arising from the removal and restoration of the Premises and/or the improvements to their condition before removal.

D. Remedies for Tenant Failure to Comply with this Section.

(i) If Tenant fails to vacate and surrender the possession of the Premises at the expiration or earlier termination of this Lease, Landlord shall be entitled to recover from Tenant rent in an amount equal to one

hundred twenty-five percent (125%) of the amount of rent payable hereunder for the period, prorated on a daily basis, from the termination of this Lease until the date the Premises are vacated and surrendered.

(ii) If Tenant abandons the premises without removing the improvements as required in paragraph B or exercise of Landlord's option under paragraph C, above, Landlord may, at the expiration or earlier termination of this Lease, take possession of the Premises and take ownership of any improvements or personal property located therein. Tenant shall be liable to Landlord for any costs associated with Landlord's removal of the improvements and/or disposal of the abandoned personal property.

(iii) The remedies provided in this section are supplemental to any other remedies provided elsewhere in this Lease.

(iv) The obligations of Tenant under this section shall survive the expiration or earlier termination of this Lease.

#### **10. Taxes and Utilities.**

10.1 Tenant shall pay when due all taxes and assessments of any kind or nature which may be imposed upon the Premises or its improvements during the Term by applicable governmental entities, including, without limitation, all improvements made to the Land by Tenant or upon any other property installed in or brought onto the Premises by Tenant.

10.2 Tenant will arrange for and pay all utilities that service the Premises.

#### **11. Easements, Zoning and Related Paperwork.**

11.1 Tenant is hereby authorized to grant such easements across, under and over the Premises (and/or across any adjacent property owned by Landlord) as are reasonably necessary for rights of way, ingress and egress and for the installation, construction, maintenance, repair and replacement of utility lines serving the Premises, including without limitation any such easements required to connect the Premises to a receiver of electric power generated at the Premises. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the execution of any such easement.

11.2 If no public road directly accesses the Premises, Landlord shall provide to Tenant during the term of this Lease a nonexclusive leasehold easement for ingress and egress to and from the Premises, by a route to be designated by Landlord across Landlord's adjoining property, which shall connect to a public road. Tenant shall have the right to improve the easement to such a condition that the anticipated construction can occur in a manner suitable to Tenant.

11.3 Landlord agrees that Tenant, as exclusive occupant of the Premises, may file and prosecute applications for all re-zonings, variances, land use approvals or other approvals required in order for Tenant to operate the Premises for its Intended Use. To the degree that any such application or related document requires the signature of the Landlord in its capacity as property owner in order to be processed, Landlord, in its capacity as property owner (**but not in its capacity as the municipal government having regulatory authority over any such matter**), agrees to sign such documents. Such a signature shall not be construed to or in any way have the effect of diminishing the authority or discretion of the City of Pendleton, as regulatory authority responsible for such matters, in its performance of its regulatory duties regarding such applications.

## **12. Insurance.**

12.1 On or before the earliest of: 1) the Commencement Date, or 2) the date Tenant takes possession of any portion of the Premises, or 3) the date Tenant commences or causes to commence any work of any type in or about the Premises, and continuing during the Term of this Lease and any occupancy of the Premises by Tenant following the expiration or termination of this Lease, Tenant will, at its sole expense, procure and maintain for the mutual benefit of Tenant and Landlord (including Landlord's officers, employees and agents acting within the scope of their employment or duties) a policy or primary and umbrella policies of commercial general liability insurance covering all operations by or on behalf of Tenant, providing insurance for bodily injury, death, and property damage liability and including coverage for contractual liability (including Tenant's indemnification obligations under this Lease).

12.2 The limits of liability under the insurance policy or policies shall not be less than those established for local public bodies under the Oregon Tort Claims Act, ORS 30.272 – 30.273, as amended. For purpose of illustration only (where the Act and these provisions differ, the Act shall govern), those limits are summarized as follows:

- A. For causes of action arising on or after July 1, 2013, and before July 1, 2014:
  - (i) For Personal Injury and Death, \$633,300 to any single claimant, and \$1,266,700 to all claimants.
  - (ii) For property damage or destruction, \$106,700 to any single claimant, and \$533,400 to all claimants.
- B. For causes of action arising on or after July 1, 2014 and before July 1, 2015:
  - (i) For Personal Injury and Death, \$666,700 to any single claimant, and \$1,333,300 to all claimants.
- C. For property damage or destruction, an increase over the prior year's limits proportional to the change in the Portland-Salem, OR-WA Consumer Price Index for All

Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, as determined by the State Court Administrator. For Causes of action arising on or after July 1, 2015 and before July 1, 2016, and for each year thereafter, an increase over the prior year's limits proportional to the change in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, as determined by the State Court Administrator.

**12.3 Tenant's insurance policies required by this Lease shall:**

- A. Be issued by insurance companies licensed to do business in Oregon with a general policyholder's ratings of at least A- and a financial rating of at least VI in the most current Bert's Insurance Reports available on the Commencement Date;
- B. Name Landlord as additional insured;
- C. Provide that the insurance not be canceled, non-renewed or coverage materially reduced unless thirty (30) days advance notice is given to Landlord; Language stating that the insurers "shall endeavor" to notify the certificate holder in the event of expiration, cancellation, termination, or material change will not be acceptable;
- D. Be non-assessable primary policies, and non-contributing with any insurance that Landlord may carry;
- E. Provide that any loss shall be payable notwithstanding any negligence of Landlord or Tenant which might result in a forfeiture of such insurance or the amount of proceeds payable; and
- F. Before or at the time Tenant's insurance is required under this Lease, and thereafter from time to time at Landlord's request, Tenant will furnish to Landlord evidence of insurance in the form of a certificate or other evidence reasonably satisfactory to Landlord that the insurance required by this Lease is in effect.

**13. Indemnification.** Tenant, at Tenant's sole cost and expense, will maintain, for the mutual benefit of Tenant, Landlord, and any leasehold mortgagee, property insurance covering loss or damage by fire and other risks an insurance policy insuring the fair market value of the Premises. If a special form type of insurance policy becomes unavailable, then Tenant will insure the improvements with coverage that is customary from time to time for comparable developments. Tenant shall be fully and exclusively responsible for insuring its facility. Indemnification. Except to the extent caused by Landlord, Tenant agrees to indemnify and hold Landlord harmless from any and all damages or claims which Landlord may be compelled to pay on account of injuries to person or property on the Premises where the aforesaid injuries are caused by Tenant, its agents, servants or employees, or by Tenant's breach of this Lease.

**14. Assignment and Subletting.**



14.1 Tenant shall have the right to assign this Lease or sublet the Premises or any part thereof, so long as the subtenant or assignee: (1) is of a character and quality similar to that of other businesses engaged in the types of activities described in the Intended Purpose of this Lease, and (2) has the financial net worth to enable it to meet its obligations under this Lease.

14.2 Tenant, as a corporation, may also assign or transfer this lease to a corporation into which Tenant is being merged or consolidated, and may assign or sublet its interest to a corporation that is a parent, subsidiary or affiliate of Tenant and which controls, directly or indirectly, not less than fifty percent (50%) of the outstanding stock of Tenant.

14.3 In any of the above circumstances, the assignment, transfer or sublease shall only take effect if the Tenant and the proposed assignee, transferee or subleasee promptly execute, acknowledge and deliver to Landlord an agreement in form and substance satisfactory to Landlord whereby these entities agree to be bound by and upon all the covenants, agreements, terms, provisions, and conditions which the Tenant is required to perform under the Lease.

14.4 If Tenant assigns its entire interest in this Lease to a party that expressly assumes in writing all obligations of Tenant under this Lease arising after the effective date of the assignment, Tenant shall be released or discharged from all of its covenants and obligations under this Lease, except such obligations as shall have accrued prior to the effective date of any such assignment or transfer; and Landlord agrees to look solely to Tenant's assignee for performance of such obligations. Otherwise Tenant shall continue to be responsible and bound by all terms and conditions of this Lease.

14.5 Tenant shall be responsible for any reasonable costs incurred by Landlord in connection with processing the assignment or sublease, including Landlord's reasonable attorneys' fees.

#### **15. Leasehold Mortgages.**

15.1 Tenant and every successor and assign of Tenant is hereby given the right by Landlord, without Landlord's prior written consent, to mortgage its interest in this Lease and assign its interest in this Lease as collateral security for such mortgage upon the condition that all rights acquired under such mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interest of Landlord herein, none of which covenants, conditions or restrictions is or shall be waived by Landlord by reason of the rights given Tenant to mortgage its interest in this Lease, except as expressly provided in this section.

15.2 If Tenant and/or Tenant's successors and assigns shall mortgage all or part of its interest in this Lease and if Tenant or the holder of such mortgage shall send to Landlord a true copy thereof together with written notice specifying the name and address of the mortgagee and the pertinent recording data with respect to such mortgage, Landlord agrees that so long as the

leasehold mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Landlord, the following provisions shall apply:

A. **Mortgage Consent.** There shall be no cancellation, surrender or modification of this Lease by joint action of Landlord and Tenant without the prior written consent of the leasehold mortgagee.

B. **Notices to Mortgagee.** Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of such notice upon the holder of the leasehold mortgage. The leasehold mortgagee shall have the same period, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such leasehold mortgagee's acts if they had been performed by Tenant.

C. **Insurance.** Landlord agrees that the name of the leasehold mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on the condition that the insurance proceeds be applied in the manner specified in this Lease and that the leasehold mortgage or collateral document so provide.

D. **New Lease.** Landlord agrees that in the event of termination of this Lease by reason of any default by Tenant, that Landlord will enter into a new lease for the Premises with the leasehold mortgagee or its nominee for the remainder of the Lease Term effective as of the date of such termination, at the rent and other charges, and upon the terms, provisions, covenants and agreement contained in this Lease, subject only to the rights, if any, of the parties then in possession of any part of the Premises, provided:

(i) The mortgagee or its nominee shall make written request upon Landlord for the new lease within fifteen (15) days after the date of termination and the written request shall be accompanied by any then due payment of rent and other charges under this Lease; and the mortgagee or nominee shall execute and deliver the new lease within fifteen (15) days after Landlord has delivered it.

(ii) The mortgagee or its nominee shall pay to Landlord, at the time of execution and delivery of the new lease, any and all sums which would then be due pursuant to this Lease but for such termination and, in addition thereto, any reasonable expenses, including reasonable attorney's fees, which Landlord shall have incurred by reason of such default, including the costs of negotiation, approval and recording the new lease.

(iii) The mortgagee or its nominee shall perform and observe all covenants in this Lease to be performed by Tenant and shall further remedy any other

conditions which Tenant was obligated to perform under the terms of this Lease.

(iv) Landlord shall not warrant possession of the Premises to Tenant or the leasehold mortgagee under the new lease.

(v) The new lease shall be expressly made subject to the rights, if any, of Tenant under this Lease.

(vi) The tenant under the new lease shall have the same right, title and interest in and to the Premises as Tenant has under this Lease.

E. Confirming Documentation. Landlord shall, upon request, execute, acknowledge and deliver to each leasehold mortgagee an agreement prepared at the sole cost and expense of Tenant, in form satisfactory to the leasehold mortgagee and to Landlord, between Landlord, Tenant and the leasehold mortgagee confirming the provisions of this Section. Any additional reasonable costs incurred by Landlord in connection with the agreement, including reasonable attorneys' fees, shall be paid by Tenant or the leasehold mortgagee.

F. The term "mortgage," as used in this section, shall include deeds of trust and/or whatever security instruments are used in the State of Oregon from time to time, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code.

## **16. Condemnation.**

16.1 In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (herein called a "**Total Taking**"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

16.2 In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (herein called a "**Partial Taking**"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be equitably reduced based on the acreage so taken and Tenant's loss of use of the remainder of the Premises. In the event of any Partial Taking, the condemnation

award given to either Landlord or Tenant shall be paid first to Tenant to restore the improvements on the Premises to a complete operational unit.

- 16.3 In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant. The portion of the award to be received by Landlord shall be based upon the taking of or injury to the fee simple estate in the Land, but not the improvements thereon. The portion of the award to be received by Tenant shall be based upon the taking and reduction of Tenant's leasehold estate created by this Lease, the taking of any improvements constructed or placed by Tenant on the Land, loss or interruption of Tenant's business and the cost of any restoration or repair necessitated by such taking or condemnation. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself in such proceedings, and Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings. Neither Landlord nor Tenant shall enter voluntarily into any binding agreement or settlement related to a Total Taking or a Partial Taking without the prior consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

**17. Liens.**

- 17.1 Tenant will not suffer or permit any construction liens to attach to the interest of Tenant in all or any part the Premises by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Tenant or any person occupying or holding an interest in all or any part of the improvements on the Premises. If any such lien is filed against the Premises, Tenant will cause the same to be discharged of record within sixty (60) days after the date of its filing by either payment, deposit, or bond.
- 17.2 If Tenant fails to discharge or bond off the lien, Landlord will have the right to pay the amount of the lien and Tenant will promptly reimburse Landlord for any such payment by Landlord, together with all costs and fees (including attorney fees) incurred by Landlord in connection with the lien.
- 17.3 Landlord will have the right to post and keep posted at all reasonable times on the Premises and on the improvements any notices of nonresponsibility for the protection of Landlord and of the Premises and improvements from any such lien.
- 17.4 Nothing in this Lease may be deemed to be, or be construed in any way as constituting, the consent or request of Landlord, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the

furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the improvements, or as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Landlord's interest in the Premises or against Landlord's interest, if any, in the improvements. Tenant is not intended to be an agent of Landlord for the construction of improvements on the Premises.

**18. Estoppel Certificate.** Within fifteen (15) days after a request made by the other party, the party to whom the request was made will, without charge, give a certification in writing to any person, firm, or corporation reasonably specified by the requesting party stating: 1) that this Lease is then in full force and effect and unmodified, or if modified, stating the modifications; 2) that Tenant is not in default in the payment of Rent to Landlord, or if in default, stating the default; 3) that as far as the maker of the certificate knows, neither party is in default in performing or observing any other covenant or condition to be performed or observed under this Lease, or if either party is in default, stating the default; 4) that as far as the maker (if Landlord) of the certificate knows, no event has occurred that authorized, or with the lapse of time will authorize, Tenant to terminate this Lease, or if such an event has occurred, stating the event; 5) that as far as the maker of the certificate knows, neither party has any offsets, counterclaims, or defenses, or, if so, stating them; 6) the dates to which Rent has been paid; and 7) any other matters that may be reasonably requested by the requesting party.

**19. Confidentiality.** Landlord acknowledges that Landlord may become privy to confidential information of Tenant, in addition to information regarding the terms of this Lease. Landlord therefore agrees to take all steps to ensure that any information with regard to Tenant, Tenant's proposed use of the Land and improvements thereon and/or to this transaction, shall remain confidential and shall not be disclosed or revealed to outside sources by Landlord or by its employees, officers, agents, counsel, accountants or representatives except when reasonably necessary. The provisions of this paragraph shall survive termination of this Lease.

**20. Quiet Enjoyment.** Subject to the terms and conditions of this Lease, so long as Tenant is not in default under this Lease, Landlord covenants and agrees that Tenant is entitled to quiet possession of the Premises during the Term.

**21. No Representations.** Tenant acknowledges that it has examined the Premises and that no representations regarding the condition of the Premises have been made by Landlord or any agent or person acting for Landlord (except as expressly provided in this Lease). Before any construction commences on the Premises, Tenant will conduct tests of the subsurface and soil conditions to ascertain the suitability of the Premises for the contemplated Project and will furnish any fill and take any other steps that may be required before the commencement of construction. Landlord will have no liability because of, or as a result of, the existence of any subsurface or soil condition, either on the Premises or on adjacent land, that might affect Tenant's construction.

**22. Default.** In the event of the failure of either party to comply with any term, covenant or condition of this Lease for a period of thirty (30) days after the defaulting party's receipt of written notice from the other party of such failure (provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, the defaulting party shall not be in default hereunder if it commences to cure within such thirty (30) day period and prosecutes the cure to completion in good faith and with due diligence), then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages.

**23. Remedies.**

**23.1 Termination.** If the Tenant defaults, this Lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not this Lease is terminated by the election of Landlord or otherwise, Landlord will be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the Premises and its improvements, and remove any persons or property by legal action or by self help with the use of reasonable force and without liability for damages and without having accepted a surrender.

**23.2 Reletting.** Following reentry, Landlord will use reasonable efforts to relet the Premises and its improvements on their fair market rent and terms, and in that connection may make any suitable alterations or refurbish the improvements, or both, or change the character or use of the Premises and its improvements. Landlord may relet all or part of the Premises for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

**23.3 Damages.** In the event of termination or retaking of possession after default, Landlord will be entitled to recover immediately, without waiting until the due date, any future rent or, until the date fixed for expiration of the Term, the following amounts as damages:

A. The loss of rent from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured.

B. The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs incurred in accordance with this Lease, or any other expense occasioned by Tenant's default including but not limited to any reasonable remodeling or repair costs, attorney fees, court costs, broker commissions (prorated for the unexpired Term), and advertising costs.

C. Any excess of the value of the rent and all of Tenant's other obligations under this Lease over the reasonable expected return from the Premises for the period

commencing on the earlier of the date of trial or the date the Premises is relet, and continuing through the end of the Term.

**23.4 Right to Sue More than Once.** Landlord may sue periodically to recover damages during the period corresponding to the remainder of the Term, and no action for damages will bar a later action for damages subsequently accruing.

**23.5 Remedies Cumulative.** The foregoing remedies will be in addition to and will not exclude any other remedy available to Landlord under applicable law and may be exercised concurrently or successively in such order or combination as Landlord in its sole discretion may elect. All the covenants and conditions herein required to be performed by each party shall be considered to be continuing covenants and unless otherwise expressly stated shall exist for the terms of this Lease and any renewals and extensions thereof.

#### **24. General Provisions.**

**24.1 Time Is of the Essence.** Time is of the essence as to the performance of all the covenants, conditions, and agreements of this Lease.

**24.2 Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of Oregon.

**24.3 Entire Agreement; Counterparts.** This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. Tenant and Landlord mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of counterparts, each of which will constitute an original, but all of which will constitute one Lease.

**24.4 Binding Effect.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns.

**24.5 Interpretation.** In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease shall be construed against either party hereto. Landlord and Tenant acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved against the drafting party shall not be used in the interpretation of this Lease or any exhibit or amendment hereto.

**24.6 Headings, Captions, and References.** The headings and captions contained in this Lease are for convenience only and do not in any way define, describe, limit, or amplify the scope or

intent of this lease or any term or provision in it. The use of the term *herein* refers to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of a masculine or neuter gender in this Lease includes the masculine, feminine, and neuter genders and the singular form includes the plural when the context so requires.

24.7 Waiver. The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.

24.8 Invalidity of Particular Provisions. If any term or provision of this Lease (or the application of the Lease to any person or circumstance) is, to any extent, held to be invalid or unenforceable, the remainder of this Lease (or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable) will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

24.9 Relationship of Parties. Nothing contained in this Lease is to be deemed or construed, either by the parties to this Lease or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between Landlord and Tenant. It is understood and agreed that neither party to this Lease, in performing any of the duties or obligations imposed upon either party or exercising any rights or benefits granted hereunder, shall at any time hold itself out to be the agent, servant, or employee of the other party in any manner whatsoever.

24.10 Brokerage. Landlord and Tenant represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Lease, but have negotiated directly with each other.

24.11 Notices. All notices, elections, demands, requests, payments and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts, addressed as indicated in section 2, above, or at such other address as may hereafter be designated in writing by either party hereto. The time and date on which mail is postmarked shall be the time and date on which such communication is deemed to have been given.

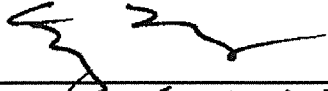
24.12 Memorandum of Lease. Promptly after the full execution of this Lease, Landlord and Tenant shall execute and (at Tenant's expense) shall record at the Umatilla County Records Office, a memorandum of this lease, specifying the Effective Date, the Expiration Date, the Premises, and such other provisions hereof as the parties may mutually agree to incorporate therein, which memorandum of lease shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant's rights hereunder.



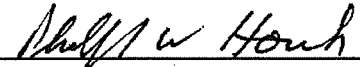
[REMAINDER OF PAGE BLANK. SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

OREGON SOLAR LAND HOLDINGS LLC:

  
\_\_\_\_\_  
Troy Snyder, For TSS Capital, its Member

THE CITY OF PENDLETON:

  
\_\_\_\_\_  
Phillip Houk, Mayor

Attest:

  
\_\_\_\_\_  
Andrea Denton, City Recorder



APPROVED BY CITY COUNCIL ON April 1, 2014

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Nancy Kerns, City Attorney

  
\_\_\_\_\_  
Steve Chrisman, Airport Manager



CITY OF PENDLETON

SOLAR LEASE - Exhibit A

DATE: 08/22/14  
BY: [Signature]  
FOR: [Signature]  
PAGE: 1



112 SE Court Pendleton, OR 97801 (541) 276-2010 FAX (541) 276-0016

---

To: Cypress Creek Renewables  
3250 Ocean Park Blvd., Ste. 355  
Santa Monica, CA 90405  
Attn: Chris Norqual

Date: November 12, 2014  
Order No. 22262AM  
Re: No Known Address  
Pendleton, OR 97801

Your File No.: Pendleton

We have enclosed our Preliminary Title Report pertaining to order number 22262AM:

***Thank you for the opportunity to serve you. Your business is appreciated!***

If you have any questions or need further assistance, please do not hesitate to contact your Title Officer listed below.

Sincerely,

Richard Brown  
Title Officer



112 SE Court Pendleton, OR 97801  
(541) 276-2010 FAX (541) 276-0016

---

## STATUS OF RECORD TITLE

Chris Norqual  
Cypress Creek Renewables  
3250 Ocean Park Blvd., Ste. 355  
Santa Monica, CA 90405  
Your Reference No. Pendleton

November 10, 2014  
Title Number: 22262AM  
Title Officer: Richard Brown  
Fee: \$200.00

### **We have searched the status of record title as to the following described property:**

#### TRACT I:

The North half of Section 6, Township 2 North, Range 32 East of the Willamette Meridian, in the County of Umatilla, State of Oregon.

#### TRACT II:

Beginning at the center of Section 6, Township 2 North, Range 32 East, of the Willamette Meridian, Umatilla County, Oregon; thence Easterly on the East-West center line of said Section 6 to the quarter corner common to Sections 6 and 5; thence South 0°20' East along the Section line common to Sections 6 and 5, a distance of 207.7 feet, more or less, to a point that is South 0°20' East 2900.5 feet from the section corner common to Section 31, 32, 6 and 5; thence Easterly 1391.37 feet; thence Southerly to the North right-of-way line of the Oregon State Highway U.S. No. 30 (the relocated Old Oregon Trail Highway); thence Westerly along the Northerly right-of-way line of the Oregon State Highway U.S. No. 30, to a point on the said Northerly right-of-way line that is 200 feet East of the North-South center line of Section 6; thence Northwesterly to a point on the said North-South center line, 200 feet North of the Northerly right-of-way line of the Oregon State Highway, U.S. No. 30; thence Northerly along the said North-South center line to the center of said Section 6, which is the point of beginning.

Together with all that portion of the East half of the Southwest quarter of Section 5, lying North of Highway No. 30, South of Pendair Heights (unrecorded subdivision) and West of Tax Lots 306, 308, 312, 392 and Public Road known as "N" Street as described in Book 343, Page 341, East of the Willamette Meridian, Umatilla County, Oregon.

Excepting therefrom that portion conveyed by Deeds recorded June 11, 1974 in Book 338, Page 95 and rerecorded January 15, 1975 in Book 343, Page 341, Umatilla County Microfilm Records.

#### **Vestee:**

City of Pendleton, Oregon, a municipal corporation

**and dated as of October 27, 2014 at 7:30 a.m.**

**Said property is subject to the following on records matters:**

**Tax Information**

Taxes assessed under Code No. 16-01 Account No. 148721 Map No. 2N 32 06 00 00100

NOTE: The 2014-2015 Taxes: Exempt

Taxes assessed under Code No. 16-01 Account No. 136308 Map No. 2N 32 05 00 00318

NOTE: The 2014-2015 Taxes: Exempt

1. Reservation of materials, including the terms and provisions contained therein, in deed from United States of America.

Recorded: March 2, 1950

Book: 192, Page: 1

The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.

2. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:

Granted To: State of Oregon, by and through its Department of Transportation

Recorded: January 15, 1975

Book: 343, Page: 344

3. An easement including the terms and provisions thereof, affecting the portion of said premises and for the purposes stated therein as set forth in instrument:

Granted To: Ruth Ann Tuckwell

Recorded: August 5, 1996

Reel: 294, Page: 1553

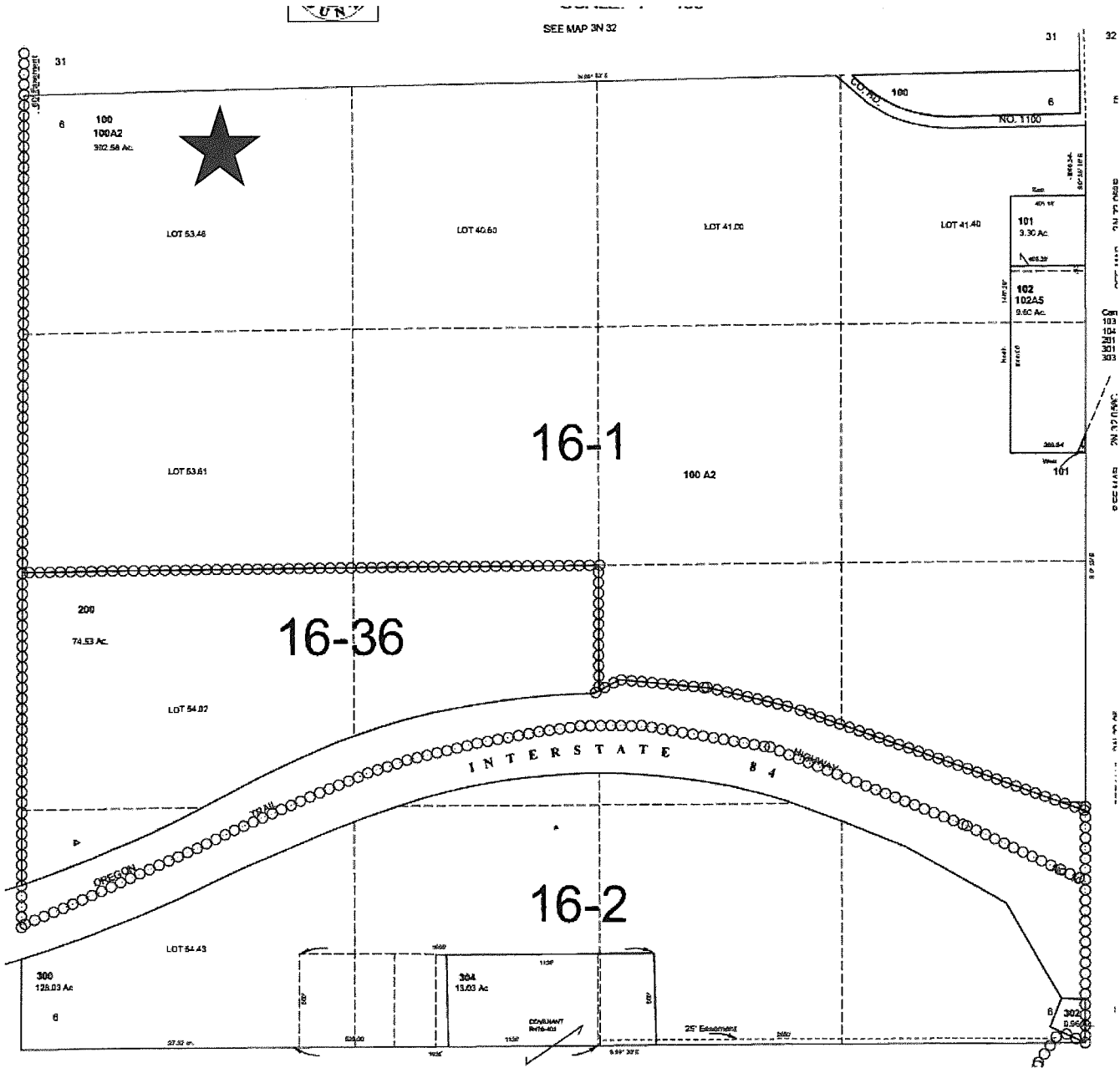
4. The rights of the public in and to that portion of the herein described property lying within the limits of public roads, streets or highways.
5. Rights of tenants under existing leases or tenancies.

NOTE: Any map or sketch enclosed as an attachment herewith is furnished for information purposes only to assist in property location with reference to streets and other parcels. No representation is made as to accuracy and the company assumes no liability for any loss occurring by reason of reliance thereon.

THIS IS NOT A TITLE REPORT, A COMMITMENT TO ISSUE TITLE INSURANCE OR A GUARANTEE OF ANY KIND. No liability is assumed with this report. The fee charged for this service does not include supplemental reports or other services. Further dissemination of the information in this report in a form purporting to insure title to the herein described land is prohibited by law.

***"Superior Service with Commitment and Respect for Customers and Employees"***





2N32050000318 Airport Road  
Pendleton, OR 97801

THIS MAP IS FURNISHED AS AN ACCOMODATION STRICTLY FOR THE PURPOSES OF GENERALLY LOCATING THE LAND. IT DOES NOT REPRESENT A SURVEY OF THE LAND OR IMPLY ANY REPRESENTATIONS AS TO THE SIZE, AREA OR ANY OTHER FACTS RELATED TO THE LAND SHOWN THEREOF



## EXHIBIT D-1

### SELLER'S MOTIVE FORCE PLAN

#### A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE

The average estimated generation is 12,066.7 MWh with an annual linearized degradation rate of 0.71% identified in the module power output schedule of the Canadian Solar warranty. The data was post-processed to account for a 1% availability loss and a 1.4% AC loss to the POI.

Month	Net Yield Year 1 (MWh)
January	769.2
February	833.7
March	1,063.5
April	1,106.6
May	1,212.8
June	1,194.4
July	1,193.7
August	1,174.2
September	1,008.6
October	967.7
November	797.9
December	744.5
PV SYST Total + Post Processing	12,066.7 MWh

#### B. MINIMUM ANNUAL DELIVERY CALCULATION

The Minimum Annual Delivery of the facility is based on the estimated most adverse natural conditions reasonably expected. To calculate this, the P99 results identified in the PVsyst report was used with the subtraction of the assumed availability loss, AC collector system loss and a 25% contingency.

Minimum estimated first-year generation is 7,851.6 MWh.

Subsequent years are subject to the 0.71% module degradation factor.

#### C. MAXIMUM ANNUAL DELIVERY CALCULATION

The Maximum Annual Delivery of the facility is based on the estimated probability model identified in the PVsyst report. The P1 results identified in the PVsyst report are used with the subtraction of the assumed availability loss and AC collector system loss.

Maximum estimated first-year generation is 13,600.3 MWh. Subsequent years are subject to the 0.71% module degradation factor.

**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION OF**  
**MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*

See attached letter



www.RRCcompanies.com

7662 SW Mohawk St.  
Tualatin, OR 97062  
503.342.4064

May 14, 2015  
Chris Norqual  
Cypress Creek Renewables  
3250 Ocean Park Blvd, Ste. 355  
Santa Monica, CA 90405  
(310) 581.6299 Office

Dear Chris,

RRC is providing this production yield estimate to Cypress Creek Renewables for the Pendleton Solar Facility. The estimate provides the likely maximum, and minimum and typical Net Output of the Facility. The assumptions used in the estimate are documented within the attached PVsyst modeling report, assuming the installation of the Canadian Solar Modules. The data from PVsyst was post-processed, as discussed below, to provide these values.

#### MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE

The average estimated generation is 12,066.7 MWh with an annual linearized degradation rate of 0.71% identified in the module power output schedule of the Canadian Solar warranty. The data was post-processed to account for a 1% availability loss and a 1.4% AC loss to the POI.

Month	Net Yield Year 1 (MWh)
January	769.2
February	833.7
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August	1,174.2
September	1,008.6
October	967.7
November	797.9
December	744.5
PV SYST Total + Post Processing	12,066.7 MWh

TABLE 1. TYPICAL MONTHLY DELIVERY SCHEDULE - P50 WITH POST PROCESSING LOSSES

#### A. MINIMUM ANNUAL DELIVERY CALCULATION

The Minimum Annual Delivery of the facility is based on the estimated most adverse natural conditions reasonably expected. To calculate this, the P99 results identified in the PVsyst report was used with the subtraction of the assumed available loss, AC collector system loss and a 25% contingency.

Minimum estimated first-year generation is 7,851.6 MWh.

Subsequent years are subject to the 0.71% module degradation factor.

#### B. MAXIMUM ANNUAL DELIVERY CALCULATION

The Maximum Annual Delivery of the facility is based on the estimated probability model identified in the PVsyst report. The P1 results identified in the PVsyst report are used with the subtraction of the assumed available loss and AC collector system loss.

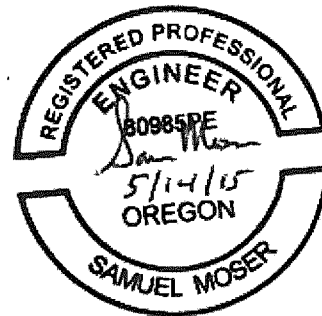
Maximum estimated first-year generation is 13,600.3 MWh.

Subsequent years are subject to the 0.71% module degradation factor.

Regards,

Samuel Moser

Attached:     1. PVSYST Pendleton Pages 1-6  
              2. Canadian Solar Datasheet, Pages 1-2



## Grid-Connected System: Simulation parameters

**Project :** **Pendleton\_Pro prospector\_TGY**

**Geographical Site** **SimonsFarm\_Pro prospector\_TGY**

**Country** **United States**

<b>Situation</b>	Latitude	36.3°N	Longitude	76.9°W
Time defined as	Legal Time	Time zone UT-5	Altitude	18 m
	Albedo	0.20		

**Meteo data:** **SimonsFarm\_Pro prospector\_TGY** TMY - Prospector

**Simulation variant :** **Pendleton\_Pro prospector\_TGY**

Simulation date 13/05/15 15h48

### Simulation parameters

<b>Collector Plane Orientation</b>	Tilt	30°	Azimuth	0°
<b>60 Sheds</b>	Pitch	7.70 m	Collector width	3.95 m
Inactive band	Top	0 m	Bottom	0 m
Shading limit angle	Gamma	24.77 °	Occupation Ratio	51.3 %
Shadings electrical effect	Cell size	12.5cm	Strings in width	1

**Models used** Transposition Perez Diffuse Imported

**Horizon** Free Horizon

**Near Shadings** Mutual shadings of sheds Electrical effect

### PV Array Characteristics

<b>PV module</b>	Si-poly	Model	<b>CS6X - 305P</b>
	Manufacturer		Canadian Solar Inc.

Number of PV modules	In series	19 modules	In parallel	1450 strings
Total number of PV modules	Nb. modules	27550	Unit Nom. Power	305 Wp
Array global power	Nominal (STC)	<b>8403 kWp</b>	At operating cond.	7503 kWp (50°C)
Array operating characteristics (50°C)	U mpp	609 V	I mpp	12316 A
Total area	Module area	<b>52864 m²</b>	Cell area	48281 m²

**Inverter** Model **SMA SC2200-US (PVSyst 6) 150223**

	Manufacturer	SMA		
Characteristics	Operating Voltage	570-950 V	Unit Nom. Power	2000 kWac

Inverter pack	Nb. of inverters	3 units	Total Power	6000 kWac
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### PV Array loss factors

Array Soiling Losses

Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.
7.6%	5.0%	3.5%	1.8%	0.5%	0.6%	1.0%	1.1%	0.8%	0.9%	2.7%	5.0%

Thermal Loss factor	Uc (const)	25.0 W/m²K	Uv (wind)	1.2 W/m²K / m/s
Wiring Ohmic Loss	Global array res.	0.84 mOhm	Loss Fraction	1.5 % at STC
LID - Light Induced Degradation			Loss Fraction	1.3 %
Module Quality Loss			Loss Fraction	0.0 %
Module Mismatch Losses			Loss Fraction	0.5 % at MPP
Incidence effect, ASHRAE parametrization	IAM = 1 - bo (1/cos i - 1)		bo Param.	0.05

## Grid-Connected System: Simulation parameters (continued)

**User's needs :**

Unlimited load (grid)

## Grid-Connected System: Main results

**Project :** Pendleton\_Pro prospector\_TGY

**Simulation variant :** Pendleton\_Pro prospector\_TGY

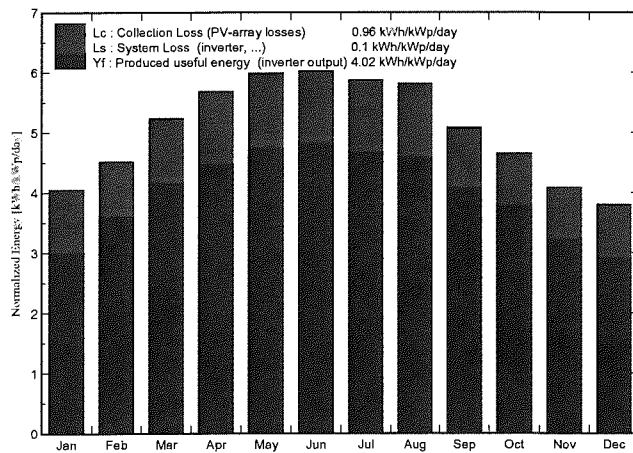
### Main system parameters

PV Field Orientation	System type	<b>Grid-Connected</b>		
PV modules	Sheds disposition, tilt	30°	azimuth	0°
PV Array	Model	CS6X - 305P	Pnom	305 Wp
Inverter	Nb. of modules	27550	Pnom total	<b>8403 kWp</b>
Inverter pack	SMA SC2200-US (PVSyst 6)	150223	Pnom	2000 kW ac
User's needs	Nb. of units	3.0	Pnom total	<b>6000 kW ac</b>
	Unlimited load (grid)			

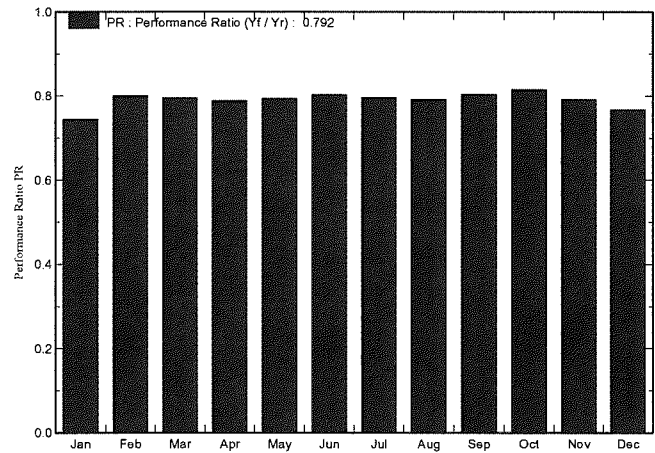
### Main simulation results

System Production	<b>Produced Energy</b>	<b>12331460 kW/year</b>	Specific prod.	1468 kWh/kWp/year
	<b>Performance Ratio PR</b>	<b>79.2 %</b>		

Normalized productions (per installed kWp): Nominal power 8403 kWp



Performance Ratio PR



### Pendleton\_Pro prospector\_TGY Balances and main results

	GlobHor	T Amb	GlobInc	GlobEff	EArray	E_Grid	EffArrR	EffSysR
	kWh/m²	°C	kWh/m²	kWh/m²	MWh	MWh	%	%
January	78.4	6.01	125.7	108.0	806	786	12.13	11.83
February	91.4	5.42	126.6	113.8	873	852	13.04	12.73
March	135.2	8.01	162.5	148.3	1113	1087	12.96	12.65
April	159.9	14.16	170.7	158.0	1158	1131	12.83	12.54
May	189.1	20.49	185.8	173.3	1268	1239	12.91	12.62
June	191.8	23.48	180.9	168.2	1248	1221	13.05	12.76
July	190.5	26.46	182.3	168.7	1246	1220	12.93	12.65
August	175.5	26.56	180.4	167.3	1226	1200	12.86	12.58
September	134.5	22.99	152.6	142.5	1054	1031	13.06	12.77
October	110.0	15.62	144.4	135.3	1013	989	13.27	12.96
November	80.9	12.02	122.6	112.3	836	815	12.89	12.58
December	71.2	3.94	118.0	104.1	781	761	12.52	12.20
Year	1608.2	15.48	1852.7	1699.9	12623	12331	12.89	12.59

Legends:	GlobHor	Horizontal global irradiation	EArray	Effective energy at the output of the array
	T Amb	Ambient Temperature	E_Grid	Energy injected into grid
	GlobInc	Global incident in coll. plane	EffArrR	Effic. Eout array / rough area
	GlobEff	Effective Global, corr. for IAM and shadings	EffSysR	Effic. Eout system / rough area

## Grid-Connected System: Loss diagram

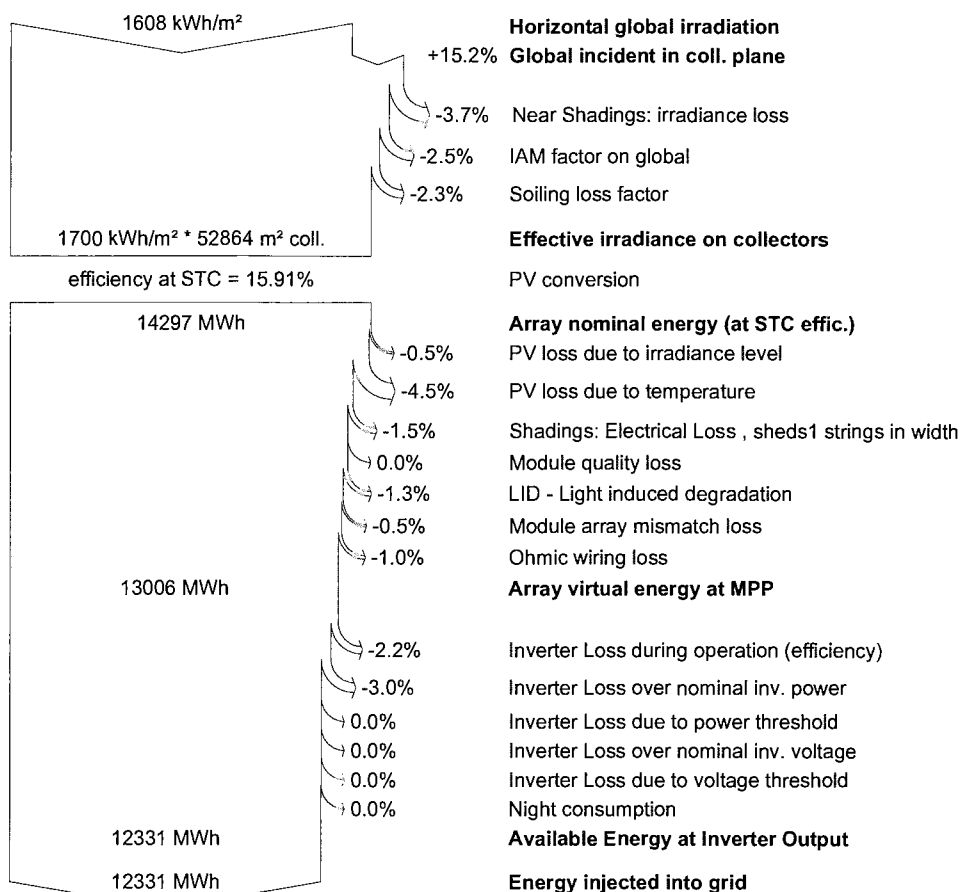
**Project :** Pendleton\_Pro prospector\_TGY

**Simulation variant :** Pendleton\_Pro prospector\_TGY

### Main system parameters

	System type	<b>Grid-Connected</b>	
PV Field Orientation	Sheds disposition, tilt	30°	azimuth 0°
PV modules	Model	CS6X - 305P	Pnom 305 Wp
PV Array	Nb. of modules	27550	Pnom total <b>8403 kWp</b>
Inverter	SMA SC2200-US (PVSyst 6) 150223		Pnom 2000 kW ac
Inverter pack	Nb. of units	3.0	Pnom total <b>6000 kW ac</b>
User's needs	Unlimited load (grid)		

### Loss diagram over the whole year





## Grid-Connected System: P50 - P90 evaluation

**Project :** Pendleton\_Pro prospector\_TGY

**Simulation variant :** Pendleton\_Pro prospector\_TGY

<b>Main system parameters</b>	System type	<b>Grid-Connected</b>		
PV Field Orientation	Sheds disposition, tilt	30°	azimuth	0°
PV modules	Model	CS6X - 305P	Pnom	305 Wp
PV Array	Nb. of modules	27550	Pnom total	<b>8403 kWp</b>
Inverter	SMA SC2200-US (PVSyst 6)	150223	Pnom	2000 kW ac
Inverter pack	Nb. of units	3.0	Pnom total	<b>6000 kW ac</b>
User's needs	Unlimited load (grid)			

### Evaluation of the Production probability forecast

The probability distribution of the system production forecast for different years is mainly dependent on the meteo data used for the simulation, and depends on the following choices:

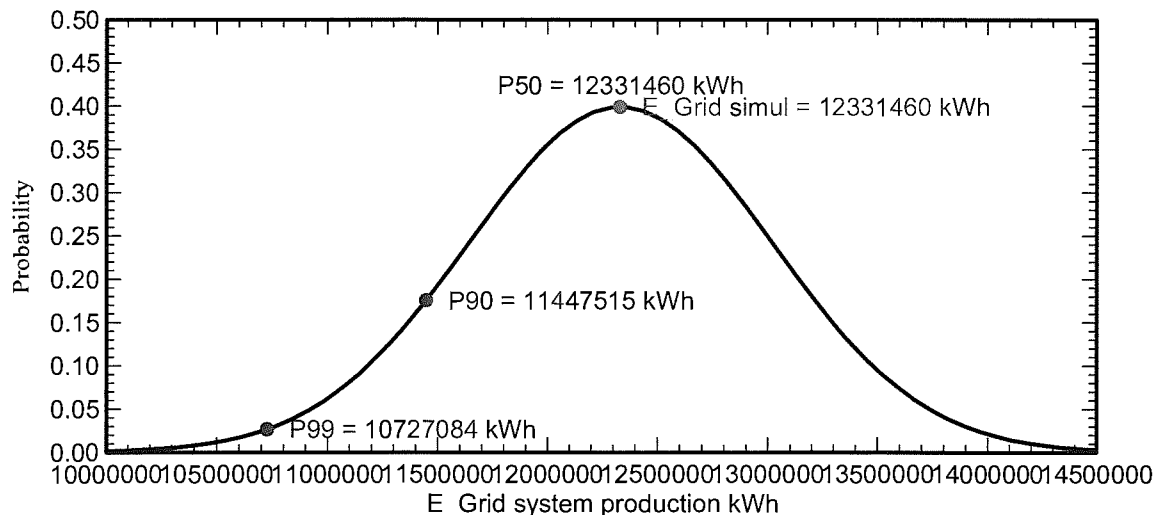
Meteo data source	Prospector
Meteo data	Kind TMY, multi-year
Specified Deviation	Climate change 0.0 %
Year-to-year variability	Variance 5.0 %

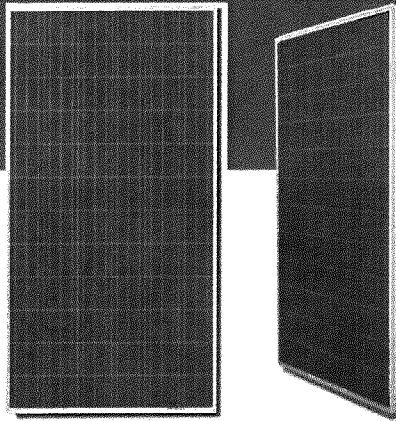
The probability distribution variance is also depending on some system parameters uncertainties

Specified Deviation	PV module modelling/parameters	2.0 %	
	Inverter efficiency uncertainty	0.5 %	
	Soiling and mismatch uncertainties	1.0 %	
	Degradation uncertainty	1.0 %	
Global variability (meteo + system)	Variance	5.6 %	(quadratic sum)

Annual production probability	<b>Variability</b>	<b>689 MWh</b>
	<b>P50</b>	<b>12331 MWh</b>
	<b>P90</b>	<b>11448 MWh</b>
	<b>P99</b>	<b>10727 MWh</b>

### Probability distribution





## MAX POWER

**CS6X-300 | 305 | 310P**

### THE BEST IN CLASS

Canadian Solar's modules are the best in class in terms of power output and long term reliability. Our meticulous product design and stringent quality control ensure our modules deliver an exceptionally high PV energy yield in live PV system as well as in PVsyst's system simulation. Our accredited in-house PV testing facilities guarantee all module component materials meet the highest quality standards possible.

### PRODUCT | KEY FEATURES



Excellent module efficiency up to 16.16%



High performance at low irradiance above 96.0%



Positive power tolerance up to 5w



High PTC rating up to 91.94%



Anti-glare module surface available



IP67 junction box long-term weather endurance

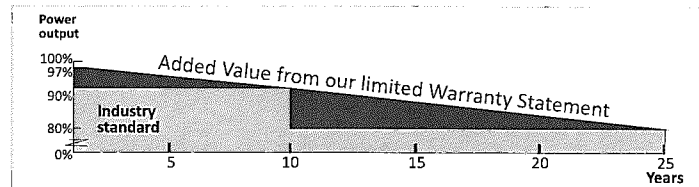


Heavy snow load up to 5400pa



Salt mist, ammonia and blown sand resistance, for seaside, farm and desert environment

### PRODUCT | WARRANTY & INSURANCE



25 Year Industry leading linear power output warranty  
10 Year Product warranty on materials and workmanship



Canadian Solar provides 100% non-cancellable, immediate warranty insurance

### PRODUCT & MANAGEMENT SYSTEM | CERTIFICATES\*

IEC 61215 / IEC 61730: VDE / CE / MCS / SII / KEMCO / CEC AU / CQC / INMETRO  
UL 1703 / IEC 61215 performance: CEC listed (US) / FSEC (US Florida)  
UL 1703: CSA | IEC 61701 ED2: VDE | IEC 62716: TUV | IEC60068-2-68: SGS  
PV CYCLE (EU) | UNI9177 Reaction to Fire: Class 1

ISO9001:2008 | Quality management system  
ISO14001:2004 | Standards for environmental management system  
QC080000:2012 | The certificate for hazardous substances process management  
OHSAS 18001:2007 | International standards for occupational health and safety



\*Please contact your sales representative for the entire list of certificates applicable to your products

### CANADIAN SOLAR INC.

Founded in 2001 in Canada, Canadian Solar Inc., (NASDAQ: CSIQ) is the world's TOP 3 solar power company. As a leading manufacturer of solar modules and PV project developer with about 6 GW of premium quality modules deployed around the world in the past 13 years, Canadian Solar is one of the most bankable solar companies in Europe, USA, Japan and China. Canadian Solar operates in six continents with customers in over 90 countries and regions. Canadian Solar is committed to providing high quality solar products, solar system solutions and services to customers around the world.



## ELECTRICAL DATA | STC

Electrical Data	CS6X-300P	CS6X-305P	CS6X-310P
Nominal Maximum Power (P <sub>max</sub> )	300 W	305 W	310 W
Optimum Operating Voltage (V <sub>mp</sub> )	36.1 V	36.3 V	36.4 V
Optimum Operating Current (I <sub>mp</sub> )	8.30 A	8.41 A	8.52 A
Open Circuit Voltage (V <sub>oc</sub> )	44.6 V	44.8 V	44.9 V
Short Circuit Current (I <sub>sc</sub> )	8.87 A	8.97 A	9.08 A
Module Efficiency	15.63 %	15.90 %	16.16 %
Operating Temperature	-40 °C~+85 °C		
Maximum System Voltage	1000 V (IEC) / 1000 V (UL) / 600 V (UL)		
Maximum Series Fuse Rating	15 A		
Application Classification	Class A		
Power Tolerance	0 ~ +5 W		

\* Under Standard Test Conditions (STC) of irradiance of 1000W/m<sup>2</sup>, spectrum AM 1.5 and cell temperature of 25°C.

## ELECTRICAL DATA | NOCT

Electrical Data	CS6X-300P	CS6X-305P	CS6X-310P
Nominal Maximum Power (P <sub>max</sub> )	218 W	221 W	225 W
Optimum Operating Voltage (V <sub>mp</sub> )	32.9 V	33.1 V	33.2 V
Optimum Operating Current (I <sub>mp</sub> )	6.61 A	6.68 A	6.77 A
Open Circuit Voltage (V <sub>oc</sub> )	41.0 V	41.2 V	41.3 V
Short Circuit Current (I <sub>sc</sub> )	7.19 A	7.27 A	7.36 A

\* Under Nominal Operating Cell Temperature (NOCT), irradiance of 800 W/m<sup>2</sup>, spectrum AM 1.5, ambient temperature 20°C, wind speed 1 m/s.

## MODULE | MECHANICAL DATA

Specification	Data
Cell Type	Poly-crystalline, 6inch
Cell Arrangement	72 (6 x 12)
Dimensions	1954 x 982 x 40mm (76.93 x 38.7 x 1.57in)
Weight	22kg (48.5 lbs)
Front Cover	3.2mm tempered glass
Frame Material	Anodized aluminium alloy
J-BOX	IP67, 3 diodes
Cable	4mm <sup>2</sup> (IEC)/4mm <sup>2</sup> &12AWG 1000 V(UL1000V)/12AWG(UL600V), 1150mm/1300mm**
Connectors	MC4 or MC4 comparable
Standard Packaging	24pcs, 608kg (quantity and weight per pallet)
Module Pieces per container	528pcs (40'HQ)

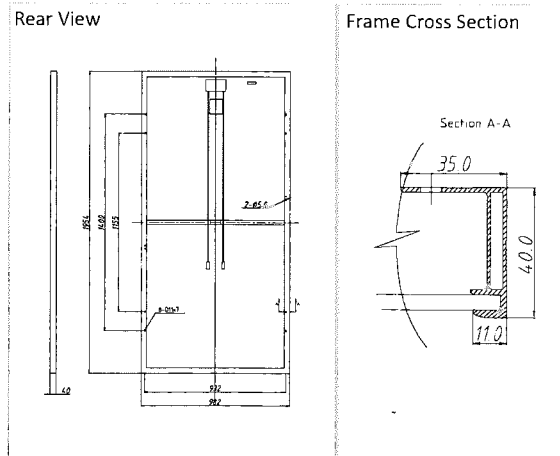
## TEMPERATURE CHARACTERISTICS

Specification	Data
Temperature Coefficient (P <sub>max</sub> )	-0.43 %/°C
Temperature Coefficient (V <sub>oc</sub> )	-0.34 %/°C
Temperature Coefficient (I <sub>sc</sub> )	0.065 %/°C
Nominal Operating Cell Temperature	45±2 °C

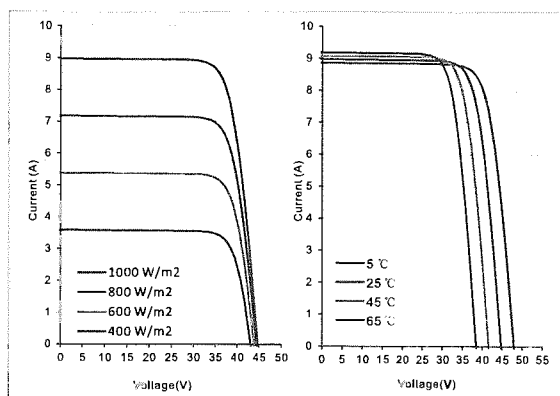
## PERFORMANCE AT LOW IRRADIANCE

Industry leading performance at low irradiance, +96.5% module efficiency from an irradiance of 100W/m<sup>2</sup> to 200W/m<sup>2</sup> (AM 1.5, 25 °C)

## MODULE | ENGINEERING DRAWING



## CS6X-305P | I-V CURVES



## Partner Section

As there are different certification requirements in different markets, please contact your sales representative for the specific certificates applicable to your products. The specification and key features described in this Datasheet may deviate slightly and are not guaranteed. Due to on-going innovation, research and product enhancement, Canadian Solar Inc. reserves the right to make any adjustment to the information described herein at any time without notice. Please always obtain the most recent version of the datasheet which shall be duly incorporated into the binding contract made by the parties governing all transactions related to the purchase and sale of the products described herein.

\*\*The CS6X with cable of 1300mm is only for Canadian market.

## **EXHIBIT E**

### **START-UP TESTING**

Start-Up Testing shall consist of the Quality Assurance/Quality Control plans and procedures developed by the EPC Contractor.

Contractor shall submit to Owner a final copy of its quality assurance/quality control (QA/QC) plan for review not later than 45 days after contract execution for Owner review and comment.

The QA/QC program shall include, but is not limited to, such procedures and systems as the following:

- Road construction
- Rebar and conduit placement
- Concrete placement and testing
- All wire insulation testing—Megger testing or very low frequency testing
- Mechanical system—trackers, mounting structures, tracker controls
- Factory testing of inverters and transformers by the manufacturer
- PV source open-circuit measurements—VOC at combiner boxes
- Fuse tests
- Termination pull testing
- All visual inspections
- Grounding continuity testing
- Earth-ground resistivity testing
- PV module inspection and manufacturer documentation of factory test per the manufacturer's existing program
- Metering and instrumentation calibration testing
- Step-up transformer field testing
- Inverter phase rotation and matching with utility
- Relay settings/transfer trip/etc. at the point of interconnection to Owner
- Other Contractor-prescribed procedures

All QA/QC testing procedures onsite shall be witnessed and documented by a qualified representative of Contractor. Owner shall observe and witness QA/QC as necessary and at its discretion. A qualified field engineer/QA representative of Contractor shall date and sign documentation indicating completion and acceptance of each onsite QA/QC test procedures.

Following installation, Contractor shall provide a proposed commissioning and startup plan for the Plant.

Contractor shall coordinate with Owner to develop an acceptable commissioning plan that includes a checkout and startup procedure. This work will assure: that systems are activated in a manner that is safe for personnel as well as for the equipment, that Contractor work is complete and according to the contract documents, and that the systems perform as required by the contract documents and are ready to be turned over to Owner. As the construction and installation of the systems nears completion, Contractor shall prepare punch lists and conduct system walk-downs, sub-system and system checkouts, startups, testing, and turnovers.

The final approved Commissioning Procedures shall, at minimum, include the following:

- Safety plan during startup and commissioning
- Review of all QA/QC testing on the DC and AC sides of inverters
- Detailed procedure for PV Plant startup, including switching sequencing
- Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected
- Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.
- Testing the system control and monitoring system to verify that it is performing correctly
- Testing the communication system for offsite monitoring

- Testing the Plant metering and protective relaying in conjunction with the utility during energization procedures
- Detailed procedure for interface and initialization with the grid
- Documentation of successful startup and commissioning procedure
- Written notification submitted by Contractor to Owner that the completion of Commissioning has occurred

Upon successful completion of energizing and startup, the Plant will be considered operable.

**EXHIBIT F**  
**SELLER AUTHORIZATION TO RELEASE**  
**GENERATION DATA TO PACIFICORP**

See Attached Letter

**Seller Authorization to Release Generation Data to PacifiCorp**

Transmission Services  
Attn: Senior Vice President, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

**RE: Pendleton Interconnection Request**

Dear Sir:

Pendleton Solar, LLC hereby voluntarily authorizes PacifiCorp's Transmission business unit to share Pendleton Solar LLC's generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group. Pendleton Solar LLC acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.



\_\_\_\_\_  
Name

President  
Title

05/08/14  
**Date**

**EXHIBIT G**  
**SCHEDULE 37 AND PRICING SUMMARY TABLE**

	On-Peak (cents/kWh)	Off-Peak (cents/kWh)
2016	3.85	2.84
2017	4.06	3.01
2018	4.33	3.20
2019	4.55	3.41
2020	4.78	3.84
2021	4.92	4.25
2022	5.58	4.83
2023	5.79	5.02
2024	8.84	7.36
2025	9.01	7.49
2026	9.17	7.64
2027	9.34	7.78
2028	9.52	7.94
2029	9.68	8.11
2030	9.85	8.28
2031	10.03	8.46



**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 1

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

For power purchased from Qualifying Facilities with a nameplate capacity of 10,000 kW or less or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 10,000 kW or less. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

**Definitions****Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Qualifying Electricity**

Electricity that meets the requirements of "qualifying electricity" set forth in the Oregon Renewable Portfolio Standards: ORS 469A.010, 469A.020, and 469A.025.

**Renewable Qualifying Facility**

A Qualifying Facility that generates Qualifying Electricity.

**Wind Qualifying Facility**

A Renewable Qualifying Facility that generates Qualifying Electricity using wind as its motive force.

**Baseload Renewable Qualifying Facility**

A Renewable Qualifying Facility that generates Qualifying Electricity using any qualifying resource other than wind or solar.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

**On-Peak Hours or Peak Hours**

On-Peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005, the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April and for the period between the last Sunday in October and the first Sunday in November.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 2

**Definitions (continued)****Off-Peak Hours**

All hours other than On-Peak.

**Excess Output**

Excess Output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-Peak Price as described and calculated under pricing option 4 (Non-Firm Market Index Avoided Cost Price) for all Excess Output.

**Same Site**

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

**Person(s) or Affiliated Person(s)**

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit and the facilities at issue are independent family-owned or community-based projects. A unit of Oregon local government may also be a "passive investor" in a community-based project if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

**Shared Interconnection and Infrastructure**

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

**Dispute Resolution**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 3

**Dispute Resolution (continued)**

Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution.

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

**Pricing Options****1. Standard Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Standard Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price. The Standard Fixed Avoided Cost pricing option is available to all Qualifying Facilities. The Standard Fixed Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs as set forth on page 5.

**2. Renewable Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Renewable Qualifying Facility and the Company and will not change during the term of the contract. Renewable Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price. The Renewable Fixed Avoided Cost pricing option is available only to Renewable Qualifying Facilities. A Renewable Qualifying Facility choosing the Renewable Fixed Avoided Cost pricing option must cede all Green Tags generated by the facility, as defined in the standard contract, to the Company during the Renewable Resource Deficiency Period identified on page 6, except that a Renewable Qualifying Facility retains ownership of all Environmental Attributes generated by the facility, as defined in the standard contract, during the Renewable Resource Sufficiency Period identified on page 6 and during any period after the first 15 years of a longer term contract (up to 20 years).

**3. Firm Market Indexed Avoided Cost Prices**

Firm Market Index Avoided Cost Prices are available to Qualifying Facilities that contract to deliver firm power. Monthly on-peak / off-peak prices paid are a blending of Intercontinental Exchange (ICE) Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

**4. Non-Firm Market Index Avoided Cost Prices**

Non-Firm Market Index Avoided Cost Prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay or, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are 93 percent of a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak firm index prices. The monthly blending matrix is available upon request. The Non-Firm Market Index Avoided Cost pricing option is available to all Qualifying Facilities. The Non-Firm Market Index Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 4

**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of the Pricing Options specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Renewable or Standard Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the renewable or standard fixed prices as provided in this schedule. On-Peak and Off-Peak are defined in the definitions section of this schedule.

**Firm Market Indexed and Non-Firm Market Index Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the market prices calculated at the time of delivery. On-Peak and Off-Peak are defined in the definitions section of this schedule.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 5

**Avoided Cost Prices**
**Standard Fixed Avoided Cost Prices**

<b>Fixed Prices ¢/kWh</b>						
Deliveries During Calendar Year	Base Load QF (1)		Wind QF (2)		Solar QF	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)	(c)	(d)	(e)	(f)
2014	3.98	2.62	3.71	2.35	3.98	2.62
2015	3.94	2.86	3.67	2.59	3.94	2.86
2016	3.85	2.84	3.58	2.57	3.85	2.84
2017	4.06	3.01	3.79	2.73	4.06	3.01
2018	4.33	3.20	4.04	2.92	4.33	3.20
2019	4.55	3.41	4.26	3.12	4.55	3.41
2020	4.78	3.84	4.48	3.54	4.78	3.84
2021	4.92	4.25	4.62	3.95	4.92	4.25
2022	5.58	4.83	5.28	4.53	5.58	4.83
2023	5.79	5.02	5.48	4.71	5.79	5.02
2024	6.97	3.91	3.72	3.59	4.32	3.91
2025	7.11	4.00	3.81	3.68	4.42	4.00
2026	7.31	4.13	3.94	3.80	4.56	4.13
2027	7.52	4.29	4.09	3.96	4.73	4.29
2028	7.74	4.44	4.24	4.11	4.89	4.44
2029	8.00	4.64	4.44	4.30	5.10	4.64
2030	8.25	4.83	4.62	4.48	5.30	4.83
2031	8.42	4.93	4.72	4.57	5.40	4.93
2032	8.59	5.03	4.81	4.66	5.51	5.03
2033	8.76	5.13	4.91	4.75	5.62	5.13
2034	8.94	5.23	5.01	4.85	5.74	5.23
2035	9.11	5.33	5.10	4.94	5.84	5.33
2036	9.30	5.44	5.21	5.05	5.97	5.44
2037	9.50	5.56	5.32	5.16	6.09	5.56
2038	9.70	5.68	5.44	5.27	6.22	5.68
2039	9.90	5.80	5.55	5.38	6.35	5.80
2040	10.11	5.91	5.66	5.48	6.48	5.91

- (1) Capacity Contribution to Peak for Avoided Proxy Resource and Base Load Qualifying Facility resource are assumed 100%.
- (2) The standard avoided cost price for wind is reduced by an integration charge of \$2.55/MWh (\$2012). If Wind Qualifying Facility is not in PacifiCorp's balancing authority area, then no reduction is required.

(continued)

P.U.C. OR No. 36

 Issued August 11, 2014  
 R. Bryce Dalley, Vice President, Regulation

 Second Revision of Sheet No. 37-5  
 Canceling First Revision of Sheet No. 37-5  
**Effective for service on and after August 20, 2014**  
 Advice No. 14-007

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 6

**Avoided Cost Prices (Continued)**
**Renewable Fixed Avoided Cost Prices**
**Fixed Prices ¢/kWh**

Deliveries During Calendar Year (1)	Base Load Renewable QF (2)		Wind QF (3,4)		Solar QF (5)	
	On-Peak	Off-Peak	On-Peak	Off-Peak	On-Peak	Off-Peak
	Energy Price	Energy Price	Energy Price	Energy Price	Energy Price	Energy Price
	(a)	(b)	(c)	(d)	(e)	(f)
2014	3.98	2.62	3.71	2.35	3.98	2.62
2015	3.94	2.86	3.67	2.59	3.94	2.86
2016	3.85	2.84	3.58	2.57	3.85	2.84
2017	4.06	3.01	3.79	2.73	4.06	3.01
2018	4.33	3.20	4.04	2.92	4.33	3.20
2019	4.55	3.41	4.26	3.12	4.55	3.41
2020	4.78	3.84	4.48	3.54	4.78	3.84
2021	4.92	4.25	4.62	3.95	4.92	4.25
2022	5.58	4.83	5.28	4.53	5.58	4.83
2023	5.79	5.02	5.48	4.71	5.79	5.02
2024	11.48	7.36	8.24	7.05	8.84	7.36
2025	11.70	7.49	8.39	7.17	9.01	7.49
2026	11.91	7.64	8.54	7.31	9.17	7.64
2027	12.14	7.78	8.71	7.45	9.34	7.78
2028	12.36	7.94	8.87	7.61	9.52	7.94
2029	12.58	8.11	9.02	7.77	9.68	8.11
2030	12.81	8.28	9.18	7.93	9.85	8.28
2031	13.05	8.46	9.34	8.10	10.03	8.46
2032	13.29	8.66	9.51	8.30	10.21	8.66
2033	13.53	8.87	9.68	8.50	10.39	8.87
2034	13.79	9.07	9.86	8.69	10.58	9.07
2035	14.04	9.27	10.03	8.89	10.78	9.27
2036	14.32	9.49	10.23	9.09	10.99	9.49
2037	14.59	9.72	10.42	9.32	11.19	9.72
2038	14.87	9.96	10.60	9.55	11.39	9.96
2039	15.15	10.21	10.80	9.79	11.60	10.21
2040	15.47	10.43	11.02	10.00	11.85	10.43

(1) For the purpose of determining: (1) when the Renewable Qualifying Facility is entitled to renewable avoided cost prices; and (2) the ownership of Environmental Attributes and the transfer of Green Tags to PacifiCorp, the Renewable Resource Sufficiency Period ends December 31, 2023, and the Renewable Resource Deficiency Period begins January 1, 2024.

(2) The renewable avoided cost price during the Renewable Resource Deficiency Period (2024-2040) has been increased by an integration charge of \$2.55/MWh (\$2012).

(3) During the Renewable Resource Deficiency Period, the renewable avoided cost price for a Wind Qualifying Facility will be adjusted by adding the difference between the avoided integration costs and the Qualifying Facility's integration costs. If the Wind Qualifying Facility is in PacifiCorp's balancing authority area (BAA), the adjustment is zero (integration costs cancel each other out). If the Wind Qualifying Facility is not in PacifiCorp's BAA, \$2.55/MWh (\$2012) will be added for avoided integration charges.

(4) During Renewable Resource Sufficiency Period, the renewable avoided cost price for a Wind Qualifying Facility has been reduced by an integration charge of \$2.55/MWh (\$2012) for Wind Qualifying Facilities located in PacifiCorp's BAA (in-system). If a Wind Qualifying Facility is not in PacifiCorp's BAA, \$2.55/MWh (\$2012) will be added for avoided integration charges.

(5) The renewable avoided cost payment during the Renewable Resource Deficiency Period (2024-2040) has been increased by an integration charge of \$2.55/MWh (\$2012).

(continued)

P.U.C. OR No. 36

Second Revision of Sheet No. 37-6

Canceling First Revision of Sheet No. 37-6

Issued August 11, 2014

**Effective for service on and after August 20, 2014**

R. Bryce Dalley, Vice President, Regulation

Advice No. 14-007

**Qualifying Facilities Contracting Procedure**

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

**1. Qualifying Facilities up to 10,000 kW**

**APPLICATION:** To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement****A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 8

**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions as defined in this Schedule (i.e., standard fixed price, renewable fixed price);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Public Utility Commission of Oregon in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)



**B. Procedures (continued)**

- 5 After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

(continued)

**II. Process for Negotiating Interconnection Agreements (continued)****A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

**B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

**EXHIBIT H**  
**GREEN TAG ATTESTATION AND BILL OF SALE**

Subject to Green Tags ownership as defined in Section 5.5, from the period commencing on \_\_\_\_ and ending on \_\_\_\_, \_\_\_\_\_ ("Seller") hereby sells, transfers and delivers to PacifiCorp the Green Tags (including all Green Tag Reporting Rights) associated with the generation of Net Output under the Power Purchase Agreement (Renewable Energy) between Seller and PacifiCorp dated [\_\_\_\_\_] (the "PPA"), as described below, in the amount of one Green Tag for each megawatt hour generated. Defined terms used in this Green Tag Attestation and Bill of Sale (as indicated by initial capitalization) shall have the meaning set forth in the PPA.

Facility name and location: \_\_\_\_\_ Fuel Type: \_\_\_\_\_

Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_

Energy Admin. ID no.: \_\_\_\_\_

Dates

MWh generated

\_\_\_\_\_

\_\_\_\_\_

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to PacifiCorp is its one and only sale of the Green Tags referenced herein;
- iii) the Facility generated Output in the amount indicated above; and
- iv) to the best of Seller's knowledge, each of the Green Tags associated with the generation Output have been generated and sold by the Facility.

This Green Tag Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to PacifiCorp all of Seller's right, title and interest in and to the Green Tags (including Green Tag Reporting Rights), as set forth above.

Seller's Contact Person: [\_\_\_\_\_]

WITNESS MY HAND,

\_\_\_\_\_

a \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

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

This Attestation may be disclosed by Seller and PacifiCorp to others, including the Center for Resource Solutions and the public utility commissions having jurisdiction over PacifiCorp, to substantiate and verify the accuracy of PacifiCorp's advertising and public communication claims, as well as in PacifiCorp's advertising and other public communications.

### ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption ("Assignment") is effective as of MAY 15 2018 ("Effective Date") by and among, RES – Ag Oak Lea LLC, an Oregon limited liability company ("ASSIGNOR") and Oak Lea Digester LLC, an Oregon limited liability company ("ASSIGNEE").

### BACKGROUND

1. PACIFICORP and ASSIGNOR entered into that certain POWER PURCHASE AGREEMENT, dated December 1, 2011 ("Agreement");
2. ASSIGNOR desires to assign all of its rights, obligations and liabilities under the Agreement to ASSIGNEE, under the terms set forth herein; and
3. ASSIGNEE desires to accept and assume all of the rights, obligations and liabilities of ASSIGNOR under the Agreement, under the terms set forth herein.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. ASSIGNOR hereby assigns to ASSIGNEE the Agreement and all of ASSIGNOR's rights and obligations thereunder, and ASSIGNEE hereby accepts and assumes all of ASSIGNOR's rights, obligations and liabilities under the Agreement. The parties agree, however, that any obligation of Assignor under said Agreement arising prior to the Effective Date shall remain the responsibility of Assignor, as the parties intend for Assignee to only be liable for the performance of the Agreement from and after the Effective Date.
2. This Assignment and any actions arising out of or relating to this Assignment shall be governed by and construed and interpreted in accordance with the laws of the State of Oregon without regard to the conflict of law provisions thereof.

[Signature page follows]

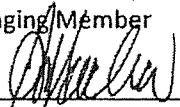
IN WITNESS WHEREOF the parties hereto have executed this Assignment as of the Effective Date set forth above.

**ASSIGNOR**

RES – AG OAK LEA LLC

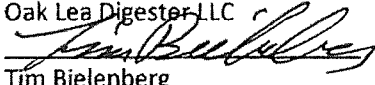
By: RES Group 1 Holdco LLC  
Its: Managing Member

By: Revolution Energy Solutions LLC  
Its: Managing Member

By:   
Print Name: Brian Barlia  
Title: Chairperson of the Board of Managers  
Date: 5/14/18

**ASSIGNEE**

Oak Lea Digester LLC

By:   
Print Name: Tim Bielenberg  
Title: Manager/Member  
Date: 5/15/18

**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**OR SOLAR 5, LLC**  
**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and**  
**not an Intermittent Resource]**  
**AND**  
**PACIFICORP**

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EXHIBIT D-1: SELLER'S MOTIVE FORCE PLAN

EXHIBIT D-2: ENGINEER'S CERTIFICATION OF MOTIVE FORCE PLAN

EXHIBIT E: START-UP TESTING

EXHIBIT F: SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO  
PACIFICORP

EXHIBIT G: SCHEDULE 37 AND PRICING SUMMARY TABLE

EXHIBIT H: GREEN TAG ATTESTATION AND BILL OF SALE



## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 17<sup>th</sup> day of June, 2015, is between OR Solar 5, LLC, "**Seller**" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp**." (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

### RECITALS

A. Seller intends to construct, own, operate and maintain the Merrill solar photo voltaic facility for the generation of electric power, including interconnection facilities, located in Merrill, Klamath County, Oregon with a Facility Capacity Rating of 8,000 -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** ("**Facility**"); and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on November 1, 2016 ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on December 1, 2016 ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 19,444,000 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall (choose one) ☒ sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp ☐ sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## **AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

### **SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1 **“As-built Supplement”** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **“Average Annual Generation”** shall have the meaning set forth in Section 4.2.

1.3 **“Billing Period”** means, unless otherwise agreed to, the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 **“CAMD”** means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Green Tags.

1.5 **“Commercial Operation Date”** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.5.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.5.2 The Facility has completed Start-Up Testing;

1.5.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;

- 1.5.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).
- 1.5.5 Seller has complied with the security requirements of Section 10.
- 1.5.6 PacifiCorp has received an executed copy of **Exhibit F**—Seller’s Interconnection Request.
- 1.6 **“Commission”** means the Oregon Public Utilities Commission.
- 1.7 **“Contract Price”** means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1, 5.2, and 5.3.
- 1.8 **“Contract Year”** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.
- 1.9 **“Credit Requirements”** means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.
- 1.10 **“Default Security”**, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at **Mid-Columbia** (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.
- 1.11 **“Effective Date”** shall have the meaning set forth in Section 2.1.
- 1.12 **“Energy Delivery Schedule”** shall have the meaning set forth in Section 4.5.
- 1.13 **“Environmental Attributes”** shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water.

Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.14 **“Excess Output”** shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

1.15 **“Facility”** shall have the meaning set forth in Recital A.

1.16 **“Facility Capacity Rating”** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.17 **“FERC”** means the Federal Energy Regulatory Commission, or its successor.

1.18 **“Generation Interconnection Agreement”** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp’s interconnection facilities required to accommodate deliveries of Seller’s Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.19 **“Green Tags”** means (1) the Environmental Attributes associated with all Net Output, together with (2) all WREGIS Certificates; and (3) the Green Tag Reporting Rights associated with such energy, Environmental Attributes and WREGIS Certificates, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified", or otherwise. One (1) Green Tag represents the Environmental Attributes made available by the generation of one (1) MWh of energy from the Facility. Provided however, that “Green Tags” do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.20 **“Green Tag Reporting Rights”** means the exclusive right of a purchaser of Green Tags to report exclusive ownership of Green Tags in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, and include reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

1.21 **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.22 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.23 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.24 **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.25 **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.26 **“Nameplate Capacity Rating”** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.27 **“Net Energy”** means the energy component, in kWh, of Net Output.

1.28 **“Net Output”** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.29 **“Net Replacement Power Costs”** shall have the meaning set forth in Section 11.4.1.

1.30 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.31 **“On-Peak Hours”** means the hours between 6 a.m. Pacific Prevailing Time (“PPT”) and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.32 **“Point of Delivery”** means the high side of the Seller’s step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp’s distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.33 **“Prime Rate”** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time

quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.34 **“Prudent Electrical Practices”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.35 **“QF”** means **“Qualifying Facility,”** as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.36 **“Renewable Resource Deficiency Period”** means the period from 2024 through 2040.

1.37 **“Renewable Resource Sufficiency Period”** means the period from 2014 through 2023.

1.38 **“Replacement Price”** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.39 **“Required Facility Documents”** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.40 **“Schedule 37”** means the Schedule 37 of Pacific Power & Light Company’s Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit G**.

1.41 **“Scheduled Commercial Operation Date”** shall have the meaning set forth in Recital C.

1.42 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.43 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.44 “**Termination Date**” shall have the meaning set forth in Section 2.4.

1.45 “**WREGIS**” means the Western Renewable Energy Generation Information System or successor organization in case WREGIS is ever replaced.

1.46 “**WREGIS Certificate**” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules dated July 15, 2013.

1.47 “**WREGIS Operating Rules**” means the operating rules and requirements adopted by WREGIS, dated July 15, 2013.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (“**Effective Date**”).

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

By June 30, 2016, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on October 31, 2036 (“**Termination Date**”).

## **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

- 3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.
  - 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
  - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a limited liability company duly organized and validly existing under the laws of Delaware.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
  - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy,



insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 Compliance with Ownership Requirements in Commission Proceedings No. UM 1129 and UM 1610. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request. These ownership requirements, as well as the dispute resolution provision governing any disputes over a QF's entitlement to the standard rates and standard contract with respect to the requirements, are detailed in Schedule 37.

i. Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

- a. Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
- b. Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- c. Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- d. Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- e. **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

_____	Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or
___x___	Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase (a) all Net Output from the Facility delivered to the Point of Delivery and (b) all Green Tags associated with the output or otherwise resulting from the generation of energy by the Facility (which shall come from the Facility and from no other source), for the periods during which the Green Tags are required to be transferred to PacifiCorp under the terms of Section 5.5.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 19,444,000 kWh per Contract Year (“**Average Annual Generation**”). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 11,667,000 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 21,778,000 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

4.6 Transfer of Title to Green Tags; Documentation of Green Tags Transfers. Subject to the Green Tags ownership as defined in Section 5.5, title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the Net Output at the Facility that gives rise to such Green Tags. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the 10th day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale in the form attached as **Exhibit H** for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program or successor organization in case the Center for Resource Solutions is replaced by another party over the life of the contract. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags, except that when Seller is required to transfer Green Tags to PacifiCorp under Section 5.5, PacifiCorp will pay all fees

required by WREGIS relating to the Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller will use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of WREGIS Certificates to PacifiCorp, and transfer such WREGIS Certificates to PacifiCorp, in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form approved by PacifiCorp, enter into a Qualified Reporting Entity Services Agreement with a third-party authorized to act as a Qualified Reporting Entity, or elect to act as its own WREGIS-defined Qualified Reporting Entity. Seller shall promptly give PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by CAMD, upon notification by CAMD that any transfer contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp. Without limiting the generality of PacifiCorp's ownership of the Green Tag Reporting Rights, PacifiCorp may report under such program that such Green Tags purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfer. Seller shall reasonably cooperate in any registration by PacifiCorp of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which PacifiCorp may wish to register or maintain registration of the Facility by providing copies of all such information as PacifiCorp reasonably required for such registration.

## **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of three pricing options: Standard Fixed Avoided Cost Prices ("Fixed Price Standard"), Renewable Fixed Avoided Cost Prices ("Fixed Price Renewable"), or Firm Market Indexed Avoided Cost Prices ("Firm Electric Market"), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility's contract. Seller has selected the following (Seller to initial one):

_____	Fixed Price Standard
___X___	Fixed Price Renewable
_____	Firm Electric Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit G**.

5.2 (Fixed Price Standard Seller Only). In the event Seller elects the Fixed Price Standard pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.3 (Fixed Price Renewable Seller Only). In the event Seller elects the Fixed Price Renewable pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak

rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller 93 percent of a blended market index price for day-ahead firm energy at MidColumbia, California Oregon Border (COB), Four Corners and Palo Verde market indices as reported by the Intercontinental Exchange (ICE), for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

#### 5.5 Environmental Attributes

5.5.1 (Fixed Price Standard Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement throughout the Term.

5.5.2 (Fixed Price Renewable Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes during the Renewable Resource Sufficiency Period, and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Scheduled Initial Delivery Date. Subject to the foregoing, Seller shall transfer the Green Tags to PacifiCorp in accordance with Section 4.5 during the Renewable Resource Deficiency Period.

### **SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six months' prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1, 5.2, and 5.3 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating

or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

## **SECTION 8: METERING**

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

## **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## **SECTION 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- ☒ Cash Escrow
- ☐ Letter of Credit
- ☐ Senior Lien
- ☐ Step-in Rights
- ☐ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

### **[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

### **[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

### **[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller



shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS  
ALTERNATIVE]**

**10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).**

Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.

11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

## 11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

## 11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

11.3.2 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price

from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

#### 11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

#### 11.4.2 Recoupment of Damages.

Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.

Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

### **SECTION 12: INDEMNIFICATION AND LIABILITY**

#### 12.1 Indemnities.

Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of

injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an

insurance company or companies rated not lower than “B+” by the A.M. Best Company the insurance coverage specified below:

Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

#### **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or

availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and

the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

## **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

## **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

## **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the

Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

#### **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

#### **SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

#### **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.



22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

### **SECTION 23: NOTICES**


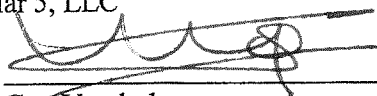
23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	OR Solar 5, LLC 1200 Brickell Avenue - Suite 1800 Miami, FL 33131 Attn: President Attn: Secretary Attn: General Counsel Phone: (347) 703 9595 Phone: (646) 467 3966 Facsimile: (786) 221 4237
<b>All Invoices:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as street address above)  Attn: Accounting Phone: (848) 213 5374 Facsimile: (786) 221 4237
<b>Scheduling:</b>	(same as street address above)  Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	(same as street address above)  Attn: Operations Phone: (305) 560 7539 Facsimile: (786) 221 4237
<b>Payments:</b>	(same as street address above)  Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as street address above)  Attn: Accounting Phone: (848) 213 5374 Facsimile: (786) 221 4237
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	Account No.: 3290299660 ABA Routing No.: 266086554 Swift Code: CITI US 33 Bank Name: Citibank, N.A. Branch Address: 2750 Aventura Blvd, Miami, FL 33180
<b>Credit and Collections:</b>	(same as street address above)  Attn: Credit Manager, Suite 700 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	(same as street address above)  Attn: Accounting Phone: (848) 213 5374 Facsimile: (786) 221 4237
<b>With Additional Notices of an Event of Default or Potential</b>	(same as street address above)  Attn: PacifiCorp General Counsel Phone: (503) 813-5029	OR Solar 5, LLC 1200 Brickell Avenue - Suite 1800 Miami, FL 33131 Attn: President

Notices	PacifiCorp	Seller
<b>Event of Default to:</b>	Facsimile: (503) 813-7252	Attn: Secretary Attn: General Counsel Phone: (347) 703 9595 Phone: (646) 467 3966 Fax: (786) 221 4237

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp	OR Solar 5, LLC
By: 	By: 
Name: <u>Bruce Griswold</u>	Name: <u>Guy Vanderhaegen</u>
Title: <u>Director, Short-Term Origination and</u>	Title: <u>President</u>
<u>QF Contracts</u>	
Date: <u>June 17, 2015</u>	Date: <u>June 22, 2015</u>

BWS 6-9-2015

## **ADDENDUM A**

### **Jury Trial Waiver**

PacifiCorp and OR Solar 5, LLC ("OR Solar 5") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum A to the PPA is entered into by and between PacifiCorp and OR Solar 5 and is intended to be interpreted and applied to the PPA.

Whereas, the Parties for their respective business purposes have an interest in not presenting a dispute to a jury for trial should a dispute arise between the Parties;

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

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

This Addendum A to the PPA is executed and made effective this 17<sup>th</sup> day of June, 2015.

PacifiCorp

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

Name: Bruce Griswold

Title: Director, Short-Term Origination  
and QF Contracts

OR Solar 5, LLC

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

Name: Guy Vanderhaegen

Title: President

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**  
**[Seller to Complete]**

Seller's Facility consists of an 8.0MWac solar photovoltaic project including PV panels, inverters, and single axis tracking system. More specifically, the inverter at the Facility is described as:

**Number of Inverters: 4**

**Model:** Sunny Central 2000 at 50 C

**Number of Phases:** Three

**Rated Output (kW):** 2000

**Rated Output (kVA):** 2,200 / 2,080 / 2,000 kVA

**Rated Voltage (line to line):** 347 to 424 Vac

**Maximum kW Output:** 2000 kW

**Maximum kVA Output:** 2200 kVA

**Minimum kW Output:** 0 kW

**Facility Annual Degradation Rate:** 0.5 %

---

**Facility Capacity Rating:** 8,000 kW

---

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

---

Transformer: 1.5 %, Tracker Motor: 0 % , Data Acquisition and Aux Loads: 0 %

---

**Values above are percentage loss of Total output and losses are already accounted for in the expected output in Exhibit D-1**

---

**Location of the Facility:** The Facility is to be constructed in the vicinity of Merrill, Klamath County, Oregon. The location is more particularly described as follows:

GPS: 42° 02'77.75"N, 121°61'06.75"W

Parcel ID: R-4110-00200-01100-000

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): ----0.95 lagging to 0.95 leading ----- **Power factor requirements will meet PacifiCorp standard interconnection procedures.**

## **EXHIBIT B**

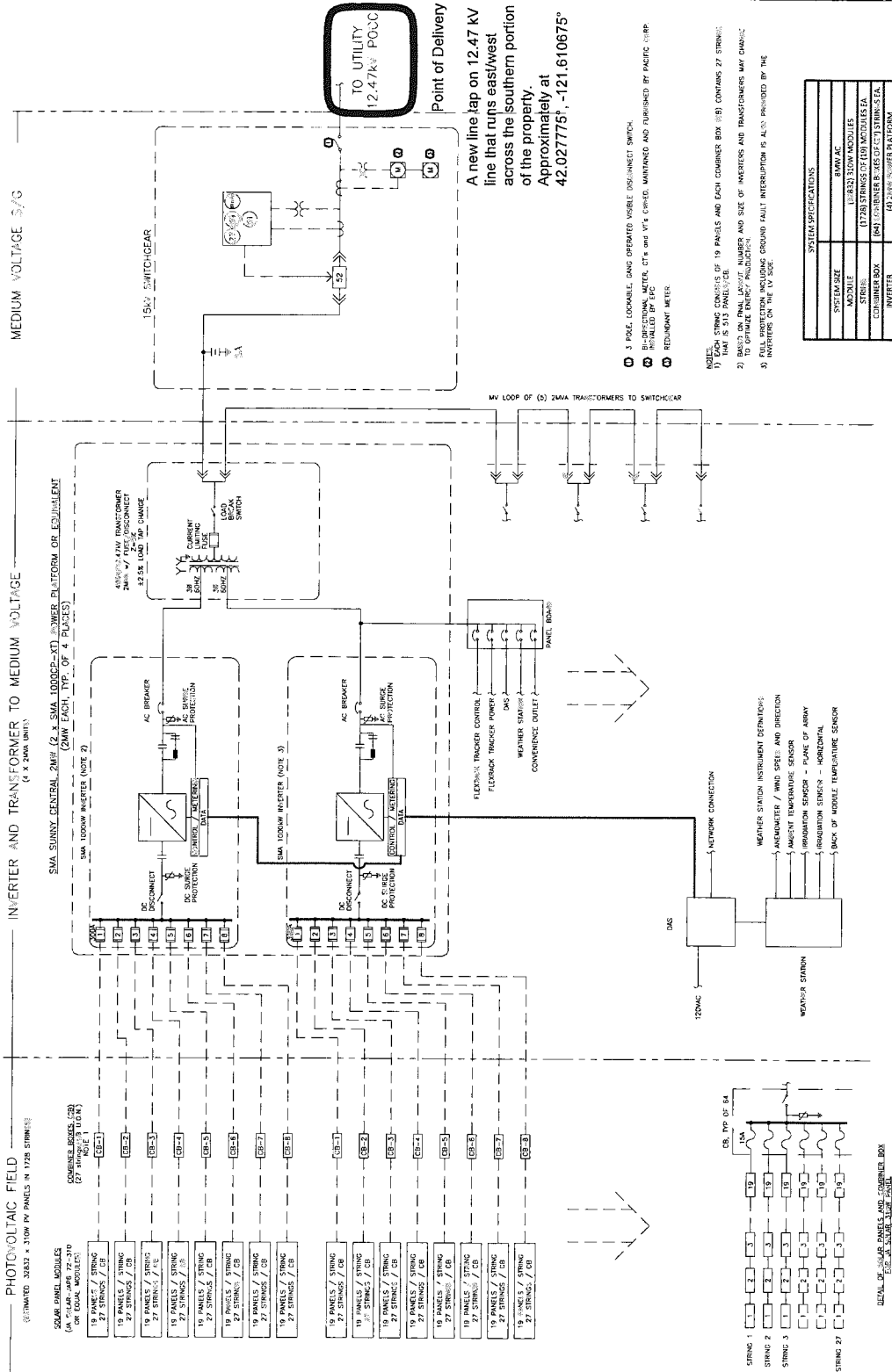
### **SELLER'S INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery  
The Point of Metering will be at the Point of Delivery, which is located at a new line tap on PacifiCorp's 12.47 kV line that runs east/west across the southern portion of the property approximately at 42.027775°, -121.610675°.
2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.  
Please see attached layout.



ELECTRICAL BLOCK DIAGRAM (HSAT OPTION)

### SINGLE LINE DIAGRAM

**FOR INTERCONNECT APPLICATION ONLY**

CONFIDENTIALITY STATEMENT: THIS DRAWING IS THE PROPERTY OF SOLVDA DESIGN & ENGINEERING. THIS INFORMATION IS CONFIDENTIAL AND IS TO BE USED ONLY IN CONNECTION WITH WORK RECEIVED BY SOLVDA. ALL RIGHT IS TO BE RESERVED TO ORIGIN. WITHOUT VIOLATING PROPRIETARY RIGHTS, SOLVDA

**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

QF Certification: QF15-733-000

Interconnection Agreement: Due June 30, 2016\_\_\_\_\_

Fuel Supply Agreement, if applicable (as applicable)

Ground Lease Agreement: Purchase option with Thomas R. Barnell and Sarah A. Barnell  
dated April 25, 2015

Retail Electric Service Agreement (as applicable)

**Permits:**

- Conditional Use Permit or alternative zoning approval as applicable by the local jurisdiction
- Building Permit
- Electrical Permit (as applicable)
- 1200C Construction Stormwater General Permit (as applicable)

**REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN OR STEP-IN RIGHTS:**

Deed or Lease to Facility Premises

Preliminary Title Report of Premises:

Proof of ownership of Facility

Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.



## OPTION AGREEMENT

**DATE:** April 25<sup>th</sup>, 2015 ("Effective Date")  
**THOMAS R. BARNELL and SARAH A. BARNELL, as co-trustees of the Barnell Family 2005 Revocable Trust** (collectively "Owner")  
**OR SOLAR 5, LLC.** ("Company")

### STATEMENT OF FACTS

A. WHEREAS, Owner owns fee simple title property described in Exhibit "A", together with all improvements situated on it and all other rights and tenements appurtenant thereto (collectively referred to as the "Property"); and

B. WHEREAS, Company desires to acquire an option to purchase the Property on the terms and conditions herein stated.

C. WHEREAS, Owner desires to grant Company an exclusive option to purchase the Property on the terms and conditions herein stated; and

NOW, THEREFORE, for and in consideration of the option money paid by Company to Owner, as well as the mutual covenants contained herein, it is agreed as follows:

#### 1. Grant of Option

In consideration of the sum of One Thousand Dollars (\$1,000.00) and other good and valuable consideration, paid by Company to Owner, the receipt and sufficiency of which is hereby acknowledged, Owner grants to Company, its successors and/or assigns, the sole and exclusive option to purchase the Property in the manner and for the price stated in this Agreement.

#### 2. Option Terms

- a. **Term.** The term of the Option (the "Initial Term") shall commence on the Effective Date and shall continue until 11:59 p.m. on December 31, 2015. Company shall have the right to extend the term of the option for an additional period of one-hundred twenty (120) days upon written notice and delivery of an additional payment of \$1,000.00 to Owner ("Extension Fee"). This extension period (the "Extension Term") will commence on the date that the Initial Term expires. The Initial Term and the Extension Term may be referred to collectively in this Agreement as the "Term." If the last day of the Term falls on a Saturday, a Sunday, or a holiday recognized by the federal government or the state of Oregon, all of Company's rights during either such time period shall extend through the next business day.
- b. **Exercise of Option.** This option shall be exercised, if at all, by written notice (the "Exercise Notice") given by Company to Owner at any time during the Term, which notice shall state that Company has elected to exercise this option. Upon exercise of this option, Company shall be obligated to purchase the Property from Owner, and Owner shall be obligated to sell the Property to Company, for the price and in the manner set forth herein. Such written notice can be provided via email or certified mail as long as such mail is post-marked with a date prior to expiration of the Initial Term.

- c. **Failure to Exercise Option.** If Company fails for any reason to exercise this option in the manner set forth herein prior to the expiration of the Term, said decision to be solely in the discretion of Company, then neither party shall have any further obligation to the other under this Option.

### **3. Inspection of Property**

During the existence of the option, Company shall have all reasonable access to the property to conduct any testing thereof, including, but not limited to, necessary surveys, or topographic studies, environmental and soil tests, wetlands delineation, etc. to determine the suitability of the property to be used by the Company for the purpose intended. If Company notifies Owner in writing at any time prior to the exercise of the option that inspection of the property has determined that the property is not suitable for the purpose intended, said decision to be solely in the discretion of Company, then the Option agreement shall automatically terminate and neither party shall have any further obligation to the other under this Option. Any such inspection or testing shall be at the sole cost of Company with results to be shared with Owner.

### **4. Purchase Price, Acreage**

- a. **Amount of Acreage.** Although Owner believes that the Property contains approximately 66.50 acres of land and has so represented to Company, neither party considers the precise amount of acreage contained in the Property to be material to the purchase or sale of the Property except for the limited purpose of determining the purchase price as set forth below in Section 4(b). On exercise of this option, the parties' obligations under this Agreement shall not be avoided due to any determination that the Property in fact contains more than or fewer than 66.50 acres, unless the excess or discrepancy is material. The parties agree that any excess or deficiency in excess of three (3) acres is "material." In no event shall Owner have any right to cancel because of a discrepancy between actual and estimated acreage.
- b. **Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be equal to the product of (1) \$8,270.68 multiplied by (2) the amount of acreage comprising the Property (rounded to the nearest 1/100th of an acre), as established by a survey obtained by the Company. If Company fails to cause a survey to be prepared, then the Property shall be deemed to contain 66.50 acres for purposes of calculating the Purchase Price.

### **5. Closing Following the Exercise of Option**

- a. **Purchase Agreement.** If Company exercises this option, Owner shall agree with Company on a closing date which shall be within sixty (60) days from the date that the option is exercised and execute a formal sales contract, in a form reasonably acceptable to both parties, subject to the terms of this Option. The escrow for the Closing shall be established at the office of AmeriTitle, Inc., located at 300 Klamath Ave., Klamath Falls, Oregon (the "Title Company").
- b. **Preliminary Title Report.** Within 15 days following receipt of the earlier of (a) written notice from Company to Owner or (b) Exercise Notice, Owner shall deliver to Company, at Owner's expense, a preliminary title report (the "Title Report") covering the Property issued by the Title Company. The Title Report shall be accompanied by legible copies of

all plats and exceptions to title referenced in the Title Report (the "Exceptions"). Within 15 days of receiving the Title Report and the Exceptions documents, Company shall give written notice (the "Initial Notice") to Owner of the Exceptions that Company shall require Owner to remove of record at or before Closing (the "Unacceptable Exceptions"). If Company fails to give Owner the Initial Notice, then Company shall be deemed to have approved the Title Report. Owner shall have 10 days following receipt of the Initial Notice to give written notice to Company (the "Reply Notice") of those Unacceptable Exceptions that Owner concludes, in good faith, that Owner cannot or will not remove at or before Closing. Owner agrees to remove all Unacceptable Exceptions not referenced in a duly given Reply Notice. If one or more of the Unacceptable Exceptions cannot be removed at or before Closing and Owner so states in a duly given Reply Notice, then Company may exercise any of the following rights by giving written notice to Owner within 15 days of receiving the Reply Notice: Company may terminate this Option, in which event any payments to Owner shall be refunded to Company and neither party shall have any further liability, or; Company may accept title to the Property subject to any such Unacceptable Exceptions. The foregoing rights of Company shall not be deemed waived by giving the Exercise Notice. Exceptions that are shown on the Title Report and to which Company does not object or to which Company agrees, in writing, to waive objection, are referred herein to as "Permitted Exceptions."

- c. **Prorations.** All items of expense incurred by Owner with respect to the Property shall be paid by Owner at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Owner and Company as of the Closing Date.
- d. **Farm Tax Deferral.** Owner has advised Company that the Property has been classified as farm use property and therefore has been given an ad valorem tax deferral. Company shall be responsible for paying any deferred taxes and other charges due by reason of the loss of the real property tax deferral (the "Deferred Taxes").
- e. **Costs.** Company and Owner each shall pay one-half of the escrow fee of the Title Company with respect to the Closing. Owner shall pay the premium for a standard form Owner's ALTA Title Insurance Policy, in the amount of the Purchase Price, insuring fee simple title to the Property vested in Company, subject only to the exceptions accepted by Company, and for all conveyance or excise taxes payable by reason of the purchase and sale of the Property. Company shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.
- f. **Deed Form.** At closing, Owner shall deliver to Company the property by general warranty deed, containing exceptions only as to current taxes and the Permitted Exceptions
- g. **Payment of the Purchase Price.** At closing, the Purchase Price less the pro rated portion of the real property taxes and assessments payable, and less at the Company's option, any Costs which are payable to Owner, shall be paid to Owner in immediately available funds.

**6. Assignment**

This option and all rights hereunder shall be assignable by Company and it is understood and agreed that the right of assignment by Company continues after the exercise of the option but prior to completion of purchase. Owner shall receive written notice of any assignment.

**7. Access**

Owner grants to Company and its agents the right to enter on the Property at any reasonable times before the Closing Date for the purpose of conducting tests or studies that Company may deem necessary or appropriate in connection with its acquisition of the Property. Owner shall cooperate with Company in making such tests and studies. No soil tests or drilling shall be undertaken without first obtaining Owner's approval with respect to the agents retained to perform such work and the location and purpose of the tests or drilling. Company shall not interfere with or disturb the rights of any tenants of Owner in possession of any portion of the Property. Company shall protect, defend, and hold Owner harmless from any loss, liability, or damage to persons or property arising out of or related to Company's activities on the Property. If Company fails to exercise the Option and purchase the Property, Company shall fully compensate Owner for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to Company's activities pursuant to this paragraph.

**8. Approvals**

Company shall have the right to apply for and obtain any governmental approvals to use and develop the Property as Company may desire. Owner shall assist and cooperate with Company in obtaining any such approvals. Such cooperation shall include, but not be limited to, signing all applications and other documents requested by Company that may be reasonably related to such matters, provided that Owner approves the form and substance of all of such documents. All costs and expenses incurred with respect to such approvals shall be paid for by Company.

**9. Possession, Continued Harvest and Removal of Equipment**

The parties do hereby acknowledge and agree that growing crops and nursery stock (the "Stock") and above-ground irrigation equipment ( "Equipment") may be located on the Property and that Owner shall have up until March 1st, 2016 to continue to harvest or remove the Stock and Equipment on the Property (the "Removal Period"). Subject to Owner's right to harvest Stock and Remove Equipment during the Removal Period, Company shall be entitled to exclusive possession of the Property on and after the Closing Date. Owner expressly acknowledges that, in the event of the exercise of the Option, any Stock or Equipment remaining after the expiration of the Removal Period are included in the Property and that Owner shall have no right to harvest the Stock or remove any Equipment after the expiration of the Removal Period.

**10. Recording**

On the Effective Date, Owner shall execute, acknowledge, and deliver to Company a Memorandum in the form attached as Exhibit B. If Company fails to exercise the Option before the Term expires, Company shall execute, acknowledge, and deliver to Owner a statutory quitclaim deed releasing any interest in the Property.

#### **11. 1031 Exchange**

Owner has informed Company that it is possible that Owner may utilize a 1031 like kind property exchange as part of the closing of the subject property. Company agrees that it will not hinder said property exchange. However, Owner shall be responsible for any and all cost associated with said 1031 exchange. Further, Owner agrees that the 1031 exchange shall not affect the date of closing of the sale of the subject property.

#### **12. Construction**

The language in all parts of this Option shall in all cases be construed according to its fair meaning and not strictly for or against any of the parties to this Option. Without limitation, there shall be no presumption against any party on the ground that such party was responsible for drafting this Option or any part of it.

#### **13. Maintenance**

Before the Closing Date, Owner shall maintain the Property in the same condition as it now exists, ordinary wear and tear excepted, and shall not cause or permit any waste.

#### **14. Risk of Loss**

Owner shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the Exercise Notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Owner shall give Company written notice of such event.

#### **15. Time Is of the Essence**

Time is of the essence of as to each of the deadlines and dates set forth in this Option.

#### **16. Ownership**

During the Term, Owner shall not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it, nor grant an option to any third party to acquire all or any portion of it.

#### **17. Property Rights**

Owner represents and warrants that all rights of the property are intact and unencumbered, including without limitation, rights for surface, mineral, timber, water, air, sun, etc.

#### **18. Entire Agreement**

This Option contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Option must be approved by Owner and Company, in writing.

#### **19. Counterparts**

This Option may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall be effective when one or more counterparts have been signed and delivered by Owner and Company.

#### **20. Statutory Warning**

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSONS RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

[Signature Pages Follow]

IN WITNESS WHEREOF, Owner and Company have signed and acknowledged this option on the date first written hereinabove.

OWNER:

Thomas R. Barnell  
Thomas R. Barnell, Co-Trustee of the Barnell  
Family 2005 Revocable Trust

Sarah A. Barnell  
Sarah A. Barnell, Co-Trustee of the Barnell  
Family 2005 Revocable Trust

COMPANY:

OR SOLAR 5, LLC.

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

Its: \_\_\_\_\_

STATE OF CALIFORNIA                    )  
COUNTY OF MERCED                    )

Signed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of April, 2015 by Thomas R. Barnell, Co-Trustee of the Barnell Family 2005 Revocable Trust.

STATE OF CALIFORNIA                    )  
COUNTY OF MERCED                    )

Lisa Avila  
LISA AVILA  
Commission # 1956047  
Notary Public - California  
Merced County  
My Comm. Expires Oct 10, 2015

NOTARY PUBLIC FOR CALIFORNIA  
My Commission Expires: Oct 10, 2015

Signed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of April, 2015 by Sarah A. Barnell, Co-Trustee of the Barnell Family 2005 Revocable Trust.

STATE OF FLORIDA                    )  
COUNTY OF MIAMI-DADE                    )

Lisa Avila  
LISA AVILA  
Commission # 1956047  
Notary Public - California  
Merced County  
My Comm. Expires Oct 10, 2015

NOTARY PUBLIC FOR CALIFORNIA  
My Commission Expires: Oct 10, 2015

Signed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of April, 2015 by \_\_\_\_\_, in their capacity as a duly authorized representative and on behalf of OR SOLAR 5, LLC.

\_\_\_\_\_  
NOTARY PUBLIC FOR FLORIDA  
My Commission Expires: \_\_\_\_\_

IN WITNESS WHEREOF, Owner and Company have signed and acknowledged this option on the date first written hereinabove.

OWNER:

\_\_\_\_\_  
Thomas R. Barnell, Co-Trustee of the Barnell  
Family 2005 Revocable Trust

\_\_\_\_\_  
Sarah A. Barnell, Co-Trustee of the Barnell  
Family 2005 Revocable Trust

STATE OF CALIFORNIA                    )  
COUNTY OF MERCED                    )

Signed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of April, 2015 by Thomas R. Barnell, Co-Trustee of the Barnell Family 2005 Revocable Trust.

COMPANY:

OR SOLAR 5, LLC.

By:   
SAMIRA VERSTYN

Its: SECRETARY

\_\_\_\_\_  
NOTARY PUBLIC FOR CALIFORNIA  
My Commission Expires:

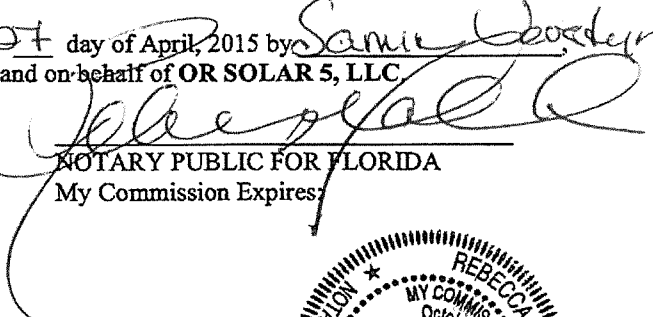
STATE OF CALIFORNIA                    )  
COUNTY OF MERCED                    )

Signed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of April, 2015 by Sarah A. Barnell, Co-Trustee of the Barnell Family 2005 Revocable Trust.

\_\_\_\_\_  
NOTARY PUBLIC FOR CALIFORNIA  
My Commission Expires:

STATE OF FLORIDA                        )  
COUNTY OF MIAMI-DADE                )

Signed and sworn to (or affirmed) before me on this 27 day of April, 2015 by Samira Verstyn  
in their capacity as a duly authorized representative and on behalf of **OR SOLAR 5, LLC**

  
NOTARY PUBLIC FOR FLORIDA  
My Commission Expires:

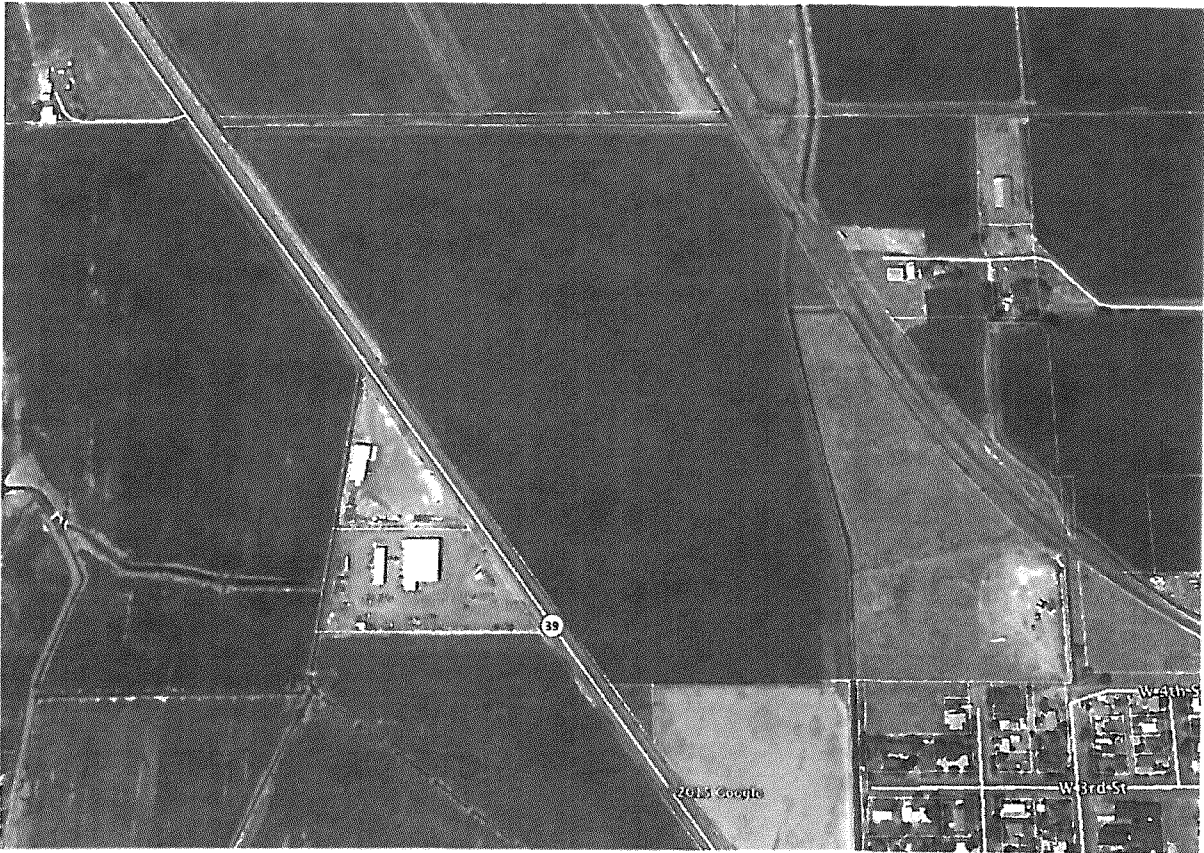




**Exhibit A**  
**Description of Property**

Map Tax Lot: R-4110-00200-01100-000

Legal : TWP 41 RNGE 10, BLOCK SEC 2, TRACT  
110, ACRES 66.50, POTENTIAL\*



**Exhibit B**

**Memorandum of Option**

After recording return to:  
Origis Energy USA, Inc.  
Attn: President  
1200 Brickell Ave., Suite 1800  
Miami, FL, 33131

**MEMORANDUM OF OPTION AGREEMENT**

**THOMAS R. BARNELL and SARAH A. BARNELL**, as Co-Trustees of the **Barnell Family 2005 Revocable Trust** ("Owner"), and **OR SOLAR 5, LLC**. ("Company"), have entered into an Option Agreement dated April 25th, 2015 (the "**Option Agreement**"), wherein Owner has granted to Company the sole and exclusive option to purchase the property described in Exhibit A. The term of the option will expire at 11:59 p.m. on December 31, 2015.

This Memorandum is being executed and recorded in the Official Records of Klamath County, Oregon, to give notice of the provisions of the Option Agreement and will not be deemed or construed to define, limit, or modify the Option Agreement in any manner.

[Signature Pages Follow]

Executed as of April 25<sup>th</sup>, 2015.

OWNER:

*Thomas R. Barnell*

Thomas R. Barnell, Co-Trustee of the **Barnell Family 2005 Revocable Trust**

*Sarah A. Barnell*

Sarah A. Barnell, Co-Trustee of the **Barnell Family 2005 Revocable Trust**

COMPANY:

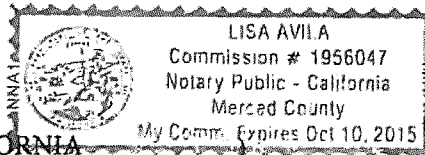
**OR SOLAR 5, LLC.**

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

Its: \_\_\_\_\_

STATE OF CALIFORNIA )  
COUNTY OF MERCED )

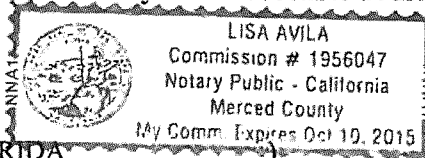
Signed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of April, 2015 by Thomas R. Barnell, Co-Trustee of the **Barnell Family 2005 Revocable Trust**.



*Lisa Avila*  
NOTARY PUBLIC FOR CALIFORNIA  
My Commission Expires: *Oct 10, 2015*

STATE OF CALIFORNIA )  
COUNTY OF MERCED )

Signed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of April, 2015 by Sarah A. Barnell, Co-Trustee of the **Barnell Family 2005 Revocable Trust**.



*Lisa Avila*  
NOTARY PUBLIC FOR CALIFORNIA  
My Commission Expires: *Oct 10, 2015*

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

Signed and sworn to (or affirmed) before me on this \_\_\_\_ day of April, 2015 by \_\_\_\_\_, in their capacity as a duly authorized representative and on behalf of **OR SOLAR 5, LLC.**

\_\_\_\_\_  
NOTARY PUBLIC FOR FLORIDA  
My Commission Expires: \_\_\_\_\_

OWNER:

Thomas R. Barnell, Co-Trustee of the Barnell  
Family 2005 Revocable Trust

Sarah A. Barnell, Co- Trustee of the Barnell  
Family 2005 Revocable Trust

COMPANY:

OR SOLAR 5, LLC.

By: SANIR VERSTYN

Its: SECRETARY

STATE OF CALIFORNIA )  
COUNTY OF MERCED )

Signed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of April, 2015 by Thomas R. Barnell, Co-Trustee of the Barnell Family 2005 Revocable Trust.

NOTARY PUBLIC FOR CALIFORNIA  
My Commission Expires:

STATE OF CALIFORNIA )  
COUNTY OF MERCED )

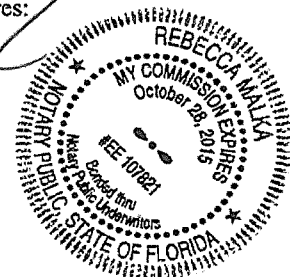
Signed and sworn to (or affirmed) before me on this 25<sup>th</sup> day of April, 2015 by Sarah A. Barnell, Co-Trustee of the Barnell Family 2005 Revocable Trust.

NOTARY PUBLIC FOR CALIFORNIA  
My Commission Expires:

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

Signed and sworn to (or affirmed) before me on this 27<sup>th</sup> day of April, 2015 by Sanir Verstyn  
in their capacity as a duly authorized representative and on behalf of OR SOLAR 5, LLC.

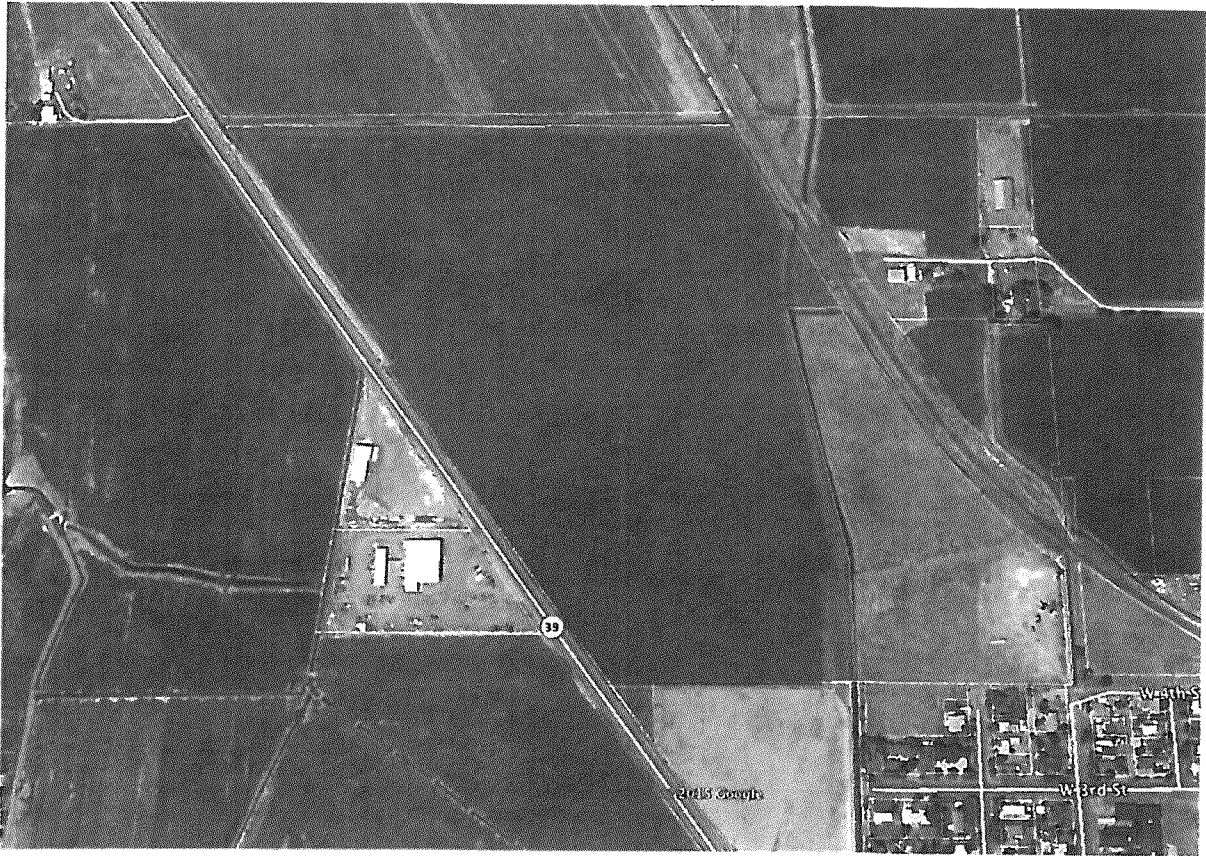
NOTARY PUBLIC FOR FLORIDA  
My Commission Expires:



Description of Property

Map Tax Lot: R-4110-00200-01100-000

Legal : TWP 41 RNGE 10, BLOCK SEC 2, TRACT  
110, ACRES 66.50, POTENTIAL\*



**EXHIBIT D-1**  
**SELLER'S MOTIVE FORCE PLAN**

**A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	664,000
February	877,000
March	1,048,000
April	1,984,000
May	2,411,000
June	2,646,000
July	2,521,000
August	2,594,000
September	1,943,000
October	1,266,000
November	760,000
December	730,000

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

Origis Energy USA has prepared an energy performance model for this project using PV industry standard practices and PVsyst version 6.36. PVsyst generates a base energy performance report. The meteo file used as the basis for the PVsyst model was selected from NREL TMY3 of Klamath Falls Intl Airport after considering the project site's unique geography. Probability assumptions around expected annual performance are primarily based on the energy model and the source weather file.

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account maintenance and Seller's load (if any).

The minimum expected annual output assumes a series of possible downward impacting elements into account, such as the most adverse weather conditions, measuring errors in the PVsyst modeling, negative equipment variability factors (such as PV module modeling accuracy).

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate.

The maximum annual output is estimated using most favorable weather conditions and equipment factors.

Our selections and assumptions for all these areas are outlined below.

**Plant Ratings (MW or MWh)**

AC Capacity (inverter nameplate):	8.0
<u>Expected Annual Energy:</u>	<u>19,444</u>
Maximum Annual Delivered Energy:	21,778
Minimum Annual Delivered Energy:	11,667

**Weather and Resource Data:**

The weather file selected and used in the PVsyst model is of high importance and one of the key drivers for the output projected by such model. When modeling the expected energy of any geographic site, a meteorological weather file must be manually selected that is used by the energy modeling tool to compute the performance of the PV system on an hourly basis over the course of a "typical" year. This model forms the basis of a P50 energy estimation for the PV project. Ideal elements of a weather file include hourly horizontal global and diffuse irradiation, ambient temperature, and average wind velocity. With these values, the modeling tool can very accurately simulate expected energy performance of the PV cells since it is these environmental variables that determine actual power produced by the cells.

Many available weather files in the US are taken directly from measured weather sites such as at major airports. This data is typically based on over 30 years of measured values which is then comparatively selected and formulated into a "Typical Meteorological Year" or TMY file for use in modeling. For this project, we considered the NREL TMY3 of Klamath Falls Intl Airport. The TMY3 dataset is based on years of continuous data collection and analysis.

**Station Service and Parasitic Losses:**

While very little losses are expected during the operation of the plant, there are some losses that will be required. Most of the losses in the system are realized in the DC collection system through the AC inverter output. Downstream of the inverter, most of the losses are expected to be very small. However, this section of the system is where nighttime tare losses that are required to keep the project operational are found.

<b><u>Loss</u></b>	<b><u>Percent Loss (% of Total)</u></b>
Transformers	0.8%
Station Use	0.24%
Soiling	4.0%
Module Mismatch and Quality	2.5%
Temperature	4.4%
Ohmic Wiring Loss	1.1%



**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION OF**  
**MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*

*Engineer's Certification of Motive Force Plan attached.*



10555 Old Placerville Road  
Sacramento, CA 95827-2503  
Phone: (916) 368-4468  
FAX: (916) 368-4490  
A California Corporation  
[www.saceng.com](http://www.saceng.com)

MECHANICAL, ELECTRICAL & FIRE PROTECTION ENGINEERING SERVICES

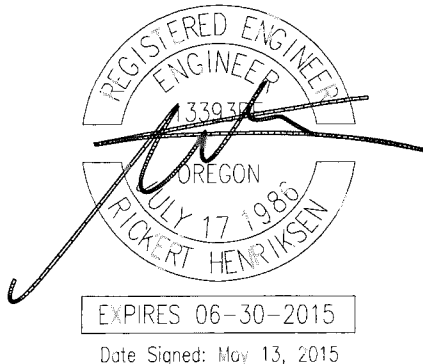
May 13, 2015

Michael Chestone  
Director of Development  
Origis Energy USA  
1200 Brickell Ave, Suite 1800  
Miami, FL 33131

Ref: Merrill Solar Project, Klamath Falls

Dear Michael:

A review of the Energy Performance Estimation dated April 22<sup>nd</sup>, 2015 for the Merrill Solar project has been completed. The simulations provides annual produced energy of 19,444 Mwh. Based on this, it will provide a maximum annual delivered energy of 21,778 MWh and a minimum annual delivered energy of 11,667 MWh. It is concluded that the methods used to determine the weather file and simulation parameters, and the assumptions used for the PV Array and System loss factors were all performed using approved industry standards.



Rickert Henriksen  
Oregon PE 13393  
President

## EXHIBIT E

### START-UP TESTING

Start-Up Testing shall consist of the Quality Assurance/Quality Control plans and procedures developed by the EPC Contractor.

Contractor shall submit to Owner a final copy of its quality assurance/quality control (QA/QC) plan for review not later than 45 days after contract execution for Owner review and comment.

The QA/QC program shall include, but is not limited to, such procedures and systems as the following:

- Road construction
- Rebar and conduit placement
- Concrete placement and testing
- All wire insulation testing—Megger testing or very low frequency testing
- Mechanical system—trackers, mounting structures, tracker controls
- Factory testing of inverters and transformers by the manufacturer
- PV source open-circuit measurements—VOC at combiner boxes
- Fuse tests
- Termination pull testing
- All visual inspections
- Grounding continuity testing
- Earth-ground resistivity testing
- PV module inspection and manufacturer documentation of factory test per the manufacturer's existing program
- Metering and instrumentation calibration testing
- Step-up transformer field testing
- Inverter phase rotation and matching with utility
- Relay settings/transfer trip/etc. at the point of interconnection to Owner
- Other Contractor-prescribed procedures

All QA/QC testing procedures onsite shall be witnessed and documented by a qualified representative of Contractor. Owner shall observe and witness QA/QC as necessary and at its discretion. A qualified field engineer/QA representative of Contractor shall date and sign documentation indicating completion and acceptance of each onsite QA/QC test procedures.

Following installation, Contractor shall provide a proposed commissioning and startup plan for the Plant.

Contractor shall coordinate with Owner to develop an acceptable commissioning plan that includes a checkout and startup procedure. This work will assure: that systems are activated in a manner that is safe for personnel as well as for the equipment, that Contractor work is complete and according to the contract documents, and that the systems perform as required by the contract documents and are ready to be turned over to Owner. As the construction and installation of the systems nears completion, Contractor shall prepare punch lists and conduct system walk-downs, sub-system and system checkouts, startups, testing, and turnovers.

The final approved Commissioning Procedures shall, at minimum, include the following:

- Safety plan during startup and commissioning
- Review of all QA/QC testing on the DC and AC sides of inverters
- Detailed procedure for PV Plant startup, including switching sequencing
- Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected
- Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.
- Testing the system control and monitoring system to verify that it is performing correctly
- Testing the communication system for offsite monitoring

- Testing the Plant metering and protective relaying in conjunction with the utility during energization procedures
- Detailed procedure for interface and initialization with the grid
- Documentation of successful startup and commissioning procedure
- Written notification submitted by Contractor to Owner that the completion of Commissioning has occurred

Upon successful completion of energizing and startup, the Plant will be considered operable.

**EXHIBIT F**  
**SELLER AUTHORIZATION TO RELEASE**  
**GENERATION DATA TO PACIFICORP**

[See attached letter]



**EXHIBIT F  
SELLER AUTHORIZATION TO RELEASE  
GENERATION DATA TO PACIFICORP**

**PacifiCorp  
825 NE Multnomah Street  
Portland, OR 97232**

**Attention: Contract Administration, Suite 600  
RE: Merrill Solar – OR Solar 5, LLC**

**OR Solar 5, LLC**, hereby voluntarily authorizes PacifiCorp's to share **OR Solar 5, LLC's** generator meter data with affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group. **OR Solar 5, LLC** acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

A handwritten signature in black ink, appearing to read "S. Verstyn", with a long horizontal line extending to the right.

Sincerely,

Samir Verstyn  
Secretary

**EXHIBIT G**  
**SCHEDULE 37 AND PRICING SUMMARY TABLE**

Year	On-Peak	Off-Peak
	¢/kWh	¢/kWh
2016	3.85	2.84
2017	4.06	3.01
2018	4.33	3.20
2019	4.55	3.41
2020	4.78	3.84
2021	4.92	4.25
2022	5.58	4.83
2023	5.79	5.02
2024	8.84	7.36
2025	9.01	7.49
2026	9.17	7.64
2027	9.34	7.78
2028	9.52	7.94
2029	9.68	8.11
2030	9.85	8.28
2031, up to but not including November 1, 2031	10.03	8.46
from November 1, 2031 through the Termination Date:	Price specified by Section 5.3 of the Agreement	

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 1

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

For power purchased from Qualifying Facilities with a nameplate capacity of 10,000 kW or less or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 10,000 kW or less. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

**Definitions****Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Qualifying Electricity**

Electricity that meets the requirements of "qualifying electricity" set forth in the Oregon Renewable Portfolio Standards: ORS 469A.010, 469A.020, and 469A.025.

**Renewable Qualifying Facility**

A Qualifying Facility that generates Qualifying Electricity.

**Wind Qualifying Facility**

A Renewable Qualifying Facility that generates Qualifying Electricity using wind as its motive force.

**Baseload Renewable Qualifying Facility**

A Renewable Qualifying Facility that generates Qualifying Electricity using any qualifying resource other than wind or solar.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

**On-Peak Hours or Peak Hours**

On-Peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005, the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April and for the period between the last Sunday in October and the first Sunday in November.

(continued)



**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 2

**Definitions (continued)****Off-Peak Hours**

All hours other than On-Peak.

**Excess Output**

Excess Output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-Peak Price as described and calculated under pricing option 4 (Non-Firm Market Index Avoided Cost Price) for all Excess Output.

**Same Site**

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

**Person(s) or Affiliated Person(s)**

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit and the facilities at issue are independent family-owned or community-based projects. A unit of Oregon local government may also be a "passive investor" in a community-based project if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

**Shared Interconnection and Infrastructure**

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

**Dispute Resolution**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 3

**Dispute Resolution (continued)**

Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution.

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

**Pricing Options****1. Standard Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Standard Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price. The Standard Fixed Avoided Cost pricing option is available to all Qualifying Facilities. The Standard Fixed Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs as set forth on page 5.

**2. Renewable Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Renewable Qualifying Facility and the Company and will not change during the term of the contract. Renewable Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price. The Renewable Fixed Avoided Cost pricing option is available only to Renewable Qualifying Facilities. A Renewable Qualifying Facility choosing the Renewable Fixed Avoided Cost pricing option must cede all Green Tags generated by the facility, as defined in the standard contract, to the Company during the Renewable Resource Deficiency Period identified on page 6, except that a Renewable Qualifying Facility retains ownership of all Environmental Attributes generated by the facility, as defined in the standard contract, during the Renewable Resource Sufficiency Period identified on page 6 and during any period after the first 15 years of a longer term contract (up to 20 years).

**3. Firm Market Indexed Avoided Cost Prices**

Firm Market Index Avoided Cost Prices are available to Qualifying Facilities that contract to deliver firm power. Monthly on-peak / off-peak prices paid are a blending of Intercontinental Exchange (ICE) Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

**4. Non-Firm Market Index Avoided Cost Prices**

Non-Firm Market Index Avoided Cost Prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay or, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are 93 percent of a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak firm index prices. The monthly blending matrix is available upon request. The Non-Firm Market Index Avoided Cost pricing option is available to all Qualifying Facilities. The Non-Firm Market Index Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 4

**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of the Pricing Options specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Renewable or Standard Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the renewable or standard fixed prices as provided in this schedule. On-Peak and Off-Peak are defined in the definitions section of this schedule.

**Firm Market Indexed and Non-Firm Market Index Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the market prices calculated at the time of delivery. On-Peak and Off-Peak are defined in the definitions section of this schedule.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 5

**Avoided Cost Prices**
**Standard Fixed Avoided Cost Prices**

<b>Fixed Prices ¢/kWh</b>								
Deliveries During Calendar Year	Base Load QF (1)		Wind QF (2)		Solar QF			
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price		
	(a)	(b)	(c)	(d)	(e)	(f)		
2014	3.98	2.62	3.71	2.35	3.98	2.62		
2015	3.94	2.86	3.67	2.59	3.94	2.86		
2016	3.85	2.84	3.58	2.57	3.85	2.84		
2017	4.06	3.01	3.79	2.73	4.06	3.01		
2018	4.33	3.20	4.04	2.92	4.33	3.20		
2019	4.55	3.41	4.26	3.12	4.55	3.41		
2020	4.78	3.84	4.48	3.54	4.78	3.84		
2021	4.92	4.25	4.62	3.95	4.92	4.25		
2022	5.58	4.83	5.28	4.53	5.58	4.83		
2023	5.79	5.02	5.48	4.71	5.79	5.02		
2024	6.97	3.91	3.72	3.59	4.32	3.91		
2025	7.11	4.00	3.81	3.68	4.42	4.00		
2026	7.31	4.13	3.94	3.80	4.56	4.13		
2027	7.52	4.29	4.09	3.96	4.73	4.29		
2028	7.74	4.44	4.24	4.11	4.89	4.44		
2029	8.00	4.64	4.44	4.30	5.10	4.64		
2030	8.25	4.83	4.62	4.48	5.30	4.83		
2031	8.42	4.93	4.72	4.57	5.40	4.93		
2032	8.59	5.03	4.81	4.66	5.51	5.03		
2033	8.76	5.13	4.91	4.75	5.62	5.13		
2034	8.94	5.23	5.01	4.85	5.74	5.23		
2035	9.11	5.33	5.10	4.94	5.84	5.33		
2036	9.30	5.44	5.21	5.05	5.97	5.44		
2037	9.50	5.56	5.32	5.16	6.09	5.56		
2038	9.70	5.68	5.44	5.27	6.22	5.68		
2039	9.90	5.80	5.55	5.38	6.35	5.80		
2040	10.11	5.91	5.66	5.48	6.48	5.91		

- (1) Capacity Contribution to Peak for Avoided Proxy Resource and Base Load Qualifying Facility resource are assumed 100%.
- (2) The standard avoided cost price for wind is reduced by an integration charge of \$2.55/MWh (\$2012). If Wind Qualifying Facility is not in PacifiCorp's balancing authority area, then no reduction is required.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 6

**Avoided Cost Prices (Continued)**
**Renewable Fixed Avoided Cost Prices**
**Fixed Prices ¢/kWh**

Deliveries During Calendar Year (1)	Base Load Renewable QF (2)		Wind QF (3,4)		Solar QF (5)	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)	(c)	(d)	(e)	(f)
2014	3.98	2.62	3.71	2.35	3.98	2.62
2015	3.94	2.86	3.67	2.59	3.94	2.86
2016	3.85	2.84	3.58	2.57	3.85	2.84
2017	4.06	3.01	3.79	2.73	4.06	3.01
2018	4.33	3.20	4.04	2.92	4.33	3.20
2019	4.55	3.41	4.26	3.12	4.55	3.41
2020	4.78	3.84	4.48	3.54	4.78	3.84
2021	4.92	4.25	4.62	3.95	4.92	4.25
2022	5.58	4.83	5.28	4.53	5.58	4.83
2023	5.79	5.02	5.48	4.71	5.79	5.02
2024	11.48	7.36	8.24	7.05	8.84	7.36
2025	11.70	7.49	8.39	7.17	9.01	7.49
2026	11.91	7.64	8.54	7.31	9.17	7.64
2027	12.14	7.78	8.71	7.45	9.34	7.78
2028	12.36	7.94	8.87	7.61	9.52	7.94
2029	12.58	8.11	9.02	7.77	9.68	8.11
2030	12.81	8.28	9.18	7.93	9.85	8.28
2031	13.05	8.46	9.34	8.10	10.03	8.46
2032	13.29	8.66	9.51	8.30	10.21	8.66
2033	13.53	8.87	9.68	8.50	10.39	8.87
2034	13.79	9.07	9.86	8.69	10.58	9.07
2035	14.04	9.27	10.03	8.89	10.78	9.27
2036	14.32	9.49	10.23	9.09	10.99	9.49
2037	14.59	9.72	10.42	9.32	11.19	9.72
2038	14.87	9.96	10.60	9.55	11.39	9.96
2039	15.15	10.21	10.80	9.79	11.60	10.21
2040	15.47	10.43	11.02	10.00	11.85	10.43

(1) For the purpose of determining: (1) when the Renewable Qualifying Facility is entitled to renewable avoided cost prices; and (2) the ownership of Environmental Attributes and the transfer of Green Tags to PacifiCorp, the Renewable Resource Sufficiency Period ends December 31, 2023, and the Renewable Resource Deficiency Period begins January 1, 2024.

(2) The renewable avoided cost price during the Renewable Resource Deficiency Period (2024-2040) has been increased by an integration charge of \$2.55/MWh (\$2012).

(3) During the Renewable Resource Deficiency Period, the renewable avoided cost price for a Wind Qualifying Facility will be adjusted by adding the difference between the avoided integration costs and the Qualifying Facility's integration costs. If the Wind Qualifying Facility is in PacifiCorp's balancing authority area (BAA), the adjustment is zero (integration costs cancel each other out). If the Wind Qualifying Facility is not in PacifiCorp's BAA, \$2.55/MWh (\$2012) will be added for avoided integration charges.

(4) During Renewable Resource Sufficiency Period, the renewable avoided cost price for a Wind Qualifying Facility has been reduced by an integration charge of \$2.55/MWh (\$2012) for Wind Qualifying Facilities located in PacifiCorp's BAA (in-system). If a Wind Qualifying Facility is not in PacifiCorp's BAA, \$2.55/MWh (\$2012) will be added for avoided integration charges.

(5) The renewable avoided cost payment during the Renewable Resource Deficiency Period (2024-2040) has been increased by an integration charge of \$2.55/MWh (\$2012).

(continued)

P.U.C. OR No. 36

Second Revision of Sheet No. 37-6

Canceling First Revision of Sheet No. 37-6

Issued August 11, 2014

R. Bryce Dalley, Vice President, Regulation

**Effective for service on and after August 20, 2014**

Advice No. 14-007

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 7

**Qualifying Facilities Contracting Procedure**

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

**1. Qualifying Facilities up to 10,000 kW**

**APPLICATION:** To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement****A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions as defined in this Schedule (i.e., standard fixed price, renewable fixed price);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Public Utility Commission of Oregon in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)

**B. Procedures (continued)**

- 5 After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

(continued)



**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**II. Process for Negotiating Interconnection Agreements (continued)****A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

**B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

**EXHIBIT H**  
**GREEN TAG ATTESTATION AND BILL OF SALE**

Subject to Green Tags ownership as defined in Section 5.5, from the period commencing on \_\_\_\_\_ and ending on \_\_\_\_\_, \_\_\_\_\_ ("Seller") hereby sells, transfers and delivers to PacifiCorp the Green Tags (including all Green Tag Reporting Rights) associated with the generation of Net Output under the Power Purchase Agreement (Renewable Energy) between Seller and PacifiCorp dated [\_\_\_\_\_] (the "PPA"), as described below, in the amount of one Green Tag for each megawatt hour generated. Defined terms used in this Green Tag Attestation and Bill of Sale (as indicated by initial capitalization) shall have the meaning set forth in the PPA.

Facility name and location: \_\_\_\_\_ Fuel Type: \_\_\_\_\_

Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_

Energy Admin. ID no.: \_\_\_\_\_

Dates	MWh generated
_____	_____

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to PacifiCorp is its one and only sale of the Green Tags referenced herein;
- iii) the Facility generated Output in the amount indicated above; and
- iv) to the best of Seller's knowledge, each of the Green Tags associated with the generation Output have been generated and sold by the Facility.

This Green Tag Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to PacifiCorp all of Seller's right, title and interest in and to the Green Tags (including Green Tag Reporting Rights), as set forth above.

Seller's Contact Person: [\_\_\_\_\_]

WITNESS MY HAND,

\_\_\_\_\_

a \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

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

This Attestation may be disclosed by Seller and PacifiCorp to others, including the Center for Resource Solutions and the public utility commissions having jurisdiction over PacifiCorp, to substantiate and verify the accuracy of PacifiCorp's advertising and public communication claims, as well as in PacifiCorp's advertising and other public communications.

**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**OR SOLAR 8, LLC**  
**[a new Firm Qualifying Facility with 10,000 kW Facility Capacity Rating, or Less and**  
**not an Intermittent Resource]**  
**AND**  
**PACIFICORP**

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ADDENDUM A: JURY TRIAL WAIVER

EXHIBIT A: DESCRIPTION OF SELLER'S FACILITY

EXHIBIT B: SELLER'S INTERCONNECTION FACILITIES

EXHIBIT C: REQUIRED FACILITY DOCUMENTS

EXHIBIT D-1: SELLER'S MOTIVE FORCE PLAN

EXHIBIT D-2: ENGINEER'S CERTIFICATION OF MOTIVE FORCE PLAN

EXHIBIT E: START-UP TESTING

EXHIBIT F: SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO  
PACIFICORP

EXHIBIT G: SCHEDULE 37 AND PRICING SUMMARY TABLE

EXHIBIT H: GREEN TAG ATTESTATION AND BILL OF SALE

## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT, entered into this 17<sup>th</sup> day of June, 2015, is between OR Solar 8 , LLC, "**Seller**" and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, "**PacifiCorp.**" (Seller and PacifiCorp are referred to individually as a "**Party**" or collectively as the "**Parties**").

### RECITALS

A. Seller intends to construct, own, operate and maintain the Dairy solar photo voltaic facility for the generation of electric power, including interconnection facilities, located in Dairy, Klamath County, Oregon with a Facility Capacity Rating of 10,000 -kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** ("**Facility**"); and

B. Seller intends to commence delivery of Net Output under this Agreement, for the purpose of Start-up Testing, on November 1, 2016 ("**Scheduled Initial Delivery Date**"); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on December 1, 2016 ("**Scheduled Commercial Operation Date**"); and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 24,378,000 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall (choose one) ☒ sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp ☐ sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a "New QF Contract" under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol.

## **AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

### **SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1 **“As-built Supplement”** shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 **“Average Annual Generation”** shall have the meaning set forth in Section 4.2.

1.3 **“Billing Period”** means, unless otherwise agreed to, the time period between PacifiCorp's consecutive readings of its power purchase billing meter at the Facility in the normal course of PacifiCorp's business. Such periods typically range between twenty-seven (27) and thirty-four (34) days and may not coincide with calendar months.

1.4 **“CAMD”** means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Green Tags.

1.5 **“Commercial Operation Date”** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.5.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.5.2 The Facility has completed Start-Up Testing;

1.5.3 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating that, (a), in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected with PacifiCorp's electric system, or (b) if the Facility is interconnected with another electric utility that will wheel Net Output to PacifiCorp, all required interconnection facilities have been completed and tested and are in place to allow for such wheeling;

- 1.5.4 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents and if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents. (Facilities over 200 kW only).
- 1.5.5 Seller has complied with the security requirements of Section 10.
- 1.5.6 PacifiCorp has received an executed copy of **Exhibit F**—Seller’s Interconnection Request.
- 1.6 **“Commission”** means the Oregon Public Utilities Commission.
- 1.7 **“Contract Price”** means the applicable price for capacity or energy, or both capacity and energy, stated in Sections 5.1, 5.2, and 5.3.
- 1.8 **“Contract Year”** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“PPT”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.
- 1.9 **“Credit Requirements”** means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.
- 1.10 **“Default Security”**, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at **Mid-Columbia** (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in Schedule 37, and multiplying such difference by (c) the Minimum Annual Delivery; *provided*, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in Schedule 37. Such amount shall be fixed at the Effective Date of this Agreement.
- 1.11 **“Effective Date”** shall have the meaning set forth in Section 2.1.
- 1.12 **“Energy Delivery Schedule”** shall have the meaning set forth in Section 4.5.
- 1.13 **“Environmental Attributes”** shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water.



Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere.

1.14 **“Excess Output”** shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

1.15 **“Facility”** shall have the meaning set forth in Recital A.

1.16 **“Facility Capacity Rating”** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.17 **“FERC”** means the Federal Energy Regulatory Commission, or its successor.

1.18 **“Generation Interconnection Agreement”** means the generation interconnection agreement to be entered into separately between Seller and PacifiCorp’s transmission or distribution department, as applicable, providing for the construction, operation, and maintenance of PacifiCorp’s interconnection facilities required to accommodate deliveries of Seller’s Net Output if the Facility is to be interconnected directly with PacifiCorp rather than another electric utility.

1.19 **“Green Tags”** means (1) the Environmental Attributes associated with all Net Output, together with (2) all WREGIS Certificates; and (3) the Green Tag Reporting Rights associated with such energy, Environmental Attributes and WREGIS Certificates, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified", or otherwise. One (1) Green Tag represents the Environmental Attributes made available by the generation of one (1) MWh of energy from the Facility. Provided however, that “Green Tags” do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.20 **“Green Tag Reporting Rights”** means the exclusive right of a purchaser of Green Tags to report exclusive ownership of Green Tags in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, and include reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

1.21 **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody’s, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.22 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.23 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller’s ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.24 **“Maximum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.25 **“Minimum Annual Delivery”** shall have the meaning set forth in Section 4.3.

1.26 **“Nameplate Capacity Rating”** means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.27 **“Net Energy”** means the energy component, in kWh, of Net Output.

1.28 **“Net Output”** means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

1.29 **“Net Replacement Power Costs”** shall have the meaning set forth in Section 11.4.1.

1.30 **“Off-Peak Hours”** means all hours of the week that are not On-Peak Hours.

1.31 **“On-Peak Hours”** means the hours between 6 a.m. Pacific Prevailing Time (“PPT”) and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in Schedule 37.

1.32 **“Point of Delivery”** means the high side of the Seller’s step-up transformer(s) located at the point of interconnection between the Facility and PacifiCorp’s distribution/transmission system, as specified in the Generation Interconnection Agreement, or, if the Facility is not interconnected directly with PacifiCorp, the point at which another utility will deliver the Net Output to PacifiCorp as specified in **Exhibit B**.

1.33 **“Prime Rate”** means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time

quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.34 **“Prudent Electrical Practices”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.35 **“QF”** means **“Qualifying Facility,”** as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.36 **“Renewable Resource Deficiency Period”** means the period from 2024 through 2040.

1.37 **“Renewable Resource Sufficiency Period”** means the period from 2014 through 2023.

1.38 **“Replacement Price”** means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.39 **“Required Facility Documents”** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement or equivalent, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those set forth in **Exhibit C**.

1.40 **“Schedule 37”** means the Schedule 37 of Pacific Power & Light Company’s Commission-approved tariffs, providing pricing options for Qualifying Facilities of 10,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Schedule 37 is attached as **Exhibit G**.

1.41 **“Scheduled Commercial Operation Date”** shall have the meaning set forth in Recital C.

1.42 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.43 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.44 “**Termination Date**” shall have the meaning set forth in Section 2.4.

1.45 “**WREGIS**” means the Western Renewable Energy Generation Information System or successor organization in case WREGIS is ever replaced.

1.46 “**WREGIS Certificate**” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules dated July 15, 2013.

1.47 “**WREGIS Operating Rules**” means the operating rules and requirements adopted by WREGIS, dated July 15, 2013.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (“**Effective Date**”).

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

By June 30, 2016, Seller shall provide PacifiCorp with a copy of an executed Generation Interconnection Agreement, or wheeling agreement, as applicable, which shall be consistent with all material terms and requirements of this Agreement.

Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on October 31, 2036 (“**Termination Date**”).

## **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

- 3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.
  - 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
  - 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
  - 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2 Seller represents, covenants, and warrants to PacifiCorp that:
- 3.2.1 Seller is a limited liability company duly organized and validly existing under the laws of Delaware.
  - 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
  - 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
  - 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.
  - 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy,

insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.

3.2.7 Compliance with Ownership Requirements in Commission Proceedings No. UM 1129 and UM 1610. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Schedule 37 tariff approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request. These ownership requirements, as well as the dispute resolution provision governing any disputes over a QF's entitlement to the standard rates and standard contract with respect to the requirements, are detailed in Schedule 37.

i. Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

- a. Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
- b. Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- c. Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- d. Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- e. **[Applicable only to Seller's with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

_____	Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or
____x____	Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

#### **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase (a) all Net Output from the Facility delivered to the Point of Delivery and (b) all Green Tags associated with the output or otherwise resulting from the generation of energy by the Facility (which shall come from the Facility and from no other source), for the periods during which the Green Tags are required to be transferred to PacifiCorp under the terms of Section 5.5.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 24,378,000 kWh per Contract Year (“**Average Annual Generation**”). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall make available from the Facility a minimum of 14,627,000 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced pro rata to reflect the Commercial Operation Date, and further provided that such minimum Net Output shall be reduced on a pro-rata basis for any periods during a Contract Year that the Facility was prevented from generating electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will make available from the Facility a maximum of 27,303,000 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D**.

4.6 Transfer of Title to Green Tags; Documentation of Green Tags Transfers. Subject to the Green Tags ownership as defined in Section 5.5, title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the Net Output at the Facility that gives rise to such Green Tags. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the 10th day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale in the form attached as **Exhibit H** for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program or successor organization in case the Center for Resource Solutions is replaced by another party over the life of the contract. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags, except that when Seller is required to transfer Green Tags to PacifiCorp under Section 5.5, PacifiCorp will pay all fees



required by WREGIS relating to the Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller will use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of WREGIS Certificates to PacifiCorp, and transfer such WREGIS Certificates to PacifiCorp, in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form approved by PacifiCorp, enter into a Qualified Reporting Entity Services Agreement with a third-party authorized to act as a Qualified Reporting Entity, or elect to act as its own WREGIS-defined Qualified Reporting Entity. Seller shall promptly give PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by CAMD, upon notification by CAMD that any transfer contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp. Without limiting the generality of PacifiCorp's ownership of the Green Tag Reporting Rights, PacifiCorp may report under such program that such Green Tags purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfer. Seller shall reasonably cooperate in any registration by PacifiCorp of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which PacifiCorp may wish to register or maintain registration of the Facility by providing copies of all such information as PacifiCorp reasonably required for such registration.

## **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of three pricing options: Standard Fixed Avoided Cost Prices ("Fixed Price Standard"), Renewable Fixed Avoided Cost Prices ("Fixed Price Renewable"), or Firm Market Indexed Avoided Cost Prices ("Firm Electric Market"), as published in Schedule 37. Once an option is selected the option will remain in effect for the duration of the Facility's contract. Seller has selected the following (Seller to initial one):

_____	Fixed Price Standard
___X___	Fixed Price Renewable
_____	Firm Electric Market

A copy of Schedule 37, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit G**.

5.2 (Fixed Price Standard Seller Only). In the event Seller elects the Fixed Price Standard pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.3 (Fixed Price Renewable Seller Only). In the event Seller elects the Fixed Price Renewable pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak

rates specified in **Schedule 37** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller 93 percent of a blended market index price for day-ahead firm energy at MidColumbia, California Oregon Border (COB), Four Corners and Palo Verde market indices as reported by the Intercontinental Exchange (ICE), for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

#### 5.5 Environmental Attributes

5.5.1 (Fixed Price Standard Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement throughout the Term.

5.5.2 (Fixed Price Renewable Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes during the Renewable Resource Sufficiency Period, and any period within the Term of this Agreement after completion of the first fifteen (15) years after the Scheduled Initial Delivery Date. Subject to the foregoing, Seller shall transfer the Green Tags to PacifiCorp in accordance with Section 4.5 during the Renewable Resource Deficiency Period.

### **SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction of the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six months' prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 10,000 kW or less, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1, 5.2, and 5.3 of this Agreement. If Seller increases the Facility Capacity Rating above 10,000 kW, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating

or the maximum instantaneous capacity of the Facility complies with Seller's Generation Interconnection Agreement and any other agreements with PacifiCorp.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement (if applicable), Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's non-compliance with the Generation Interconnection Agreement. PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

## **SECTION 8: METERING**

8.1 PacifiCorp shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Generation Interconnection Agreement, if applicable.

8.2 Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement, or, if the Net Output is to be wheeled to PacifiCorp by another utility, metering will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such other utility. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp's system at the Point of Delivery.

8.3 PacifiCorp shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement, if applicable. If the Net Output is to be wheeled to PacifiCorp by another utility, meter inspection, testing, repair and replacement will be performed in accordance with the terms of PacifiCorp's interconnection agreement with such utility. If any of the inspections or tests discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

## **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## **SECTION 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- ☒ Cash Escrow
- ☐ Letter of Credit
- ☐ Senior Lien
- ☐ Step-in Rights
- ☐ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

### **[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

10.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

### **[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

10.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

### **[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

10.3 Senior Lien. Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien to PacifiCorp, Seller

shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS ALTERNATIVE]**

**10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).**

Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.

PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.

During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.

During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.

In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.

11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Generation Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;

11.1.5 Delayed Commercial Operations. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

## 11.2 Notice; Opportunity to Cure.

11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.

11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.

11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

## 11.3 Termination.

11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement; *provided, however* that PacifiCorp shall not terminate: (a) for a default under Section 11.1.5 unless PacifiCorp is in a resource deficient state during the period Commercial Operation is delayed; or (b) for a default under Section 11.1.6, unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.

In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.

11.3.2 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price



from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.

If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

#### 11.4 Damages.

11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default ("**Net Replacement Power Costs**"); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one Contract Year.

#### 11.4.2 Recoupment of Damages.

Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.

Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller's default on its commercial or financing agreements necessary for its continued operation of the Facility.

### **SECTION 12: INDEMNIFICATION AND LIABILITY**

#### 12.1 Indemnities.

Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller's side of the Point of Delivery, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of

injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.

Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an

insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

#### **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or

availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall recommence performance of such obligation, provided that:

the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and

the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

## **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

## **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

## **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the

Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

#### **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

#### **SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

#### **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

### **SECTION 23: NOTICES**

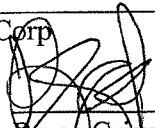

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Phone: (503) 813 - 5380 Facsimile: (503) 813 - 6291 Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	OR Solar 8, LLC 1200 Brickell Avenue - Suite 1800 Miami, FL 33131 Attn: President Attn: Secretary Attn: General Counsel Phone: (347) 703 9595 Phone: (646) 467 3966 Facsimile: (786) 221 4237
<b>All Invoices:</b>	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as street address above) Attn: Accounting Phone: (848) 213 5374 Facsimile: (786) 221 4237
<b>Scheduling:</b>	(same as street address above) Attn: Resource Planning, Suite 600 Phone: (503) 813 - 6090 Facsimile: (503) 813 - 6265	(same as street address above) Attn: Operations Phone: (305) 560 7539 Facsimile: (786) 221 4237
<b>Payments:</b>	(same as street address above) Attn: Back Office, Suite 700 Phone: (503) 813 - 5578 Facsimile: (503) 813 - 5580	(same as street address above) Attn: Accounting Phone: (848) 213 5374 Facsimile: (786) 221 4237
<b>Wire Transfer:</b>	Bank One N.A. ABA: ACCT: NAME: PacifiCorp Wholesale	Account No.: 3290299660 ABA Routing No.: 266086554 Swift Code: CITI US 33 Bank Name: Citibank, N.A. Branch Address: 2750 Aventura Blvd, Miami, FL 33180
<b>Credit and Collections:</b>	(same as street address above) Attn: Credit Manager, Suite 700 Phone: (503) 813 - 5684 Facsimile: (503) 813 - 5609	(same as street address above) Attn: Accounting Phone: (848) 213 5374 Facsimile: (786) 221 4237
<b>With Additional Notices of an Event of Default or Potential</b>	(same as street address above) Attn: PacifiCorp General Counsel Phone: (503) 813-5029	OR Solar 8, LLC 1200 Brickell Avenue - Suite 1800 Miami, FL 33131 Attn: President

Notices	PacifiCorp	Seller
<b>Event of Default to:</b>	Facsimile: (503) 813-7252	Attn: Secretary Attn: General Counsel Phone: (347) 703 9595 Phone: (646) 467 3966 Fax: (786) 221 4237

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp	OR Solar 8, LLC
By: 	By: 
Name: <u>Bruce Griswold</u>	Name: <u>Guy Vanderhaegen</u>
Title: <u>Director, Short-Term Origination and</u> <u>OE Contracts</u>	Title: <u>President</u>
Date: <u>June 17 2015</u>	Date: <u>June 22, 2015</u>

BWS 6-17-2015



## **ADDENDUM A**

### **Jury Trial Waiver**

PacifiCorp and OR Solar 8, LLC ("OR Solar 8") are parties to that certain Power Purchase Agreement executed the date last written below (the "PPA"). This Addendum A to the PPA is entered into by and between PacifiCorp and OR Solar 8 and is intended to be interpreted and applied to the PPA.

Whereas, the Parties for their respective business purposes have an interest in not presenting a dispute to a jury for trial should a dispute arise between the Parties;

NOW, THEREFORE, for independent consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties do hereby declare and agree as follows:

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

This Addendum A to the PPA is executed and made effective this 17<sup>th</sup> day of June, 2015.

PacifiCorp

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

Name: Bruce Griswold

Title: Director, Short-Term Origination  
and QF Contracts

OR Solar 8, LLC

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

Name: Guy Vanderhaegen

Title: President

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**  
**[Seller to Complete]**

Seller's Facility consists of a 10.0MWac solar photovoltaic project including PV panels, inverters, and single axis tracking system. More specifically, the inverter at the Facility is described as:

**Number of Inverters: 5**

**Model:** Sunny Central 2000 at 25C

**Number of Phases:** Three

**Rated Output (kW):** 2000      **Rated Output (kVA):** 2,200 / 2,080 / 2,000      **kVA**

**Rated Voltage (line to line):** 347 to 424 Vac

**Maximum kW Output:** 2000 kW      **Maximum kVA Output:** 2000 kVA

**Minimum kW Output:** 0 kW

**Facility Annual Degradation Rate:** 0.5 %

---

**Facility Capacity Rating:**   10,000   kW

---

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

---

Transformer:   1.5   %, Tracker Motor:   0   % , Data Acquisition and Aux Loads:   0   %

---

**Values above are percentage loss of Total output and losses are already accounted for in the expected output in Exhibit D-1**

---

**Location of the Facility:** The Facility is to be constructed in the vicinity of Dairy, Klamath County, Oregon. The location is more particularly described as follows:

GPS: 42° 23'47.05"N, 121°58'05.32"W

Parcel ID: R-3810-02500-00100-000

**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR): 0.95 lagging to 0.95 leading----- **Power factor requirements will meet PacifiCorp standard interconnection procedures.**

## **EXHIBIT B**

### **SELLER'S INTERCONNECTION FACILITIES**

[Seller to provide its own diagram and description]

### **POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

Instructions to Seller:

1. Include description of point of metering, and Point of Delivery

The Point of Metering will be at the Point of Delivery, a new line tap on PacifiCorp's 12.47 kV line that runs north/south across the western boundary of the property located approximately at 42.234705°, -121.580532° and leads directly into the Dairy Substation.

2. Provide interconnection single line drawing of Facility including any transmission facilities on Seller's side of the Point of Delivery.  
Please see attached layout.

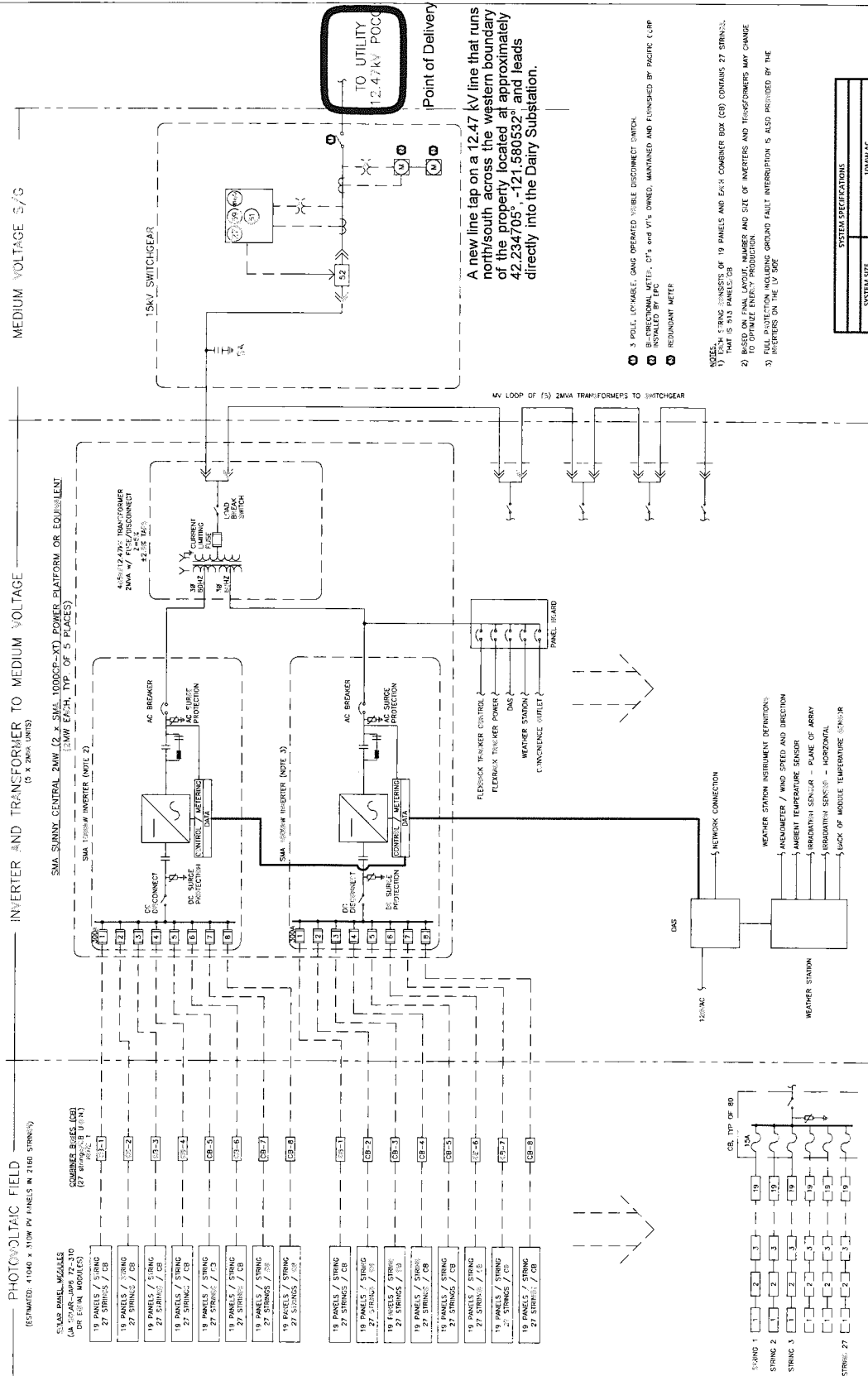
2	REVISION FOR IA SUBMISSION	04/07/15
1	PRELIMINARY	04/01/15
REV. NO.	DESCRIPTION	DATE

**SHEET 11 OF 13**

### DC-AC SINGLE LINE SCHEMATIC

PROJ. MGR.	PROJ. ENGR.	DATE:
DESIGN BY	CHECKED BY	SCALE:
DRAWING NO.		

E100



### ELECTRICAL BLOCK DIAGRAM (HSAT OPTION)

**FOR INTERCONNECT APPLICATION ONLY**

① SINGLE LINE DIAGRAM

CONFIDENTIALITY STATEMENT: THIS DRAWING IS THE PROPERTY OF SOLVIA DESIGN & ENGINEERING. THIS INFORMATION IS CONFIDENTIAL AND IS TO BE USED ONLY IN CONNECTION WITH WORK ORDERED BY SOLVIA. NO PART IS TO BE DISCLOSED TO OTHERS WITHOUT WRITTEN PERMISSION FROM SOLVIA DESIGN & ENGINEERING.

**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

QF Certification: QF15-736-000

Interconnection Agreement: Due June 30, 2016 \_\_\_\_\_

Fuel Supply Agreement, if applicable (as applicable)

Ground Lease Agreement: Purchase option agreement with Larry Mitchell dated May 4,  
2015

Retail Electric Service Agreement (as applicable)

**Permits:**

- Conditional Use Permit or alternative zoning approval as applicable by the local jurisdiction
- Building Permit
- Electrical Permit (as applicable)
- 1200C Construction Stormwater General Permit (as applicable)

**REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN OR STEP-IN RIGHTS:**

Deed or Lease to Facility Premises

Preliminary Title Report of Premises:

Proof of ownership of Facility

Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.

## OPTION AGREEMENT

DATE: May 4<sup>th</sup>, 2015 ("Effective Date")  
LARRY MITCHELL, as Trustee of the ("Owner")  
Larry L. Mitchell Loving Trust  
OR SOLAR 8, LLC. ("Company")

### STATEMENT OF FACTS

A. WHEREAS, Owner owns fee simple title property described in Exhibit "A", together with all improvements situated on it and all other rights and tenements appurtenant thereto (collectively referred to as the "Property"); and

B. WHEREAS, Company desires to acquire an option to purchase the Property on the terms and conditions herein stated.

C. WHEREAS, Owner desires to grant Company an exclusive option to purchase the Property on the terms and conditions herein stated; and

NOW, THEREFORE, for and in consideration of the option money paid by Company to Owner, as well as the mutual covenants contained herein, it is agreed as follows:

#### 1. Grant of Option

In consideration of the sum of Three Thousand Dollars (\$3,000.00) and other good and valuable consideration, paid by Company to Owner, the receipt and sufficiency of which is hereby acknowledged, Owner grants to Company, its successors and/or assigns, the sole and exclusive option to purchase the Property in the manner and for the price stated in this Agreement.

#### 2. Option Terms

- a. **Term.** The term of the Option (the "Initial Term") shall commence on the Effective Date and shall continue until 11:59 p.m. on December 31, 2015. Company shall have the right to extend the term of the option for an additional period of ninety (90) days upon written notice and delivery of an addition payment of \$2,000.00 to Owner ("Extension Fee"). This extension period (the "Extension Term") will commence on the date that the Initial Term expires. The Initial Term and the Extension Term may be referred to collectively in this Agreement as the "Term." If the last day of the Term falls on a Saturday, a Sunday, or a holiday recognized by the federal government or the state of Oregon, all of Company's rights during either such time period shall extend through the next business day.
- b. **Exercise of Option.** This option shall be exercised, if at all, by written notice (the "Exercise Notice") given by Company to Owner at any time during the Term, which notice shall state that Company has elected to exercise this option. Upon exercise of this option, Company shall be obligated to purchase the Property from Owner, and Owner shall be obligated to sell the Property to Company, for the price and in the manner set forth herein.

- c. **Failure to Exercise Option.** If Company fails for any reason to exercise this option in the manner set forth herein prior to the expiration of the Term, said decision to be solely in the discretion of Company, then neither party shall have any further obligation to the other under this Option.

### **3. Inspection of Property**

During the existence of the option, Company shall have all reasonable access to the property to conduct any testing thereof, including, but not limited to, necessary surveys, or topographic studies, environmental and soil tests, wetlands delineation, etc. to determine the suitability of the property to be used by the Company for the purpose intended. If Company notifies Owner in writing at any time prior to the exercise of the option that inspection of the property has determined that the property is not suitable for the purpose intended, said decision to be solely in the discretion of Company, then the Option agreement shall automatically terminate and neither party shall have any further obligation to the other under this Option. Any such inspection or testing shall be at the sole cost of Company with results to be shared with Owner.

### **4. Purchase Price, Acreage**

- a. **Amount of Acreage.** Although Owner believes that the Property contains approximately 160.0 acres of land and has so represented to Company, neither party considers the precise amount of acreage contained in the Property to be material to the purchase or sale of the Property except for the limited purpose of determining the purchase price as set forth below in Section 4(b). On exercise of this option, the parties' obligations under this Agreement shall not be avoided due to any determination that the Property in fact contains more than or fewer than 160.00 acres, unless the excess or discrepancy is material. The parties agree that any excess or deficiency in excess of three (3) acres is "material." In no event shall Owner have any right to cancel because of a discrepancy between actual and estimated acreage.
- b. **Purchase Price.** The purchase price for the Property (the "Purchase Price") shall be equal to the product of (1) \$6,094.00 multiplied by (2) the amount of acreage comprising the Property (rounded to the nearest 1/100th of an acre), as established by a survey obtained by the Company. If Company fails to cause a survey to be prepared, then the Property shall be deemed to contain 160.0 acres for purposes of calculating the Purchase Price.

### **5. Closing Following the Exercise of Option**

- a. **Purchase Agreement.** If Company exercises this option, Owner shall agree with Company on a closing date which shall be within sixty (60) days from the date that the option is exercised and execute a formal sales contract, in a form reasonably acceptable to both parties, subject to the terms of this Option. The escrow for the Closing shall be established at the office of AmeriTitle, Inc., located at 300 Klamath Ave., Klamath Falls, Oregon (the "Title Company").
- b. **Preliminary Title Report.** Within 15 days following receipt of the earlier of (a) written notice from Company to Owner or (b) Exercise Notice, Owner shall deliver to Company, at Owner's expense, a preliminary title report (the "Title Report") covering the Property issued by the Title Company. The Title Report shall be accompanied by legible copies of all plats and exceptions to title referenced in the Title Report (the "Exceptions"). Within

15 days of receiving the Title Report and the Exceptions documents, Company shall give written notice (the "Initial Notice") to Owner of the Exceptions that Company shall require Owner to remove of record at or before Closing (the "Unacceptable Exceptions"). If Company fails to give Owner the Initial Notice, then Company shall be deemed to have approved the Title Report. Owner shall have 10 days following receipt of the Initial Notice to give written notice to Company (the "Reply Notice") of those Unacceptable Exceptions that Owner concludes, in good faith, that Owner cannot or will not remove at or before Closing. Owner agrees to remove all Unacceptable Exceptions not referenced in a duly given Reply Notice. If one or more of the Unacceptable Exceptions cannot be removed at or before Closing and Owner so states in a duly given Reply Notice, then Company may exercise any of the following rights by giving written notice to Owner within 15 days of receiving the Reply Notice: Company may terminate this Option, in which event any payments to Owner shall be refunded to Company and neither party shall have any further liability, or; Company may accept title to the Property subject to any such Unacceptable Exceptions. The foregoing rights of Company shall not be deemed waived by giving the Exercise Notice. Exceptions that are shown on the Title Report and to which Company does not object or to which Company agrees, in writing, to waive objection, are referred herein to as "Permitted Exceptions."

- c. **Prorations.** All items of expense incurred by Owner with respect to the Property shall be paid by Owner at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs shall be prorated between Owner and Company as of the Closing Date.
- d. **Farm Tax Deferral.** Owner has advised Company that the Property has been classified as farm use property and therefore has been given an ad valorem tax deferral. Company shall be responsible for paying any deferred taxes and other charges due by reason of the loss of the real property tax deferral (the "Deferred Taxes").
- e. **Costs.** Company and Owner each shall pay one-half of the escrow fee of the Title Company with respect to the Closing. Owner shall pay the premium for a standard form Owner's ALTA Title Insurance Policy, in the amount of the Purchase Price, insuring fee simple title to the Property vested in Company, subject only to the exceptions accepted by Company, and for all conveyance or excise taxes payable by reason of the purchase and sale of the Property. Company shall pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.
- f. **Deed Form.** At closing, Owner shall deliver to Company the property by general warranty deed, containing exceptions only as to current taxes and the Permitted Exceptions
- g. **Payment of the Purchase Price.** At closing, the Purchase Price less at the Company's option, any Costs which are payable to Owner, shall be paid to Owner in immediately available funds.



#### **6. Assignment**

This option and all rights hereunder shall be assignable by Company and it is understood and agreed that the right of assignment by Company continues after the exercise of the option but prior to completion of purchase. Owner shall receive written notice of any assignment.

#### **7. Access**

Owner grants to Company and its agents the right to enter on the Property at any reasonable times before the Closing Date for the purpose of conducting tests or studies that Company may deem necessary or appropriate in connection with its acquisition of the Property. Owner shall cooperate with Company in making such tests and studies. No soil tests or drilling shall be undertaken without first obtaining Owner's approval with respect to the agents retained to perform such work and the location and purpose of the tests or drilling. Company shall not interfere with or disturb the rights of any tenants of Owner in possession of any portion of the Property. Company shall protect, defend, and hold Owner harmless from any loss, liability, or damage to persons or property arising out of or related to Company's activities on the Property. If Company fails to exercise the Option and purchase the Property, Company shall fully compensate Owner for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to Company's activities pursuant to this paragraph. The parties shall cooperate during periods of joint use so that each parties' use shall cause a minimum of interference to the others.

#### **8. Approvals**

Company shall have the right to apply for and obtain any governmental approvals to use and develop the Property as Company may desire. Owner shall assist and cooperate with Company in obtaining any such approvals. Such cooperation shall include, but not be limited to, signing all applications and other documents requested by Company that may be reasonably related to such matters, provided that Owner approves the form and substance of all of such documents. All costs and expenses incurred with respect to such approvals shall be paid for by Company. Should the Company fail to exercise this option, Company shall, at Company expense, provide for the Property to be restored to its pre-existing zone and land use designation. .

#### **9. Possession, Continued Harvest**

The parties do hereby acknowledge and agree that growing crops and nursery stock (the "Stock") may be located on the Property and that Owner shall have up until March 1<sup>st</sup>, 2016 to continue to harvest or remove the Stock from the Property (the "Harvest Period"). During the Harvest Period, Owner agrees to continue to harvest the Stock during the Term in the same manner as the Stock was harvested before this Option was executed, in the ordinary course of its business and consistent with good agricultural practice. Subject to Owner's right to harvest Stock during the Harvest Period, Company shall be entitled to exclusive possession of the Property on and after the Closing Date. Owner expressly acknowledges that, in the event of the exercise of the Option, any stock remaining after the expiration of the Harvest Period are included in the Property and that Owner shall have no right to harvest the Stock after the expiration of the Harvest Period.

#### **10. Recording**

On the Effective Date, Owner shall execute, acknowledge, and deliver to Company a Memorandum in the form attached as Exhibit B. If Company fails to exercise the Option before the Term expires, Company shall execute, acknowledge, and deliver to Owner a statutory quitclaim deed releasing any interest in the Property.

#### **11. 1031 Exchange**

Owner has informed Company that it is possible that Owner may utilize a 1031 like kind property exchange as part of the closing of the subject property. Company agrees that it will not hinder said property exchange. However, Owner shall be responsible for any and all cost associated with said 1031 exchange. Further, Owner agrees that the 1031 exchange shall not affect the date of closing of the sale of the subject property.

#### **12. Construction**

The language in all parts of this Option shall in all cases be construed according to its fair meaning and not strictly for or against any of the parties to this Option. Without limitation, there shall be no presumption against any party on the ground that such party was responsible for drafting this Option or any part of it.

#### **13. Maintenance**

Before the Closing Date, Owner shall maintain the Property in the same condition as it now exists, ordinary wear and tear excepted, and shall not cause or permit any waste.

#### **14. Risk of Loss**

Owner shall bear the risk of all loss or damage to the Property from all causes, through the Closing Date. If, before the Closing Date, and regardless of whether the Exercise Notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature or if all or any portion of the Property is taken by condemnation, or if any such condemnation is threatened, Owner shall give Company written notice of such event.

#### **15. Time Is of the Essence**

Time is of the essence of as to each of the deadlines and dates set forth in this Option.

#### **16. Ownership**

During the Term, Owner shall not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it, nor grant an option to any third party to acquire all or any portion of it.

#### **17. Property Rights**

Owner represents and warrants that all rights of the property are intact and unencumbered, including without limitation, rights for surface, mineral, timber, water, air, sun, etc.

#### **18. Entire Agreement**

This Option contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the Property. Any modifications, changes, additions, or deletions to this Option must be approved by Owner and Company, in writing.

**19. Counterparts**

This Option may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall be effective when one or more counterparts have been signed and delivered by Owner and Company.

**20. Miscellaneous**

- a) Should suit or action be instituted to enforce the terms or provisions of this agreement that such action shall be brought in the circuit court for the state of Oregon, county of Klamath. All such action shall be governed under the laws of the state of Oregon.
- b) If suit or action is instituted in connection with any controversy arising out of this Option Agreement, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal suit or action be instituted to enforce the terms or provisions of this agreement that such action shall be brought in the circuit court for the state of Oregon, county of Klamath. All such action shall be governed under the laws of the state of Oregon

**21. Statutory Warning**

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSONS RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

[Signature Pages Follow]

IN WITNESS WHEREOF, Owner and Company have signed and acknowledged this option on the date first written hereinabove.

OWNER:

Larry L. Mitchell  
Larry L. Mitchell, Trustee of the Larry L.  
Mitchell Loving Trust

COMPANY:

OR SOLAR 8, LLC.

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

Its: \_\_\_\_\_

STATE OF OREGON                     )  
COUNTY OF KLAMATH            )

Signed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of May, 2015 by Larry Mitchell, Trustee of the Larry L. Mitchell Loving Trust.



Linzi Rose Kerr  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: March 16, 2018

STATE OF FLORIDA                     )  
COUNTY OF MIAMI-DADE            )

Signed and sworn to (or affirmed) before me on this \_\_\_\_ day of May, 2015 by \_\_\_\_\_, in their capacity as a duly authorized representative and on behalf of OR SOLAR 8, LLC.

\_\_\_\_\_  
NOTARY PUBLIC FOR FLORIDA  
My Commission Expires: \_\_\_\_\_

**Exhibit A  
Description of Property**

**1050 Mitchell Road, Dairy, OR, 97625**

**"The NE 1/4 of Section 25, Township 38 South, Range 10 East  
of the Willamette Meridian, Klamath County, Oregon".**



**Property to include irrigation pivot and all pumps currently on property.**

**Exhibit B**

**Memorandum of Option**

After recording return to:  
OR Solar 8, LLC.  
C/O Origis Energy USA, Inc.  
Attn: President  
1200 Brickell Ave., Suite 1800  
Miami, FL, 33131

**MEMORANDUM OF OPTION AGREEMENT**

**LARRY A. MITCHELL**, Trustees of the **Larry L. Mitchell Loving Trust** ("Owner"), and **OR SOLAR 8, LLC**. ("Company"), have entered into an Option Agreement dated May 4th, 2015 (the "Option Agreement"), wherein Owner has granted to Company the sole and exclusive option to purchase the property described in Exhibit A. The term of the option will expire at 11:59 p.m. on December 31, 2015.

This Memorandum is being executed and recorded in the Official Records of Klamath County, Oregon, to give notice of the provisions of the Option Agreement and will not be deemed or construed to define, limit, or modify the Option Agreement in any manner.

[Signature Pages Follow]

Executed as of May 4<sup>th</sup>, 2015.

OWNER:

Larry L. Mitchell  
Larry L. Mitchell, Trustee of the Larry L.  
Mitchell Loving Trust

COMPANY:

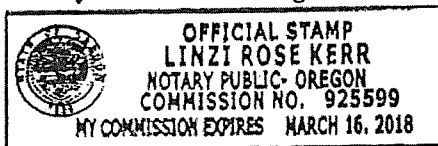
OR SOLAR 8, LLC.

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

Its: \_\_\_\_\_

STATE OF OREGON )  
COUNTY OF KLAMATH )

Signed and sworn to (or affirmed) before me on this 4<sup>th</sup> day of May, 2015 by Larry Mitchell, Trustee of  
the Larry L. Mitchell Loving Trust.



Linzi Rose Kerr  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: March 16, 2018

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

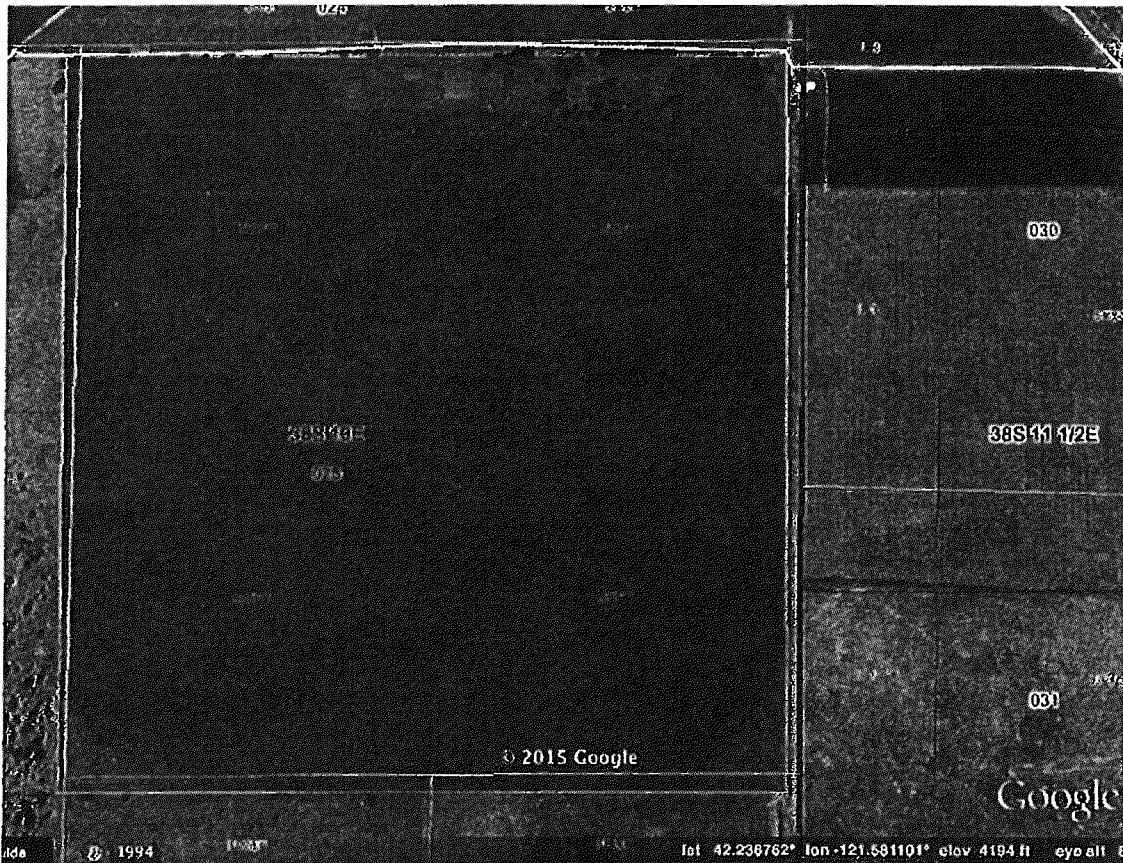
Signed and sworn to (or affirmed) before me on this \_\_\_\_ day of May, 2015 by \_\_\_\_\_,  
in their capacity as a duly authorized representative and on behalf of OR SOLAR 8, LLC.

\_\_\_\_\_  
NOTARY PUBLIC FOR FLORIDA  
My Commission Expires: \_\_\_\_\_

**Description of Property**

**1050 Mitchell Road, Dairy, OR, 97625**

**"The NE 1/4 of Section 25, Township 38 South, Range 10 East  
of the Willamette Meridian, Klamath County, Oregon".**



**Property to include irrigation pivot and all pumps currently on property.**



**EXHIBIT D-1**  
**SELLER'S MOTIVE FORCE PLAN**

**A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

<b>Month</b>	<b>Average Energy (kWh)</b>
January	945,000
February	1,097,000
March	1,311,000
April	2,481,000
May	2,857,000
June	3,307,000
July	3,404,000
August	3,242,000
September	2,429,000
October	1,531,000
November	950,000
December	825,000

Seller provide an estimate of the average monthly Net Output of the Facility, and explain the basis for the estimate.

Origis Energy USA has prepared an energy performance model for this project using PV industry standard practices and PVsyst version 6.36. PVsyst generates a base energy performance report. The meteo file used as the basis for the PVsyst model was selected from NREL TMY3 of Klamath Falls Intl Airport after considering the project site's unique geography. Probability assumptions around expected annual performance are primarily based on the energy model and the source weather file.

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the Minimum Annual Delivery of the Facility, and explain the basis for the estimate. NOTE: The Minimum Annual Delivery should be based on the most adverse natural motive force conditions reasonably expected and should take into account maintenance and Seller's load (if any).

The minimum expected annual output assumes a series of possible downward impacting elements into account, such as the most adverse weather conditions, measuring errors in the PVsyst modeling, negative equipment variability factors (such as PV module modeling accuracy).

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

Seller specify the estimated Maximum Annual Delivery of the Facility, and explain the basis for the estimate.

The maximum annual output is estimated using most favorable weather conditions and equipment factors.

### **Plant Ratings (MW or MWh)**

AC Capacity (inverter nameplate):	10.0
<u>Expected Annual Energy:</u>	<u>24,378</u>
Maximum Annual Delivered Energy:	27,703
Minimum Annual Delivered Energy:	14,627

### **Weather and Resource Data:**

The weather file selected and used in the PVsyst model is of high importance and one of the key drivers for the output projected by such model. When modeling the expected energy of any geographic site, a meteorological weather file must be manually selected that is used by the energy modeling tool to compute the performance of the PV system on an hourly basis over the course of a "typical" year. This model forms the basis of a P50 energy estimation for the PV project. Ideal elements of a weather file include hourly horizontal global and diffuse irradiation, ambient temperature, and average wind velocity. With these values, the modeling tool can very accurately simulate expected energy performance of the PV cells since it is these environmental variables that determine actual power produced by the cells.

Many available weather files in the US are taken directly from measured weather sites such as at major airports. This data is typically based on over 30 years of measured values which is then comparatively selected and formulated into a "Typical Meteorological Year" or TMY file for use in modeling. For this project, we considered the NREL TMY3 of Klamath Falls Intl Airport. The TMY3 dataset is based on years of continuous data collection and analysis.

### **Station Service and Parasitic Losses:**

While very little losses are expected during the operation of the plant, there are some losses that will be required. Most of the losses in the system are realized in the DC collection system through the AC inverter output. Downstream of the inverter, most of the losses are expected to be very small. However, this section of the system is where nighttime tare losses that are required to keep the project operational are found.

<u>Loss</u>	<u>Percent Loss (% of Total)</u>
-------------	----------------------------------

Transformers	0.8%
Station Use	0.24%
Soiling	4.0%
Module Mismatch and Quality	2.5%
Temperature	4.4%
Ohmic Wiring Loss	0.8%

**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION OF**  
**MOTIVE FORCE PLAN**

*Seller provide a written declaration from a Licensed Professional Engineer to PacifiCorp that the Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting Seller's estimated average, maximum, and minimum Net Output.*

*Engineer's Certification of Motive Force Plan attached.*



10555 Old Placerville Road  
Sacramento, CA 95827-2503  
Phone: (916) 368-4468  
FAX: (916) 368-4490  
A California Corporation  
www.saceng.com

MECHANICAL, ELECTRICAL & FIRE PROTECTION ENGINEERING SERVICES

May 13, 2015

Michael Chestone

Director of Development

Origis Energy USA

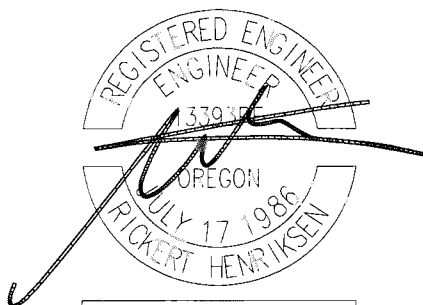
1200 Brickell Ave, Suite 1800

Miami, FL 33131

Ref: Dairy Solar Project, Klamath Falls

Dear Michael:

A review of the Energy Performance Estimation dated April 24<sup>th</sup>, 2015 for the Dairy Solar project has been completed. The simulations provides annual produced energy of 24,378 Mwh. Based on this, it will provide a maximum annual delivered energy of 27,303 MWh and a minimum annual delivered energy of 14,627 MWh. It is concluded that the methods used to determine the weather file and simulation parameters, and the assumptions used for the PV Array and System loss factors were all performed using approved industry standards.



EXPIRES 06-30-2015

Date Signed: May 13, 2015

Rickert Henriksen

Oregon PE 13393

President

## **EXHIBIT E**

### **START-UP TESTING**

Start-Up Testing shall consist of the Quality Assurance/Quality Control plans and procedures developed by the EPC Contractor.

Contractor shall submit to Owner a final copy of its quality assurance/quality control (QA/QC) plan for review not later than 45 days after contract execution for Owner review and comment.

The QA/QC program shall include, but is not limited to, such procedures and systems as the following:

- Road construction
- Rebar and conduit placement
- Concrete placement and testing
- All wire insulation testing—Megger testing or very low frequency testing
- Mechanical system—trackers, mounting structures, tracker controls
- Factory testing of inverters and transformers by the manufacturer
- PV source open-circuit measurements—VOC at combiner boxes
- Fuse tests
- Termination pull testing
- All visual inspections
- Grounding continuity testing
- Earth-ground resistivity testing
- PV module inspection and manufacturer documentation of factory test per the manufacturer's existing program
- Metering and instrumentation calibration testing
- Step-up transformer field testing
- Inverter phase rotation and matching with utility
- Relay settings/transfer trip/etc. at the point of interconnection to Owner
- Other Contractor-prescribed procedures

All QA/QC testing procedures onsite shall be witnessed and documented by a qualified representative of Contractor. Owner shall observe and witness QA/QC as necessary and at its discretion. A qualified field engineer/QA representative of Contractor shall date and sign documentation indicating completion and acceptance of each onsite QA/QC test procedures.

Following installation, Contractor shall provide a proposed commissioning and startup plan for the Plant.

Contractor shall coordinate with Owner to develop an acceptable commissioning plan that includes a checkout and startup procedure. This work will assure: that systems are activated in a manner that is safe for personnel as well as for the equipment, that Contractor work is complete and according to the contract documents, and that the systems perform as required by the contract documents and are ready to be turned over to Owner. As the construction and installation of the systems nears completion, Contractor shall prepare punch lists and conduct system walk-downs, sub-system and system checkouts, startups, testing, and turnovers.

The final approved Commissioning Procedures shall, at minimum, include the following:

- Safety plan during startup and commissioning
- Review of all QA/QC testing on the DC and AC sides of inverters
- Detailed procedure for PV Plant startup, including switching sequencing
- Confirm testing and energizing inverters in conformance with manufacturer's recommended procedures; note operating voltages; and confirm inverter is performing as expected
- Under full sun conditions, and after at least 15 minutes of operation, taking and recording PV Plant operating data—such as but not limited to MWDC, MWAC, VDC, VAC, IDC, IAC, Solar Radiation, etc.
- Testing the system control and monitoring system to verify that it is performing correctly
- Testing the communication system for offsite monitoring

- Testing the Plant metering and protective relaying in conjunction with the utility during energization procedures
- Detailed procedure for interface and initialization with the grid
- Documentation of successful startup and commissioning procedure
- Written notification submitted by Contractor to Owner that the completion of Commissioning has occurred

Upon successful completion of energizing and startup, the Plant will be considered operable.

**EXHIBIT F**  
**SELLER AUTHORIZATION TO RELEASE**  
**GENERATION DATA TO PACIFICORP**

[See attached letter]





**EXHIBIT F  
SELLER AUTHORIZATION TO RELEASE  
GENERATION DATA TO PACIFICORP**

**PacifiCorp  
825 NE Multnomah Street  
Portland, OR 97232**

**Attention: Contract Administration, Suite 600  
RE: Dairy Solar – OR Solar 8, LLC**

**OR Solar 8, LLC**, hereby voluntarily authorizes PacifiCorp's to share **OR Solar 8, LLC's** generator meter data with affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group. **OR Solar 8, LLC** acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

A handwritten signature in black ink, appearing to be 'Samir Verstyn', with a horizontal line extending to the right.

Sincerely,

Samir Verstyn  
Secretary

**EXHIBIT G**  
**SCHEDULE 37 AND PRICING SUMMARY TABLE**

Year	On-Peak	Off-Peak
	¢/kWh	¢/kWh
2016	3.85	2.84
2017	4.06	3.01
2018	4.33	3.20
2019	4.55	3.41
2020	4.78	3.84
2021	4.92	4.25
2022	5.58	4.83
2023	5.79	5.02
2024	8.84	7.36
2025	9.01	7.49
2026	9.17	7.64
2027	9.34	7.78
2028	9.52	7.94
2029	9.68	8.11
2030	9.85	8.28
2031, up to but not including November 1, 2031	10.03	8.46
from November 1, 2031 through the Termination Date:	Price specified by Section 5.3 of the Agreement	

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 1

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

For power purchased from Qualifying Facilities with a nameplate capacity of 10,000 kW or less or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 10,000 kW or less. Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

**Definitions****Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Qualifying Electricity**

Electricity that meets the requirements of "qualifying electricity" set forth in the Oregon Renewable Portfolio Standards: ORS 469A.010, 469A.020, and 469A.025.

**Renewable Qualifying Facility**

A Qualifying Facility that generates Qualifying Electricity.

**Wind Qualifying Facility**

A Renewable Qualifying Facility that generates Qualifying Electricity using wind as its motive force.

**Baseload Renewable Qualifying Facility**

A Renewable Qualifying Facility that generates Qualifying Electricity using any qualifying resource other than wind or solar.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

**On-Peak Hours or Peak Hours**

On-Peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005, the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April and for the period between the last Sunday in October and the first Sunday in November.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 2

**Definitions (continued)****Off-Peak Hours**

All hours other than On-Peak.

**Excess Output**

Excess Output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-Peak Price as described and calculated under pricing option 4 (Non-Firm Market Index Avoided Cost Price) for all Excess Output.

**Same Site**

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

**Person(s) or Affiliated Person(s)**

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit and the facilities at issue are independent family-owned or community-based projects. A unit of Oregon local government may also be a "passive investor" in a community-based project if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

**Shared Interconnection and Infrastructure**

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

**Dispute Resolution**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 3

**Dispute Resolution (continued)**

Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution.

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

**Pricing Options****1. Standard Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Standard Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price. The Standard Fixed Avoided Cost pricing option is available to all Qualifying Facilities. The Standard Fixed Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs as set forth on page 5.

**2. Renewable Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Renewable Qualifying Facility and the Company and will not change during the term of the contract. Renewable Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price. The Renewable Fixed Avoided Cost pricing option is available only to Renewable Qualifying Facilities. A Renewable Qualifying Facility choosing the Renewable Fixed Avoided Cost pricing option must cede all Green Tags generated by the facility, as defined in the standard contract, to the Company during the Renewable Resource Deficiency Period identified on page 6, except that a Renewable Qualifying Facility retains ownership of all Environmental Attributes generated by the facility, as defined in the standard contract, during the Renewable Resource Sufficiency Period identified on page 6 and during any period after the first 15 years of a longer term contract (up to 20 years).

**3. Firm Market Indexed Avoided Cost Prices**

Firm Market Index Avoided Cost Prices are available to Qualifying Facilities that contract to deliver firm power. Monthly on-peak / off-peak prices paid are a blending of Intercontinental Exchange (ICE) Day Ahead Power Price Report at market hubs for on-peak and off-peak prices. The monthly blending matrix is available upon request.

**4. Non-Firm Market Index Avoided Cost Prices**

Non-Firm Market Index Avoided Cost Prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay or, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are 93 percent of a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak firm index prices. The monthly blending matrix is available upon request. The Non-Firm Market Index Avoided Cost pricing option is available to all Qualifying Facilities. The Non-Firm Market Index Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 4

**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of the Pricing Options specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Renewable or Standard Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the renewable or standard fixed prices as provided in this schedule. On-Peak and Off-Peak are defined in the definitions section of this schedule.

**Firm Market Indexed and Non-Firm Market Index Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the market prices calculated at the time of delivery. On-Peak and Off-Peak are defined in the definitions section of this schedule.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Avoided Cost Prices**
**Standard Fixed Avoided Cost Prices**
**Fixed Prices ¢/kWh**

Deliveries During Calendar Year	Base Load QF (1)		Wind QF (2)		Solar QF	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)	(c)	(d)	(e)	(f)
2014	3.98	2.62	3.71	2.35	3.98	2.62
2015	3.94	2.86	3.67	2.59	3.94	2.86
2016	3.85	2.84	3.58	2.57	3.85	2.84
2017	4.06	3.01	3.79	2.73	4.06	3.01
2018	4.33	3.20	4.04	2.92	4.33	3.20
2019	4.55	3.41	4.26	3.12	4.55	3.41
2020	4.78	3.84	4.48	3.54	4.78	3.84
2021	4.92	4.25	4.62	3.95	4.92	4.25
2022	5.58	4.83	5.28	4.53	5.58	4.83
2023	5.79	5.02	5.48	4.71	5.79	5.02
2024	6.97	3.91	3.72	3.59	4.32	3.91
2025	7.11	4.00	3.81	3.68	4.42	4.00
2026	7.31	4.13	3.94	3.80	4.56	4.13
2027	7.52	4.29	4.09	3.96	4.73	4.29
2028	7.74	4.44	4.24	4.11	4.89	4.44
2029	8.00	4.64	4.44	4.30	5.10	4.64
2030	8.25	4.83	4.62	4.48	5.30	4.83
2031	8.42	4.93	4.72	4.57	5.40	4.93
2032	8.59	5.03	4.81	4.66	5.51	5.03
2033	8.76	5.13	4.91	4.75	5.62	5.13
2034	8.94	5.23	5.01	4.85	5.74	5.23
2035	9.11	5.33	5.10	4.94	5.84	5.33
2036	9.30	5.44	5.21	5.05	5.97	5.44
2037	9.50	5.56	5.32	5.16	6.09	5.56
2038	9.70	5.68	5.44	5.27	6.22	5.68
2039	9.90	5.80	5.55	5.38	6.35	5.80
2040	10.11	5.91	5.66	5.48	6.48	5.91

- (1) Capacity Contribution to Peak for Avoided Proxy Resource and Base Load Qualifying Facility resource are assumed 100%.
- (2) The standard avoided cost price for wind is reduced by an integration charge of \$2.55/MWh (\$2012). If Wind Qualifying Facility is not in PacifiCorp's balancing authority area, then no reduction is required.

(continued)

**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

Page 6

**Avoided Cost Prices (Continued)**
**Renewable Fixed Avoided Cost Prices**

Fixed Prices ¢/kWh								
Deliveries During Calendar Year (1)	Base Load Renewable QF (2)		Wind QF (3,4)		Solar QF (5)			
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price		
	(a)	(b)	(c)	(d)	(e)	(f)		
2014	3.98	2.62	3.71	2.35	3.98	2.62		
2015	3.94	2.86	3.67	2.59	3.94	2.86		
2016	3.85	2.84	3.58	2.57	3.85	2.84		
2017	4.06	3.01	3.79	2.73	4.06	3.01		
2018	4.33	3.20	4.04	2.92	4.33	3.20		
2019	4.55	3.41	4.26	3.12	4.55	3.41		
2020	4.78	3.84	4.48	3.54	4.78	3.84		
2021	4.92	4.25	4.62	3.95	4.92	4.25		
2022	5.58	4.83	5.28	4.53	5.58	4.83		
2023	5.79	5.02	5.48	4.71	5.79	5.02		
2024	11.48	7.36	8.24	7.05	8.84	7.36		
2025	11.70	7.49	8.39	7.17	9.01	7.49		
2026	11.91	7.64	8.54	7.31	9.17	7.64		
2027	12.14	7.78	8.71	7.45	9.34	7.78		
2028	12.36	7.94	8.87	7.61	9.52	7.94		
2029	12.58	8.11	9.02	7.77	9.68	8.11		
2030	12.81	8.28	9.18	7.93	9.85	8.28		
2031	13.05	8.46	9.34	8.10	10.03	8.46		
2032	13.29	8.66	9.51	8.30	10.21	8.66		
2033	13.53	8.87	9.68	8.50	10.39	8.87		
2034	13.79	9.07	9.86	8.69	10.58	9.07		
2035	14.04	9.27	10.03	8.89	10.78	9.27		
2036	14.32	9.49	10.23	9.09	10.99	9.49		
2037	14.59	9.72	10.42	9.32	11.19	9.72		
2038	14.87	9.96	10.60	9.55	11.39	9.96		
2039	15.15	10.21	10.80	9.79	11.60	10.21		
2040	15.47	10.43	11.02	10.00	11.85	10.43		

(1) For the purpose of determining: (1) when the Renewable Qualifying Facility is entitled to renewable avoided cost prices; and (2) the ownership of Environmental Attributes and the transfer of Green Tags to PacifiCorp, the Renewable Resource Sufficiency Period ends December 31, 2023, and the Renewable Resource Deficiency Period begins January 1, 2024.

(2) The renewable avoided cost price during the Renewable Resource Deficiency Period (2024-2040) has been increased by an integration charge of \$2.55/MWh (\$2012).

(3) During the Renewable Resource Deficiency Period, the renewable avoided cost price for a Wind Qualifying Facility will be adjusted by adding the difference between the avoided integration costs and the Qualifying Facility's integration costs. If the Wind Qualifying Facility is in PacifiCorp's balancing authority area (BAA), the adjustment is zero (integration costs cancel each other out). If the Wind Qualifying Facility is not in PacifiCorp's BAA, \$2.55/MWh (\$2012) will be added for avoided integration charges.

(4) During Renewable Resource Sufficiency Period, the renewable avoided cost price for a Wind Qualifying Facility has been reduced by an integration charge of \$2.55/MWh (\$2012) for Wind Qualifying Facilities located in PacifiCorp's BAA (in-system). If a Wind Qualifying Facility is not in PacifiCorp's BAA, \$2.55/MWh (\$2012) will be added for avoided integration charges.

(5) The renewable avoided cost payment during the Renewable Resource Deficiency Period (2024-2040) has been increased by an integration charge of \$2.55/MWh (\$2012).

(continued)

P.U.C. OR No. 36

Second Revision of Sheet No. 37-6

Canceling First Revision of Sheet No. 37-6

Issued August 11, 2014

**Effective for service on and after August 20, 2014**

R. Bryce Dalley, Vice President, Regulation

Advice No. 14-007



**AVOIDED COST PURCHASES FROM  
QUALIFYING FACILITIES OF 10,000 KW OR LESS**

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**Qualifying Facilities Contracting Procedure**

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

**1. Qualifying Facilities up to 10,000 kW**

**APPLICATION:** To owners of existing or proposed QFs with a design capacity less than or equal to 10,000 kW who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement****A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

(continued)

**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions as defined in this Schedule (i.e., standard fixed price, renewable fixed price);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Public Utility Commission of Oregon in this Schedule 37.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)

**B. Procedures (continued)**

- 5 After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

(continued)

**II. Process for Negotiating Interconnection Agreements (continued)****A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

**B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

**EXHIBIT H**  
**GREEN TAG ATTESTATION AND BILL OF SALE**

Subject to Green Tags ownership as defined in Section 5.5, from the period commencing on \_\_\_\_\_ and ending on \_\_\_\_\_, \_\_\_\_\_ ("Seller") hereby sells, transfers and delivers to PacifiCorp the Green Tags (including all Green Tag Reporting Rights) associated with the generation of Net Output under the Power Purchase Agreement (Renewable Energy) between Seller and PacifiCorp dated [\_\_\_\_\_] (the "PPA"), as described below, in the amount of one Green Tag for each megawatt hour generated. Defined terms used in this Green Tag Attestation and Bill of Sale (as indicated by initial capitalization) shall have the meaning set forth in the PPA.

Facility name and location: \_\_\_\_\_ Fuel Type: \_\_\_\_\_

Capacity (MW): \_\_\_\_\_ Operational Date: \_\_\_\_\_

Energy Admin. ID no.: \_\_\_\_\_

Dates	MWh generated
_____	_____

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to PacifiCorp is its one and only sale of the Green Tags referenced herein;
- iii) the Facility generated Output in the amount indicated above; and
- iv) to the best of Seller's knowledge, each of the Green Tags associated with the generation Output have been generated and sold by the Facility.

This Green Tag Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to PacifiCorp all of Seller's right, title and interest in and to the Green Tags (including Green Tag Reporting Rights), as set forth above.

Seller's Contact Person: [\_\_\_\_\_]

WITNESS MY HAND,

\_\_\_\_\_

a \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

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

This Attestation may be disclosed by Seller and PacifiCorp to others, including the Center for Resource Solutions and the public utility commissions having jurisdiction over PacifiCorp, to substantiate and verify the accuracy of PacifiCorp's advertising and public communication claims, as well as in PacifiCorp's advertising and other public communications.

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**THE CITY OF PRESTON, IDAHO**

**AND**

**PACIFICORP**

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## **EXHIBITS**

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## **POWER PURCHASE AGREEMENT**

THIS POWER PURCHASE AGREEMENT (this "Agreement"), is entered into between the City of Preston, a municipal corporation located in the State of Idaho (the "Seller") and PacifiCorp, an Oregon corporation acting in its merchant function capacity ("PacifiCorp"). Seller and PacifiCorp are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party."

### **RECITALS**

A. Seller owns, operates and maintains a hydro-electric power plant located in Franklin County, Idaho with a nameplate capacity rating of 400 KW (the "Facility"); and

B. Seller operates the Facility as a Qualifying Facility ("QF"); and

C. Seller expects that the Facility will deliver to PacifiCorp 2,873,000 KWh of Net Output each year of operation. Seller estimates that the Net Output will be delivered during each calendar year according to the estimates of monthly output set forth in Exhibit A. Seller acknowledges that PacifiCorp will include this amount of energy in PacifiCorp's resource planning; and

D. Seller desires to sell, and PacifiCorp agrees to purchase, the Net Output delivered by the Facility in accordance with the terms and conditions hereof; and

E. The rates, terms and conditions in this Agreement are in accordance with the rates, terms, and conditions approved by the Commission for purchases from Qualifying Facilities; and

F. PacifiCorp intends to designate Seller's Facility as a Network Resource for the purposes of serving network load.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

### **SECTION 1 DEFINITIONS, RULES OF INTERPRETATION**

1.1 **Defined Terms.** Unless otherwise required by the context in which any term appears, initially capitalized terms used herein shall have the following meanings:

"Abandonment" means the relinquishment of all possession and control of the Facility by Seller, other than pursuant to a transfer permitted under this Agreement.

"Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and

policies, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to PacifiCorp, Affiliate shall only include Berkshire Hathaway Energy Company and its direct, wholly owned subsidiaries.

"Agreement" is defined in the Recitals.

"Business Day" means any day on which banks in Salt Lake City, Utah, are not authorized or required by Requirements of Law to be closed, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Utah.

"Capacity Rights" means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility's capability and ability to produce energy. Capacity Rights are measured in KW and do not include any Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

"Commission" means the Idaho Public Utilities Commission.

"Confidential Business Information" is defined in Section 23.1.

"Contract Interest Rate" means the lesser of (a) the highest rate permitted under Requirements of Law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate." If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid.

"Contract Price" means the applicable price, expressed in \$/MWh for Net Output and Capacity Rights stated in Section 5.1.

"Contract Year" means any consecutive 12-month period during the Term, commencing at 00:00 hours on the Effective Date or any of its anniversaries and ending at 24:00 hours on the last day of such 12-month period.

"Credit Requirements" means a senior, unsecured long term debt rating (or corporate rating if such debt rating is unavailable) of (a) BBB- or greater from S&P, or (b) Baa3 or greater from Moody's; provided that if (a) or (b) is not available, an equivalent rating as determined by PacifiCorp through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with a third party.

"Default Security" is an amount equal to twenty five dollars (\$25) per KW of the Nameplate Capacity Rating.

"Effective Date" is defined in Section 2.1.

"Electric System Authority" means each of NERC, WECC, WREGIS, an RTO, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region, as such are applicable to the Seller or PacifiCorp.

"Environmental Attributes" means any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (a) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change or any Governmental Authority to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere. Environmental Attributes do not include (i) Tax Credits or other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility, (ii) matters designated by PacifiCorp as sources of liability, or (iii) adverse wildlife or environmental impacts.

"Environmental Contamination" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Premises will not be available or usable for the purposes contemplated by this Agreement.

"Event of Default" is defined in Section 11.1.

"Expected Net Output" means 2,873,000 KWh of Net Output per Contract Year, measured at the Point of Delivery.

"Facility" is defined in the Recitals and is more fully described in attached Exhibit B and includes all equipment, devices, associated appurtenances owned, controlled, operated and managed by Seller in connection with, or to facilitate, the production, generation, transmission, delivery, or furnishing of electric energy by Seller to PacifiCorp and required to interconnect with the System.

"FERC" means the Federal Energy Regulatory Commission.

"Firm Market Price Index" means (a) the average price reported by Intercontinental Exchange, Inc. ("ICE") Day-Ahead Palo Verde On-Peak Index, for On-Peak Hours, and (b) the average price reported on the ICE Day-Ahead Palo Verde Off-Peak Index, for Off-Peak Hours. If either index is not available for a given period, for purposes of calculations hereunder, the Firm Market Price Index shall be deemed to equal the volumetrically-weighted average price derived from data published by ICE for the same number of days immediately preceding and immediately succeeding the period in which the index in question was not available, regardless of which days of the week are used for this purpose. If the Firm Market Price Index or its replacement or any component of that index or its replacement ceases to be

published or available, or useful for its intended purpose hereunder, during the Term, the Parties shall agree upon a replacement Firm Market Price Index or component that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of electricity for the applicable periods.

"Force Majeure" is defined in Section 14.1.

"Forced Outage" means NERC Event Types U1, U2 and U3, as set forth in attached Exhibit J, and specifically excludes any Maintenance Outage or Planned Outage.

"Generation Interconnection Agreement" means the small generator interconnection agreement entered into separately between Seller and Interconnection Provider concerning the Interconnection Facilities.

"Governmental Authority" means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, PacifiCorp or this Agreement, including any municipality, township or county, and any entity or body 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.

"Hazardous Materials" means any waste or other substance that is listed, defined, designated or classified as or determined to be hazardous under or pursuant to any environmental law or regulation.

"Indemnified Party" is defined in Section 6.1.2(b).

"Interconnection Facilities" means all the facilities installed for the purpose of interconnecting the Facility to the System, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

"Interconnection Provider" means PacifiCorp Transmission.

"KW" means kilowatt.

"KWh" means kilowatt hour.

"Lender" means an entity lending money or extending credit (including any financing lease, monetization of tax benefits, transaction with a tax equity investor, backleverage financing or credit derivative arrangement) to Seller or Seller's Affiliates (a) for the construction, term or permanent financing or refinancing of the Facility; (b) for working capital or other ordinary business requirements for the Facility (including for the maintenance, repair, replacement or improvement of the Facility); (c) for any development financing, bridge financing, credit support, and related credit enhancement or interest rate, currency, weather, or Environmental Attributes in connection with the development, construction or operation of the Facility; or (d) for the purchase of the Facility and related rights from Seller.



"Letter of Credit" means an irrevocable standby letter of credit in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder that:

- (1) is issued by a Qualifying Institution;
- (2) by its terms, permits PacifiCorp to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;
- (3) permits PacifiCorp to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;
- (4) permits PacifiCorp to draw the entire amount available thereunder if such letter of credit is not increased or replaced as and when provided in Section 8;
- (5) is transferable by PacifiCorp to any party to which PacifiCorp may assign this Agreement; and
- (6) shall remain in effect for at least ninety (90) days after the end of the Term.

"Liabilities" is defined in Section 12.1.1.

"Maintenance Outage" means NERC Event Type MO, as set forth in attached Exhibit J, and includes any outage involving ten percent (10%) of the Facility's Net Output that is not a Forced Outage or a Planned Outage.

"Maximum Delivery Rate" means the maximum hourly rate of delivery of Net Output in MWh from the Facility to the Point of Delivery, calculated on the basis of the Net Output delivered in an hour accruing at an average rate equivalent to the actual Nameplate Capacity Rating.

"Minimum Annual Delivery" is defined in Section 4.3.

"Moody's" means Moody's Investor Services, Inc.

"Mountain Prevailing Time" or "MPT" means Mountain Standard Time or Mountain Daylight Time, as applicable in Utah on the day in question.

"MW" means megawatt.

"MWh" means megawatt hour.

"Nameplate Capacity Rating" means the maximum installed instantaneous generation capacity of the Facility, expressed in MW (AC), when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor

and operating parameters provided by the manufacturer of the generator, as set forth in a notice from Seller to PacifiCorp.

"NERC" means the North American Electric Reliability Corporation.

"Net Output" means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller's load other than station use), if any. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Delivery.

"Network Resource" is defined in the Tariff.

"Network Service Provider" means PacifiCorp Transmission, as a provider of network service to PacifiCorp under the Tariff.

"Off-Peak Hours" means all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, MPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, MPT, on Sundays and NERC designated holidays.

"On-Peak Hours" means all hours ending 07:00:00 through 22:00:00 MMPT, Monday through Saturday, excluding NERC designated holidays.

"Output" means all energy produced by the Facility.

"PacifiCorp" is defined in the Recitals, and explicitly excludes PacifiCorp Transmission.

"PacifiCorp Indemnitees" is defined in Section 12.1.1.

"PacifiCorp Representatives" is defined in Section 6.11.

"PacifiCorp Transmission" means PacifiCorp, an Oregon corporation, acting in its interconnection or transmission function capacity.

"PacifiCorp's Cost to Cover" means the positive difference, if any, between (a) the time weighted average of the Firm Market Price Index for each day for which the determination is being made, and (b) the Contract Price specified in Exhibit F in effect on such days, stated as an amount per MWh. If on a given day (or Contract Year in the case of calculations for the failure to meet the Minimum Annual Delivery) the difference between (a) minus (b) referenced above is zero or negative, then PacifiCorp's Cost to Cover shall be zero dollars (\$0), and Seller shall have no obligation to pay any amount to PacifiCorp on account of Section 11.2.1 with respect to such day (or Contract Year in the case of calculations for the failure to meet the Minimum Annual Delivery).

"Party" and "Parties" are defined in the Recitals.

"Permits" means the permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the ownership or operation

of the Facility or occupancy of the Premises, and all amendments, modifications, supplements, general conditions and addenda thereto.

"Planned Outage" means NERC Event Type PO, as set forth in attached Exhibit J, and specifically excludes any Maintenance Outage or Forced Outage.

"Point of Delivery" means the point of interconnection between the Facility and the System, as specified in the Generation Interconnection Agreement and as further described in Exhibit C.

"Premises" means the real property on which the Facility is located, as more fully described on Exhibit B.

"Prudent Electrical Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the independent electric power generation industry for facilities of similar size and characteristics or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition.

"PURPA" means the Public Utility Regulatory Policies Act of 1978.

"QF" means "Qualifying Facility," as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

"Qualifying Institution" means a United States commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof having assets of at least \$10,000,000,000 (net of reserves) and a credit rating on its long-term senior unsecured debt of at least "A" from S&P and "A2" from Moody's.

"Required Facility Documents" means the Permits and other authorizations, rights and agreements now or hereafter necessary for ownership, operation, and maintenance of the Facility, and to deliver the Net Output to PacifiCorp in accordance with this Agreement and Requirements of Law, including those set forth in Exhibit D.

"Requirements of Law" means any applicable and mandatory (but not merely advisory) federal, state and local law, statute, regulation, rule, action, order, code or ordinance enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority or regulatory body (including those pertaining to electrical, building, zoning, environmental and wildlife protection and occupational safety and health).

"RTO" means any entity (including an independent system operator) that becomes responsible as system operator for, or directs the operation of, the System.

"S&P" means Standard & Poor's Rating Group (a division of S&P Global, Inc.).

"Seller" is defined in the Recitals.

"Seller Indemnitees" is defined in Section 12.1.2.

"Seller's Cost to Cover" means the positive difference, if any, between (a) the Contract Price per MWh specified in Exhibit F, and (b) the net proceeds per MWh actually realized by Seller from the sale to a third party of Net Output not purchased by PacifiCorp as required hereunder. If on any given day the difference between (a) minus (b) referenced above is zero or negative, then Seller's Cost to Cover shall be zero dollars with respect to such day, and PacifiCorp shall have no obligation to pay any amount to Seller on account of Section 11.2.2. For any days prior to the Commercial Operation Date, the Contract Price applicable in the first Contract Year shall be utilized for purposes of clause (a).

"Seller Uncontrollable Minutes" means, for the Facility in any Contract Year, the total number of minutes during such Contract Year during which the Facility was unable to deliver Net Output to PacifiCorp (or during which PacifiCorp failed to accept such delivery) due to one or more of the following events, each as recorded by Seller's SCADA and indicated by Seller's electronic fault log: (a) an emergency or Force Majeure event; (b) to the extent not caused by Seller's actions or omissions, a curtailment in accordance with Section 4.5(b); (c) Planned Outages, but in no event exceeding 36 hours per Contract Year consistent with such operating manual; and (d) a default by PacifiCorp; provided, however, that if any of the events described above in items (a) through (d) occur simultaneously, then the relevant period of time shall only be counted once in order to prevent double counting. Seller Uncontrollable Minutes shall not include minutes when (i) the Facility or any portion thereof was unavailable solely due to Seller's non-conformance with the Generation Interconnection Agreement or (ii) the Facility or any portion thereof was paused or withdrawn from use by Seller for reasons other than those covered in this definition.

"System" means the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Transmission Provider, which shall include the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to interconnect the Facility, all as set forth in the Generation Interconnection Agreement.

"Tariff" means the PacifiCorp FERC Electric Tariff Volume No. 11 Open Access Transmission Tariff, as revised from time to time.

"Tax Credits" means any state, local and/or federal production tax credit, tax deduction, and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.

"Term" is defined in Section 2.1.

"Transmission Provider" means PacifiCorp Transmission, including the Grid Operations business unit.

"Transmission Service" means, if applicable, the transmission services pursuant to which the Transmission Provider transmits Output to the Point of Delivery, as applicable.

"WECC" means the Western Electricity Coordinating Council.

## 1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity's or index's successors; (d) "herein," "hereof" and "hereunder" refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) "including" means "including, without limitation" or "including, but not limited to"; (h) all references to a particular law or statute mean that law or statute as amended from time to time; (i) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (j) the word "or" is not necessarily exclusive. Reference to "days" shall be calendar days, unless expressly stated otherwise herein.

1.2.2 Terms Not to be Construed For or Against Either Party. Each term hereof shall be construed according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3 Headings. The headings used for the sections and articles hereof are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions hereof.

1.2.4 Interpretation with FERC Orders. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its companion orders, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Interconnection Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. Seller expressly recognizes that, for purposes hereof, the Interconnection Provider and Transmission Provider each shall be deemed to be a separate entity and separate contracting party from PacifiCorp whether or not the Generation Interconnection Agreement is entered into with Interconnection Provider or an Affiliate thereof. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Interconnection Provider or Transmission Provider, and is not liable for any breach of agreement or duty by Interconnection Provider or Transmission Provider.

## **SECTION 2 EFFECTIVE DATE; TERM**

2.1 Effective Date & Term. This Agreement shall become effective upon approval by the Commission; *provided*, however, this Agreement shall not become effective until the Commission has determined, pursuant to a final order, that the prices to be paid for energy and capacity are just and reasonable, in the public interest, and that the costs incurred by PacifiCorp for purchases of capacity and energy from Seller are legitimate expenses, all of which the

Commission will allow PacifiCorp to recover in rates in Idaho in the event other jurisdictions deny recovery of their proportionate share of said expenses (the "Effective Date").

Unless earlier terminated as provided herein, the Agreement shall remain in effect for a term of 20 years from the Effective Date ("Term").

### **SECTION 3 REPRESENTATIONS AND WARRANTIES**

3.1 Mutual Representations and Warranties. Each Party represents, covenants, and warrants to the other that:

3.1.1 Organization. It is duly organized and validly existing under the laws of the State of its organization.

3.1.2 Authority. It has the requisite power and authority to enter this Agreement and to perform according to the terms hereof.

3.1.3 Corporate Actions. It has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance hereof and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. The execution and delivery hereof does not contravene any provision of, or constitute a default under, any indenture, mortgage, security instrument or undertaking, or other material agreement to which it is a party or by which it is bound, or any valid order of any court, or any regulatory agency or other Governmental Authority having authority to which it is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of it, enforceable against it in accordance with its terms, except as the enforceability hereof may be limited by general principles of equity or bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies.

3.1.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of either Party's knowledge, threatened in writing against either Party or its members, with respect hereto and the transactions contemplated hereunder. No other investigation or proceeding is pending or threatened in writing against a Party, its members, or any Affiliate, the effect of which would materially and adversely affect the Party's performance of its obligations hereunder.

3.2 Seller's Further Representations and Warranties. Seller further represents, covenants, and warrants to PacifiCorp that:

3.2.1 Authority. Seller (a) has all required regulatory authority to make wholesale sales from the Facility; (b) has the power and authority to own and operate the Facility and be present upon the Premises for the Term; and (c) is duly qualified and in good standing

under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.2 No Contravention. The execution, delivery, performance and observance by Seller of its obligations hereunder do not and will not:

(a) contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or any of Seller's members;

(b) require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are (i) set forth in Exhibit D;

(c) result in a breach of or constitute a default under any provision of any security issued by any of Seller's members or managers, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder, or any material agreement, instrument or undertaking to which either Seller's members or any Affiliates of Seller's members is a party or by which the property of any of Seller's members or any Affiliates of Seller's members is bound, the effect of which would materially and adversely affect Seller's performance of, or ability to perform, its obligations hereunder.

3.2.3 Required Facility Documents. All Required Facility Documents are listed on Exhibit D. Seller holds as of the Effective Date and will maintain for the Term all Required Facility Documents. The use of the Facility complies with all applicable restrictive covenants affecting the Premises. Seller shall promptly notify PacifiCorp of any additional Required Facility Documents.

3.2.4 Delivery of Energy. Seller holds rights sufficient to enable Seller to deliver Net Output at the Nameplate Capacity Rating from the Facility to the Point of Delivery pursuant to this Agreement throughout the Term.

3.2.5 Control of Premises. Seller has all legal rights necessary for the Seller to enter upon and occupy the Premises for the purpose of operating and maintaining the Facility for the Term. All leases of real property required for the operation of the Facility or the performance of any obligations of Seller hereunder are set forth and accurately described in Exhibit E. Seller shall maintain all leases or other land grants necessary for the operation and maintenance of the Facility as valid for the Term. Upon request by PacifiCorp, Seller shall provide copies of the memoranda of lease recorded in connection with the development of the Facility.

3.2.6 Undertaking of Agreement; Professionals and Experts. Seller has engaged those professional or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts including engineers, attorneys or accountants, that Seller may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Seller.

3.2.7 Verification. All information relating to the Facility, its operation and output provided to PacifiCorp and contained in this Agreement has been verified by Seller and is true and accurate.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered hereinto in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter hereof.

3.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this section are made as of the Effective Date. If at any time during the Term, the Seller obtains actual knowledge of any event or information that would have caused any of the representations and warranties in this Section 3 to be materially untrue or misleading at the time given, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. If at any time the Seller obtains actual knowledge that the representations and warranties in this Sections 3 are not true, Seller shall provide written notice to PacifiCorp. The notice required pursuant to this section shall be given as soon as practicable after the occurrence of each such event.

## **SECTION 4**

### **DELIVERIES OF NET OUTPUT**

4.1 Purchase and Sale. Except as otherwise expressly provided herein, commencing on the Effective Date and continuing through the Term, Seller shall sell and make available to PacifiCorp, and PacifiCorp shall purchase and receive the entire Net Output from the Facility at the Point of Delivery. PacifiCorp shall be under no obligation to make any purchase hereunder other than Net Output, as described above. PacifiCorp shall not be obligated to purchase, receive or pay for Net Output that is not delivered to the Point of Delivery.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any Net Output, energy, or Capacity Rights from the Facility to any party other than PacifiCorp.

4.3 Minimum Annual Delivery. Seller shall make available from the Facility a minimum of 1,500,000 KWh of Net Output during each Contract Year ("Minimum Annual Delivery"), provided that such minimum for the first Contract Year (if less than a full calendar year) shall be reduced pro rata to reflect the Effective Date, and provided further that such minimum Net Output shall be reduced pro rata to reflect any periods during a Contract Year that the Facility was prevented from generating electricity during periods constituting Seller Uncontrollable Minutes.

4.4 Title and Risk of Loss of Net Output. Seller shall deliver Net Output to the Point of Delivery and Capacity Rights free and clear of all liens, claims and encumbrances. Title to and risk of loss of all Net Output shall transfer from Seller to PacifiCorp upon its delivery to PacifiCorp at the Point of Delivery. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by, all Output up to and at the Point of Delivery.



PacifiCorp shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Net Output after the Point of Delivery.

4.5 Curtailment. PacifiCorp shall not be obligated to purchase, receive, pay for, or pay any damages associated with, Net Output if such Net Output is not delivered to the System or Point of Delivery due to any of the following: (a) the interconnection between the Facility and the System is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement, (b) the Transmission Provider or Network Service Provider directs a general curtailment, reduction, or redispatch of generation in the area, (which would include the Net Output) for any reason, even if and no matter how such curtailment or redispatch directive is carried out by PacifiCorp, which may fulfill such directive by acting in its sole discretion; or if PacifiCorp curtails or otherwise reduces the Net Output in any way in order to meet its obligations to the Transmission Provider or Network Service Provider to operate within system limitations or otherwise, (c) the Facility's Output is not received because the Facility is not fully integrated or synchronized with the System, or (d) an event of Force Majeure prevents either Party from delivering or receiving Net Output. Seller shall reasonably determine the MWh amount of Net Output curtailed pursuant to this Section 4.5 after the fact based on the amount of energy that could have been generated at the Facility and delivered to PacifiCorp as Net Output but that was not generated and delivered because of the curtailment. Seller shall determine the quantity of such curtailed energy based on the time and duration of the curtailment period. Seller shall promptly provide PacifiCorp with access to such information and data as PacifiCorp may reasonably require to confirm to its reasonable satisfaction the amount of energy that was not generated or delivered because of a curtailment described in this Section 4.5.

4.6 PacifiCorp as Merchant. Seller acknowledges that PacifiCorp, acting in its merchant capacity function as purchaser under this Agreement, has no responsibility for or control over PacifiCorp Transmission or any successor Transmission Provider.

4.7 Renewable Energy Credits. Seller maintains ownership of any commercially transferrable or tradeable renewable energy credits associated with the Output.

4.8 Purchase and Sale of Capacity Rights. For and in consideration of PacifiCorp's agreement to purchase from Seller the Facility's Net Output on the terms and conditions set forth herein, Seller transfers to PacifiCorp, and PacifiCorp accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Rights, if any, existing during the Term.

4.9 Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other person or entity the Capacity Rights, if any. During the Term, Seller shall not report to any person or entity that the Capacity Rights, if any, belong to anyone other than PacifiCorp. PacifiCorp may at its own risk and expense report to any person or entity that Capacity Rights exclusively belong to it.

4.10 Further Assurances. At PacifiCorp's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Net Output or Capacity Rights, if any, to PacifiCorp.

## **SECTION 5**

### **CONTRACT PRICE; COSTS**

5.1 Contract Price; Includes Capacity Rights. Beginning on the Effective Date, PacifiCorp shall pay Seller the Contract Price per MWh of Net Output delivered to the Point of Delivery, as specified in Exhibit F, up to the Maximum Delivery Rate. Seller shall not be entitled to any compensation over and above the Contract Price for any Net Output or Capacity Rights associated therewith.

5.2 Costs and Charges. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Net Output up to and at the Point of Delivery, including transmission costs, Transmission Service, and transmission line losses, and any operation and maintenance charges imposed by Interconnection Provider and Transmission Provider for the Interconnection Facilities. PacifiCorp shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Output at and from the Point of Delivery, including transmission costs and transmission line losses and imbalance charges or penalties. Without limiting the generality of the foregoing, Seller, in accordance with the Generation Interconnection Agreement, shall bear all costs associated with the modifications to Interconnection Facilities or the System (including System upgrades) caused by or related to (a) the interconnection of the Facility with the System and (b) any increase in generating capacity of the Facility.

5.3 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself.

5.4 Taxes. Seller shall pay or cause to be paid when due, or reimburse PacifiCorp for, all existing and any new sales, use, excise, severance, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the Net Output or Capacity Rights up to and including, but not beyond, the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. PacifiCorp shall pay or cause to be paid when due all such taxes imposed or levied by any Governmental Authority on the Net Output or Capacity Rights beyond the Point of Delivery, regardless of whether such taxes are imposed on PacifiCorp or Seller under Requirements of Law. The Contract Price shall not be adjusted on the basis of any action of any Governmental Authority with respect to changes to or revocations of sales and use tax benefits, rebates, exception or give back. In the event any taxes are imposed on a Party for which the other Party is responsible hereunder, the Party on which the taxes are imposed shall promptly provide the other Party notice thereof and such other information as such Party may reasonably request with respect to any such taxes.

5.5 Costs of Ownership and Operation. Without limiting the generality of any other provision hereof and subject to Section 5.4, Seller shall be solely responsible for paying when due (a) all costs of owning and operating the Facility in compliance with existing and future Requirements of Law and the terms and conditions hereof, and (b) all taxes and charges (however characterized) now existing or hereinafter imposed on or with respect to the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility,

including any such tax or charge (however characterized) to the extent payable by a generator of such energy or Environmental Attributes.

5.6 Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008).

## **SECTION 6 OPERATION AND CONTROL**

### **6.1 Standard of Facility Operation.**

6.1.1 General. At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (a) the applicable and mandatory standards, criteria and formal guidelines of FERC, NERC, any RTO, and any other Electric System Authority and any successors to the functions thereof; (b) the Permits and Required Facility Documents; (c) the Generation Interconnection Agreement; (d) all Requirements of Law; (e) the requirements hereof; and (f) Prudent Electrical Practice. Seller acknowledges that it shall have no claims hereunder against PacifiCorp with respect to any requirements imposed by or damages caused by (or allegedly caused by) the Transmission Provider. Seller will have no claims against PacifiCorp under this Agreement with respect to the provision of station service.

#### **6.1.2 Fines and Penalties.**

(a) Without limiting a Party's rights under Section 6.1.2(b), each Party shall pay all fines and penalties incurred by such Party on account of noncompliance by such Party with Requirements of Law in respect to this Agreement, except where such fines and penalties are being contested in good faith through appropriate proceedings.

(b) If fines, penalties, or legal costs are assessed against or incurred by either Party (the "Indemnified Party") on account of any action by any Governmental Authority due to noncompliance by the other Party (the "Indemnifying Party") with any Requirements of Law or the provisions hereof, or if the performance of the Indemnifying Party is delayed or stopped by order of any Governmental Authority due to the Indemnifying Party's noncompliance with any Requirements of Law, the Indemnifying Party shall indemnify and hold harmless the Indemnified Party against any and all Liabilities suffered or incurred by the Indemnified Party as a result thereof. Without limiting the generality of the foregoing, the Indemnifying Party shall

reimburse the Indemnified Party for all fees, damages, or penalties imposed on the Indemnified Party by any Governmental Authority, other person or to other utilities for violations to the extent caused by a default by the Indemnifying Party or a failure of performance by the Indemnifying Party hereunder.

6.2 Interconnection. Seller is responsible for the costs and expenses associated with maintaining interconnection service for the Facility at its Nameplate Capacity Rating at the Point of Delivery. Seller shall have no claims hereunder against PacifiCorp, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by (or allegedly caused by) acts or omissions of the Transmission Provider or Interconnection Provider, in connection with the Generation Interconnection Agreement or otherwise.

6.2.1 Preliminary Interconnection. Notwithstanding any other provision of this Agreement to the contrary, for the period beginning on the Effective Date and ending on the earlier of (i) the date a Generator Interconnection Agreement is obtained by Seller from Interconnection Provider with respect to the Facility or (ii) December 31, 2018, the Parties agree that the interconnection-related provisions of that certain Power Purchase Agreement between Seller and PacifiCorp, dated February 24, 1982, as amended (the "Original PPA"), shall apply to and be incorporated by reference into this Agreement. If a Generator Interconnection Agreement is not obtained and in effect by December 31, 2018, this Agreement shall terminate with no further action required by either Party. After a Generator Interconnection Agreement is in place with respect to the Facility as provided in this Section 6.2.1, the interconnection-related provisions of the Original PPA shall no longer be in effect.

6.3 Coordination with System. Seller shall be responsible for the coordination and synchronization of the Facility and the Interconnection Facilities with the System.

6.4 Outages.

6.4.1 Planned Outages. Except as otherwise provided herein, Seller shall not schedule a Planned Outage during any portion of the months of December, January, July, and August, except to the extent a Planned Outage is reasonably required to enable a vendor to satisfy a guarantee requirement. Seller shall provide PacifiCorp with an annual forecast of Planned Outages for each Contract Year at least one month, but no more than three months, before the first day of that Contract Year, and shall promptly update such schedule, or otherwise change it, only to the extent that Seller is reasonably required to change it in order to comply with Prudent Electrical Practices. Seller shall not schedule any maintenance of Interconnection Facilities during such months, without the prior written approval of PacifiCorp, which approval shall not be unreasonably withheld or delayed.

6.4.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify PacifiCorp of the proposed Maintenance Outage as soon as practicable but in any event at least five days before the outage begins. Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of PacifiCorp; provided, however, that Seller shall take all reasonable measures consistent with Prudent Electrical Practices to not schedule any Maintenance Outage during the following periods: June

15 through June 30, July, August, and September 1 through September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give PacifiCorp notice of the Maintenance Outage as soon as practicable after Seller determines that the Maintenance Outage is necessary. PacifiCorp shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage provided that such change has no substantial impact on Seller. Seller shall notify PacifiCorp of any subsequent changes in generation capacity available to PacifiCorp as a result of such Maintenance Outage or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to minimize the frequency and duration of Maintenance Outages.

6.4.3 Forced Outages. Seller shall promptly provide to PacifiCorp an oral report, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any Forced Outage resulting in more than ten percent (10%) of the Nameplate Capacity Rating of the Facility being unavailable. This report shall include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller shall promptly update the report as necessary to advise PacifiCorp of changed circumstances. As soon as practicable, the oral report shall be confirmed in writing by notice to PacifiCorp. Seller shall take all reasonable measures consistent with Prudent Electrical Practices to avoid Forced Outages and to minimize their duration.

6.4.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform PacifiCorp, via telephone to a number specified by PacifiCorp (or other method approved by PacifiCorp), of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day (except for curtailments pursuant to Section 4.5(b)) and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than five percent (5%) of the Nameplate Capacity Rating of the Facility.

6.4.5 Effect of Outages on Estimated Output. Seller represents and warrants that the estimated monthly Net Output set forth on Exhibit A takes into account the Planned Outages, Maintenance Outages, and Forced Outages that Seller reasonably expects to encounter in the ordinary course of operating the Facility.

## 6.5 Scheduling.

6.5.1 Cooperation and Standards. With respect to any and all scheduling requirements hereunder, (a) Seller shall cooperate with PacifiCorp with respect to scheduling Net Output, and (b) each Party shall designate authorized representatives to communicate with regard to scheduling and related matters arising hereunder. Each Party shall comply with the applicable variable resource standards and criteria of any applicable Electric System Authority.

6.5.2 Schedule Coordination. If, as a result hereof, PacifiCorp is deemed by an RTO to be financially responsible for Seller's performance under the Generation Interconnection Agreement, due to Seller's lack of standing as a "scheduling coordinator" or other RTO recognized designation, qualification or otherwise, then Seller shall acquire such RTO recognized standing (or shall contract with a third party who has such RTO recognized standing) such that PacifiCorp is no longer responsible for Seller's performance under the Generation Interconnection Agreement or RTO requirement.

6.6 Increase in Nameplate Capacity Rating; New Project Expansion or Development. Without limiting any restrictions herein on Nameplate Capacity Rating, if Seller elects to increase, at its own expense, the ability of the Facility to deliver Net Output in quantities in excess of the Maximum Delivery Rate through any means, including replacement or modification of Facility equipment or related infrastructure, PacifiCorp shall not be required to purchase any Net Output above the Maximum Delivery Rate. If Seller or any Affiliate elects to build an expansion or additional project within one mile of the Facility (measured from the nearest generation equipment at both locations), neither Seller nor any Affiliate will have the ability to require PacifiCorp to purchase (and PacifiCorp shall have no obligation to purchase pursuant to this Agreement) the output of any such expansion or additional facility. Seller covenants that it will take all actions necessary to ensure that the immediately preceding sentence (i) applies to Seller's direct and indirect parent affiliates, and (ii) will not be avoided through use or establishment of a special purpose entity or other Affiliate. Any such expansion or additional facility may not materially and adversely impact the ability of either Party to fulfill its obligations pursuant hereto.

6.7 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between PacifiCorp and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.8 Reports and Records.

6.8.1 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term commencing on the Effective Date. Seller shall provide PacifiCorp with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.8.2 Other Information to be Provided to PacifiCorp. Seller shall provide to PacifiCorp the following information concerning the Facility:

(a) A report summarizing the results of maintenance performed during each Maintenance Outage, Planned Outage, and any Forced Outage, and upon request of PacifiCorp any of the technical data obtained in connection with such maintenance; and

(b) One year's advance notice of the termination or expiration of any material agreement, including leases, pursuant to which the Facility or any material equipment relating thereto is upon the Premises; provided that the foregoing does not authorize any early termination of any land lease. In the event Seller has less than one year's advance notice of such

termination or expiration, Seller shall provide the notice contemplated by this Section to PacifiCorp within fifteen (15) Business Days of Seller obtaining knowledge of the termination or expiration.

6.8.3 Information to Governmental Authorities. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required by PacifiCorp or an Affiliate thereof for reports to, and information requests from, any Governmental Authority or Electric System Authority. Along with this information, Seller shall provide to PacifiCorp copies of all submittals to Governmental Authorities or Electric System Authorities directed by PacifiCorp and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use best efforts to provide this information to PacifiCorp with sufficient advance notice to enable PacifiCorp to review such information and meet any submission deadlines imposed by the requesting organization or entity. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.8.3.

6.8.4 Data Request. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with data collected by Seller related to the construction, operation or maintenance of the Facility reasonably required for information requests from any Governmental Authorities, state or federal agency intervenor or any other party achieving intervenor status in any PacifiCorp rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to PacifiCorp sufficiently in advance to enable PacifiCorp to review it and meet any submission deadlines. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.8.4.

6.8.5 Documents to Governmental Authorities. After sending or filing any statement, application, and report or any document with any Governmental Authority or Electric System Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to PacifiCorp a copy of the same.

6.8.6 Environmental Information. Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all data reasonably requested by PacifiCorp relating to environmental information under the Required Facility Documents. Seller shall further provide PacifiCorp with information relating to environmental impact mitigation measures it is taking in connection with the Facility's construction or operation that are required by any Governmental Authority. PacifiCorp shall reimburse Seller for all of Seller's reasonable actual costs and expenses in excess of \$5,000 per year, if any, incurred in connection with PacifiCorp's requests for the foregoing information under this Section 6.8.6. As soon as it is known to Seller, Seller shall disclose to PacifiCorp, the extent of any material violation of any environmental laws or regulations arising out of the construction or operation of the Facility, or the presence of Environmental Contamination at the Facility or on the Premises, alleged to exist by any Governmental Authority having jurisdiction over the Premises, or the present existence of, or the occurrence during Seller's occupancy of the Premises of, any enforcement, legal, or regulatory

action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination presently occurring or having occurred during the period of time that Seller has occupied the Premises.

6.8.7 Operational Reports. Seller shall provide PacifiCorp quarterly (on a calendar year basis) operational reports in a form and substance reasonably acceptable to PacifiCorp, and Seller shall, promptly upon written request from PacifiCorp, provide PacifiCorp with all operational data requested by PacifiCorp with respect to the performance of the Facility and delivery of Net Output or Capacity Rights therefrom.

6.8.8 Notice of Material Adverse Events. Seller shall promptly notify PacifiCorp of receipt of written notice or actual knowledge by Seller or its Affiliates of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided herein.

6.8.9 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, or proceeding before any court or Governmental Authority against Seller or its members with respect to this Agreement or the transactions contemplated hereunder, Seller shall promptly give notice to PacifiCorp of the same. Following its receipt of written notice or actual knowledge of the commencement of any action, suit or proceeding before any court or Governmental Authority against Seller, its members or any Affiliate, the effect of which would materially and adversely affect Seller's performance of its obligations hereunder, Seller shall promptly give notice to PacifiCorp of the same.

6.8.10 Additional Information. Seller shall provide to PacifiCorp such other information respecting the condition or operations of Seller, as such pertains to Seller's performance of its obligations hereunder, or the Facility as PacifiCorp may, from time to time, reasonably request.

6.8.11 Confidential Treatment. The monthly reports and other information provided to PacifiCorp under this Section 6.8 shall be treated as Confidential Business Information if such treatment is requested in writing by Seller at the time the information is provided to PacifiCorp, subject to PacifiCorp's rights to disclose such information pursuant to Sections 6.8.4, 6.8.5, 6.8.7, 9.5, 9.6, 23.2 and 23.3, and pursuant to any applicable Requirements of Law. Seller shall have the right to seek confidential treatment of any such information from the Governmental Authority entitled to receive such information.

6.9 Financial and Accounting Information. If PacifiCorp or one of its Affiliates determines that, under (i) the Accounting Standards Codification (ASC) 810, Consolidation of Variable Interest Entities, and (ii) Requirements of Law that it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide, upon PacifiCorp's written request, sufficient financial and ownership information so that PacifiCorp or its Affiliate may confirm whether a variable interest does exist under ASC 810 and Requirements of Law. If PacifiCorp or its Affiliate determines that, under ASC 810, it holds a variable interest in Seller, Seller hereby agrees to provide, upon PacifiCorp's



written request, sufficient financial and other information to PacifiCorp or its Affiliate so that PacifiCorp may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 and Requirements of Law. PacifiCorp shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with PacifiCorp's requests for information under this Section 6.9. The information provided to PacifiCorp under this Section 6.9 shall be treated as Confidential Business Information if at the time the Seller provides such information to PacifiCorp the Seller provides written notice that the information is Confidential Business Information. Seller shall have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information. Information provided pursuant to this Section 6.9 is subject to PacifiCorp's rights to disclose such information pursuant to Sections 6.8.3, 6.8.4, 6.8.6, 9.5, 9.6, 23.2 and 23.3, and pursuant to any applicable Requirements of Law.

6.10 Access Rights. Upon reasonable prior notice and subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety, Seller shall provide PacifiCorp and its authorized agents, employees and inspectors ("PacifiCorp Representatives") with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) to provide tours of the Facility to customers and other guests of PacifiCorp (not more than twelve (12) times per year), (c) for purposes of implementing Section 10.5, and (d) for other reasonable purposes at the reasonable request of PacifiCorp. PacifiCorp shall release Seller against and from any and all Liabilities resulting from actions or omissions by any of the PacifiCorp Representatives in connection with their access to the Facility, except to the extent that such damages are caused by the intentional or negligent act or omission of Seller or its agents or Affiliates.

6.11 Facility Images. PacifiCorp shall be free to use any and all images from or of the Facility for promotional purposes, subject to Seller's consent (not to be unreasonably withheld or delayed, and which consent may consider Requirements of Law relating to Premises security, obligations to outside vendors (including any confidentiality obligations), and the corporate policies of Seller's Affiliates). Upon PacifiCorp's request and at PacifiCorp's expense, Seller shall install imaging equipment at the Facility as PacifiCorp may request, including video and or web-based imaging equipment subject to the prudent safety requirements of Seller, and Requirements of Law relating to workplace health and safety. PacifiCorp shall retain full discretion on how such images are presented including associating images of the Facility with a PacifiCorp-designated corporate logo.

## **SECTION 7**

### **QUALIFYING FACILITY STATUS**

7.1 Seller's QF Status. Seller covenants that, during the Term and before delivering Net Output to PacifiCorp hereunder, Seller shall cause the Facility to maintain its status as a QF.

7.2 QF Facility. Seller shall provide PacifiCorp with copies of the appropriate QF certification (which may include a FERC self-certification) within ten (10) days of filing or receiving the certification. During the Term, Seller shall maintain its QF status, and shall not seek to change the Contract Price as a result of its status as a QF. At any time during the Term, PacifiCorp may require Seller, at Seller's sole cost, to provide PacifiCorp with evidence

satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements. If after receiving such information from Seller, PacifiCorp is not reasonably satisfied that the Facility qualifies for such status, PacifiCorp may require that Seller provide a written legal opinion from an attorney who is (a) in good standing before a state bar in the United States, and (b) has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may reasonably request) demonstrating that Seller has maintained the Facility as a QF.

## **SECTION 8 SECURITY AND CREDIT SUPPORT**

8.1 Representations and Warranties in Lieu of Security. Default Security is not required if Seller satisfies as of the Effective Date each of the following representations and warranties and further covenants to satisfy each of the following during the Term:

8.1.1 Financial Condition. Seller is not nor has within the past two (2) years been (a) the debtor in any bankruptcy proceeding, (b) unable to pay its bills in the ordinary course of its activities and operations, or (c) the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.

8.1.2 No Defaults on Payment Obligations. Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.

8.1.3 Current on Financial Obligations. Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction-related financial obligations.

8.1.4 Rights to Facility. Seller owns, and will continue to own for the Term, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.

8.1.5 Updates. Seller shall provide within five Business Days from receipt of a written request from PacifiCorp all reasonable financial records and other documents necessary for PacifiCorp to confirm Seller satisfies the representations and warranties contained in this Section 8.1.

8.1.6 Declaration. Seller hereby declares (Seller initial one only):

\_\_\_\_X\_\_\_\_ Seller represents, warrants and covenants to each of 8.1.1 through 8.1.5 above, and therefore is not required to post security under this Section 8 for so long as Seller satisfies each of the foregoing; or

\_\_\_\_\_ Seller elects to post the security under Section 8.

8.2 Default Security. Upon the Effective Date, unless Seller satisfies the requirements of Section 8.1 above and has provided the associated declaration in Section 8.1.6,

Seller shall provide Default Security to PacifiCorp in the form of a cash escrow or Letter of Credit.

8.2.1 Cash Escrow Security. Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

8.2.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred. Seller and any party providing a guaranty for Seller shall provide within five Business Days from receipt of a written request from PacifiCorp all reasonable financial records necessary for PacifiCorp to confirm Seller and/or the guarantor satisfies the Credit Requirements.

8.3 Return of Default Security. PacifiCorp shall return any remaining Default Security to Seller within sixty (60) days of the termination of the Agreement.

8.4 Levelized Security.

8.4.1 Duty to Post Levelized Security. Upon the Effective Date or at any time during the Term when Seller has elected to receive levelized pricing and does not satisfy the Credit Requirements, Seller shall post and maintain in favor of PacifiCorp (a) a guaranty from an entity that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its reasonable discretion, (b) a Letter of Credit, or (c) cash escrow (established in the same manner as described in Section 8.2.1, except the amount shall be consistent with the requirements on this Section 8.4) (the "Levelized Security"), as provided in this Section 8.4. In the event Seller posts Levelized Security and thereafter satisfies the Credit Requirements, as demonstrated to the reasonable satisfaction of PacifiCorp, then Seller shall be entitled to a release by PacifiCorp of the Levelized Security for so long as Seller continues to satisfy the Credit Requirements. Seller and any party providing a guaranty for Seller shall provide within five Business Days from receipt of a written request from PacifiCorp all reasonable financial records necessary for PacifiCorp to confirm Seller and/or the guarantor satisfies the Credit Requirements.

8.4.2 Amount of Levelized Security. The total amount of the Levelized Security required by Section 8.4.1 shall be the amount set forth in Exhibit G for each calendar year. Upon the Effective Date, if Seller does not satisfy the Credit Requirements, Seller shall provide the Levelized Security for the first partial and full calendar year of the Term as set forth in Exhibit G. Thereafter and throughout the Term, for the periods when Seller does not satisfy the Credit Requirements, Seller shall maintain throughout the applicable calendar year the Levelized Security amount in Exhibit G.

8.4.3 Duty of Levelized Security to Pay Amounts Due to PacifiCorp. If Seller fails to pay any amount due to PacifiCorp within the time provided for payment under this Agreement, PacifiCorp shall be entitled to and shall draw upon the Levelized Security. PacifiCorp shall also be entitled to draw upon the Levelized Security for damages arising if this Agreement is terminated under Section 11 because of Seller's default.

8.5 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 8 (a) constitutes security for, but is not a limitation of, Seller's obligations hereunder and (b) shall not be PacifiCorp's exclusive remedy for Seller's failure to perform in accordance with this Agreement. Seller shall maintain security as required by Sections 8.2 and 8.4., as applicable, per this Agreement. To the extent that PacifiCorp draws on any security, Seller shall, on or before the first day of the Contract Year following such draw, replenish or reinstate the security to the full amount then required under this Section 8. If at any time the Seller or Seller's credit support provider(s) fails to meet the Credit Requirements, then Seller shall provide replacement security meeting the requirements set forth in this Section 8 within ten (10) Business Days after the earlier of (x) Seller's receipt of notice from any source that Seller or the credit support provider(s), as applicable, no longer meets the Credit Requirements or (y) Seller's receipt of written notice from PacifiCorp requesting the posting of alternate security.

## **SECTION 9 METERING**

9.1 Installation of Metering Equipment. Metering equipment shall be inspected, tested, maintained and replaced as provided in the Generation Interconnection Agreement; provided, however, that PacifiCorp acting in its merchant function capacity shall be under no obligation, pursuant hereto, to bear any expense relating to such metering equipment.

9.2 Metering. Metering shall be performed at the location and in the manner specified in Exhibit C, the Generation Interconnection Agreement and as necessary to perform Seller's obligations hereunder. All quantities of Net Output purchased hereunder shall reflect the net amount of energy flowing into the System at the Point of Delivery.

9.3 Inspection, Testing, Repair and Replacement of Meters. PacifiCorp shall have the right to periodically inspect, test, repair and replace the metering equipment that are provided for in the Generation Interconnection Agreement, without PacifiCorp assuming any obligations thereunder. If any of the inspections or tests disclose an error exceeding 0.5 percent, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PacifiCorp arising out of such inaccuracy of metering equipment. Nothing in this Agreement shall give rise to PacifiCorp, acting in its merchant function capacity hereunder,

having any obligations to Seller, or any other person or entity, pursuant to or under the Generation Interconnection Agreement.

9.4 Metering Costs. To the extent not otherwise provided in the Generation Interconnection Agreement, Seller shall bear all costs (including PacifiCorp's costs) relating to all metering equipment at Seller's Facility.

9.5 Meter Data. Seller may request the Interconnection Provider or Transmission Provider in writing in a form similar to that found in Exhibit H to provide any and all meter or other data associated with the Facility or Net Output directly to PacifiCorp. Should Seller refuse to provide a release similar to that found in Exhibit H, Seller shall establish a mechanism at its expense that allows PacifiCorp, in its merchant function, to obtain all necessary meter and other data to fully perform and verify Seller's performance under this Agreement. Notwithstanding any other provision hereof, PacifiCorp shall have the right to provide such data to any Electric System Authority.

9.6 WREGIS Metering. Seller shall cause the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility.

## **SECTION 10 BILLINGS, COMPUTATIONS AND PAYMENTS**

10.1 Monthly Invoices. On or before the tenth (10<sup>th</sup>) day following the end of each calendar month, Seller shall deliver to PacifiCorp a proper invoice showing Seller's computation of Net Output delivered to the Point of Delivery during such month. When calculating the invoice, Seller shall provide computations showing the portion of Net Output that was delivered during On-Peak Hours and the portion of Net Output that was delivered during Off-Peak Hours. If such invoice is delivered by Seller to PacifiCorp, then PacifiCorp shall send to Seller, on or before the later of the twentieth (20<sup>th</sup>) day following receipt of such invoice or the thirtieth (30<sup>th</sup>) day following the end of each month, payment for Seller's deliveries of Net Output to PacifiCorp.

10.2 Offsets. Either Party may offset any payment due hereunder against amounts owed by the other Party pursuant hereto. Either Party's exercise of recoupment and set off rights shall not limit the other remedies available to such Party hereunder.

10.3 Interest on Late Payments. Any amounts that are not paid when due hereunder shall bear interest at the Contract Interest Rate from the date due until paid.

10.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment

dispute, the amount due shall be paid within five (5) Business Days after such determination or resolution, along with interest at the Contract Interest Rate from the date due until the date paid.

10.5 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense upon reasonable notice and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of Net Output delivered at the Point of Delivery. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest at the Contract Interest Rate from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the foregoing, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

## **SECTION 11 DEFAULTS AND REMEDIES**

11.1 Defaults. The following events are defaults (each a "default" before the passing of applicable notice and cure periods, and an "Event of Default" thereafter) hereunder:

### 11.1.1 Defaults by Either Party.

(a) A Party fails to make a payment when due hereunder if the failure is not cured within ten (10) Business Days after the non-defaulting Party gives the defaulting Party a notice of the default.

(b) A Party (i) makes a general assignment for the benefit of its creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (iii) becomes insolvent; or (iv) is unable to pay its debts when due.

(c) A Party breaches a representation or warranty made by it herein if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default; provided, that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a ninety (90) day cure period, the defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

(d) A Party otherwise fails to perform any material obligation hereunder for which an exclusive remedy is not provided hereunder and which is not addressed in any other Event of Default described in Section 11.1, if the failure is not cured within thirty

(30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a ninety (90) day cure period, the defaulting Party will have such additional time (not exceeding an additional sixty (60) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan, the non-defaulting party approves such remediation plan, and the defaulting Party promptly commences and diligently pursues the remediation plan.

#### 11.1.2 Defaults by Seller.

(a) Seller fails to post, increase, or maintain the Levelized Security or Default Security as required under, and by the applicable dates set forth in this Agreement and such failure is not cured within fifteen (15) days after Seller's receipt of written notice thereof from PacifiCorp.

(b) Seller sells Output or Capacity Rights from the Facility to a party other than PacifiCorp in breach of Section 4.2, if Seller does not permanently cease such sale and compensate PacifiCorp for the damages arising from the breach within ten (10) days after PacifiCorp gives Seller a notice of default.

(c) PacifiCorp receives notice of foreclosure of the Facility or any part thereof by a Lender, mechanic or materialman, or any other holder, of an unpaid lien or other charge or encumbrance, if the same has not been stayed, paid, or bonded around within ten (10) days of the date of the notice received by PacifiCorp.

(d) Seller fails to maintain any Required Facility Documents or Permits necessary to own or operate the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from PacifiCorp; provided, however, that, upon written notice from Seller, the thirty (30) day period shall be extended by an additional sixty (60) days if (i) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (ii) the default is capable of being cured within the additional sixty (60) day period, and (iii) Seller commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

(e) Seller's Abandonment of operation of the Facility and such failure continues for thirty (30) days after Seller's receipt of written notice thereof from PacifiCorp.

(f) Seller fails to maintain insurance as required by the Agreement and such failure continues for fifteen (15) days after Seller's receipt of written notice thereof from PacifiCorp.

(g) Seller fails to satisfy the Minimum Annual Delivery for any Contract Year.

## 11.2 Remedies for Failure to Deliver/Receive.

11.2.1 Remedy for Seller's Failure to Deliver. Upon the occurrence and during the continuation of a default of Seller under Section 11.1.2(c), Seller shall pay PacifiCorp within five Business Days after invoice receipt, an amount equal to the sum of (a) PacifiCorp's Cost to Cover multiplied by the Net Output delivered to a party other than PacifiCorp, (b) additional transmission charges, if any, reasonably incurred by PacifiCorp in moving replacement energy to the Point of Delivery or if not there, to such points in PacifiCorp's control area as are determined by PacifiCorp, and (c) any additional cost or expense incurred as a result of Seller's default under Section 11.1.2(c), as determined by PacifiCorp in a commercially reasonable manner. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

11.2.2 Remedy for PacifiCorp's Failure to Purchase. If PacifiCorp fails to receive or purchase all or part of the Net Output required to be purchased pursuant hereto and such failure is not excused under the terms hereof or by Seller's failure to perform, then Seller shall first satisfy its obligations under Section 11.6 and then PacifiCorp shall pay Seller, on the earlier of the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days after invoice receipt, an amount equal to Seller's Cost to Cover multiplied by the amount of Net Output so not purchased, less amounts received by Seller pursuant to Section 11.6. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation thereof.

11.2.3 Remedy for Seller's Failure to Sell/Deliver Capacity Rights. Seller shall be liable for PacifiCorp's actual damages in the event Seller fails to sell or deliver all or any portion of the Capacity Rights to PacifiCorp.

11.3 Termination and Remedies. From and during the continuance of an Event of Default, the non-defaulting Party shall be entitled to all remedies available at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than fifteen (15) days before such termination date. The notice required by this Section 11.3 may be provided in the notice of default (and does not have to be a separate notice) so long as it complies with all other terms of this Section 11.3. As a precondition to Seller's exercise of this termination right, Seller must also provide copies of such notice to the notice addresses of the then-current President and General Counsel of PacifiCorp. Such copies shall be sent by registered overnight delivery service or by certified or registered mail, return receipt requested. In addition, Seller's termination notice shall state prominently therein in typefont no smaller than 14-point all-capital letters that "THIS IS A TERMINATION NOTICE UNDER A PPA. YOU MUST CURE A DEFAULT, OR THE PPA WILL BE TERMINATED," and shall state therein any amount purported to be owed and wiring instructions. Notwithstanding any other provision of this Agreement to the contrary, Seller will not have any right to terminate this Agreement if the default that gave rise to the termination right is cured within fifteen (15) days of PacifiCorp's receipt of such notice. Further, from and after the date upon which Seller fails to remedy a default within the time periods provided in Section 11.1, and until PacifiCorp has recovered all damages incurred on account of such default by Seller, without exercising its termination right, PacifiCorp may offset its damages against any payment due Seller. Except in circumstances in which a remedy provided for in this Agreement



is described as a Party's sole or exclusive remedy, upon termination, the non-defaulting Party may pursue any and all legal or equitable remedies provided by law, equity or this Agreement. The rights contemplated by this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. In the event of a termination hereof:

(a) Each Party shall pay to the other all amounts due the other hereunder for all periods prior to termination, subject to offset by the non-defaulting Party against damages incurred by such Party.

(b) The amounts due pursuant to Section 11.3(a) shall be calculated and paid within thirty (30) days after the billing date for such charges and shall bear interest thereon at the Contract Interest Rate from the date of termination until the date paid. The foregoing does not extend the due date of, or provide an interest holiday for any payments otherwise due hereunder.

(c) Before and after the effective date of termination, the non-defaulting Party may pursue, to the extent permitted by this Agreement, any and all legal or equitable remedies provided by law, equity or this Agreement.

(d) Without limiting the generality of the foregoing, the provisions of Sections 4.6, 5.4, 5.5, 6.8.3, 6.8.4, 6.8.6, 10.3, 10.4, 10.5, 11.3, 11.4, 11.5, 11.6, 11.7, 11.8, and Section 12, Section 13, Section 23, and Section 24 shall survive the termination hereof.

11.4 Termination of Duty to Buy. If this Agreement is terminated because of a default by Seller, neither Seller nor any Affiliate of Seller, nor any successor to Seller with respect to the ownership of the Facility or Premises, may thereafter require or seek to require PacifiCorp to make any purchases from the Facility or any electric generation facility constructed on the Premises under PURPA, or any other Requirements of Law, for any periods that would have been within the Term had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, hereby waives its rights to require PacifiCorp to do so.

11.5 Termination Damages. If this Agreement is terminated as a result of an Event of Default by one of the Parties, termination damages shall be determined. The amount of termination damages shall be calculated by the non-defaulting Party within a reasonable period after termination of the Agreement. Amounts owed pursuant to this Section 11 shall be due within five (5) Business Days after the non-defaulting Party gives the defaulting Party notice of the amount due. The non-defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the defaulting Party for economic benefits accruing to the non-defaulting Party as a result of the defaulting Party's default.

11.6 Duty/Right to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance hereof. "Commercially reasonable efforts" (a) by Seller shall include requiring Seller to use commercially reasonable efforts to maximize the price for Net Output received by Seller from third parties, including entering into an enabling agreement with, or being affiliated with, one or more power marketers

of nationally recognized standing to market such Net Output not purchased or accepted by PacifiCorp (only during a period PacifiCorp is in default), to the extent permitted by Requirements of Law and the Generation Interconnection Agreement, and (b) by PacifiCorp shall include requiring PacifiCorp to use commercially reasonable efforts to minimize the price paid to third parties for energy purchased to replace Net Output not delivered by Seller as required hereunder.

11.7 Security. If this Agreement is terminated because of Seller's default, PacifiCorp may, in addition to pursuing any and all other remedies available at law or in equity, proceed against any security held by PacifiCorp in whatever form to reduce any amounts that Seller owes PacifiCorp arising from such default.

11.8 Cumulative Remedies. Except in circumstances in which a remedy provided for in this Agreement is described as a sole or exclusive remedy, the rights and remedies provided to PacifiCorp hereunder are cumulative and not exclusive of any rights or remedies of PacifiCorp.

## **SECTION 12 INDEMNIFICATION AND LIABILITY**

### 12.1 Indemnities.

12.1.1 Indemnity by Seller. To the extent permitted by Requirements of Law and subject to Section 12.1.5, Seller shall release, indemnify and hold harmless PacifiCorp, its divisions, Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "PacifiCorp Indemnitees") against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorneys' fees, both at trial and on appeal, whether or not suit is brought) (collectively, "Liabilities") actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Facility or Premises, for or on account of injury, bodily or otherwise, to, or death of, or damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the PacifiCorp Indemnitees. Seller shall be solely responsible for (and shall defend and hold PacifiCorp harmless against) any damage that may occur as a direct result of Seller's breach of the Generation Interconnection Agreement.

12.1.2 Indemnity by PacifiCorp. To the extent permitted by Requirements of Law and subject to Section 12.1.5, PacifiCorp shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the "Seller Indemnitees") against and from any and all Liabilities actually or allegedly resulting from, or arising out of, or in any way connected with, the performance by PacifiCorp of its obligations hereunder for or on account of (a) injury, bodily or otherwise, to, or death of, or (b) for damage to, or destruction or economic loss of property of, any person or entity within the Seller Indemnitees, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Seller Indemnitees.

12.1.3 Additional Cross Indemnity. Without limiting Sections 12.1.1 and 12.1.2, Seller shall release, indemnify and hold harmless the PacifiCorp Indemnitees from and against all Liabilities related to Net Output prior to its delivery by Seller at the Point of Delivery, and PacifiCorp shall release, indemnify and hold harmless the Seller Indemnitees from and against all Liabilities related to Net Output once delivered to PacifiCorp at the Point of Delivery as provided herein, except in each case to the extent such Liabilities are attributable to the gross negligence or willful misconduct or a breach of this Agreement by any member of the PacifiCorp Indemnitees or the Seller Indemnitees, respectively, seeking indemnification hereunder.

12.1.4 No Dedication. Nothing herein shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party. No undertaking by one Party to the other under any provision hereof shall constitute the dedication of PacifiCorp's facilities or any portion thereof to Seller or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.1.5 Consequential Damages. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY LIQUIDATED DAMAGES, DELAY DAMAGES, PACIFICORP AND SELLER COST TO COVER DAMAGES, SECTION 11.2.3 CAPACITY RIGHTS LOSS DAMAGES, OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN, ARE NOT INTENDED BY THEM TO REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.**

## **SECTION 13 INSURANCE**

13.1 Required Policies and Coverages. Without limiting any Liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry the insurance coverage specified on Exhibit I during the Term or longer period if specified in Exhibit I.

## **SECTION 14 FORCE MAJEURE**

14.1 Definition of Force Majeure. "Force Majeure" or "an event of Force Majeure" means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; civil disturbance; sabotage; strikes; lock-outs; work stoppages; and action or restraint by court order or public or Governmental Authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action).

Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or PacifiCorp's ability to purchase energy or capacity at a more advantageous price than is provided hereunder; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of the Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure, (v) the imposition upon a Party of costs or taxes allocated to such Party under Section 5, (vi) delay or failure of Seller to obtain or perform any Required Facility Document unless due to a Force Majeure event, (vii) any delay, alleged breach of contract, or failure by the Transmission Provider, Network Service Provider or Interconnection Provider unless due to a Force Majeure event, (viii) maintenance upgrade or repair of any facilities or right of way corridors constituting part of or involving the Interconnection Facilities, whether performed by or for Seller, or other third parties (except for repairs made necessary as a result of an event of Force Majeure); (ix) Seller's failure to obtain, or perform under, the Generation Interconnection Agreement, or its other contracts and obligations to transmission owner, Transmission Provider or Interconnection Provider, unless due to a Force Majeure event; or (x) any event attributable to the use of Interconnection Facilities for deliveries of Net Output to any party other than PacifiCorp. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, steel, labor, or transportation constitute an event of Force Majeure.

14.2 Suspension of Performance. Neither Party shall be liable for any delay or failure in its performance under this Agreement, nor shall any delay, failure, or other occurrence or event become an Event of Default, to the extent such delay, failure, occurrence or event is substantially caused by conditions or events of Force Majeure during the continuation of the event of Force Majeure, for the same number of days that the event of Force Majeure has prevailed, provided that:

(a) the Party affected by the Force Majeure, shall, within five (5) days after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

(b) the suspension of performance shall be of no greater scope and of no longer duration than is required to remedy the effect of the Force Majeure; and

(c) the affected Party shall use diligent efforts to remedy its inability to perform.

14.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

14.4 Strikes. Notwithstanding any other provision hereof, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations hereunder for a period exceeding 180 consecutive days (despite the

affected Party's effort to take all reasonable steps to remedy the effects of the Force Majeure with all reasonable dispatch), then the Party not affected by the Force Majeure event, with respect to its obligations hereunder, may terminate this Agreement by giving ten (10) days prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising hereunder before the effective date of such termination.

## **SECTION 15 SEVERAL OBLIGATIONS**

Nothing contained herein shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or Liability on or between the Parties.

## **SECTION 16 CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Utah, applying any choice of law rules that may direct the application of the laws of another jurisdiction.

## **SECTION 17 PARTIAL INVALIDITY**

The Parties do not intend to violate any laws governing the subject matter hereof. If any of the terms hereof are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms hereof shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties in entering hereinto, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

## **SECTION 18 NON-WAIVER**

No waiver of any provision hereof shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is executed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions hereof shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

## **SECTION 19 GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. During the Term, Seller shall maintain all Permits required, as applicable, for the construction, operation, or ownership of the Facility.

## **SECTION 20 SUCCESSORS AND ASSIGNS**

20.1 Restriction on Assignments. Except as expressly provided in this Section 20, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

20.2 Permitted Assignments. Notwithstanding Section 20.1, either Party may, without the need for consent from the other Party (but with notice to the other Party, including the names of the assignees): (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with project financing for the Facility; or (b) transfer or assign this Agreement to an Affiliate meeting the requirements of this Agreement; provided, however, that Seller shall not transfer, sell, encumber or assign this Agreement or any interest herein to any Affiliate of PacifiCorp without the prior written consent of PacifiCorp. Except with respect to collateral assignments for financing purposes in every assignment permitted under this Section 20.2, the assignee must agree in writing to be bound by the terms and conditions hereof and must possess the same or similar experience, and possess the same or better creditworthiness, as the assignor. PacifiCorp may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that PacifiCorp ceases to be a load-serving entity, in which event PacifiCorp shall be released from liability hereunder upon approval of PacifiCorp ceasing to be a load-serving entity by the Commission. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

## **SECTION 21 ENTIRE AGREEMENT**

This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof. No modification hereof shall be effective unless it is in writing and executed by both Parties.

## **SECTION 22 NOTICES**

22.1 Addresses and Delivery Methods. All notices, requests, statements or payments shall be made to the addresses set out below. In addition, copies of a notice of termination of this Agreement under Section 11.3 shall contain the information required by Section 11.3 and shall be sent to the then-current President and General Counsel of PacifiCorp. Notices required to be in writing shall be delivered by letter, facsimile or other tangible documentary form. Notice

by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. Notice by hand delivery shall be deemed to have been given when received or hand delivered. Notice by facsimile is effective as of transmission to each and all of the telefacsimile numbers provided below for a Party, but must be followed up by notice by registered mail or overnight carrier to be effective. Notice by overnight mail shall be deemed to have been given the Business Day after it is sent, if sent for next day delivery to a domestic address by a recognized overnight delivery service (e.g., Federal Express or UPS). Notice by certified or registered mail, return receipt requested, shall be deemed to have been given upon receipt.

***To PacifiCorp:***

<b>All Notices:</b> PacifiCorp 825 NE Multnomah Street Portland, OR 97232  Attention: Contract Administration Suite 600 Facsimile: (503) 813-6291 Email: <a href="mailto:cntadmin@pacificorp.com">cntadmin@pacificorp.com</a>  Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	<b>Payments:</b> Attn: Central Cashiers Office, Suite 550 Phone: (503) 813-6826  <b>Wire Transfer:</b> Bank One N.A. To be provided in separate letter from PacifiCorp to Seller
<b>Invoices:</b> Attn: Back Office, Suite 700 Facsimile: (503) 813-5580 Email: <a href="mailto:powerinvoices@pacificorp.com">powerinvoices@pacificorp.com</a>	<b>Credit and Collections:</b> Attn: Credit Manager, Suite 700 Phone: (503) 813-7280 Facsimile: (503) 813-5609
<b>Scheduling:</b> Attn: Pre-Scheduling, Suite 600 Phone: (503) 813-6090 Email: <a href="mailto:ctpreschd@pacificorp.com">ctpreschd@pacificorp.com</a>	<b>With additional Notices of an Event of Default or Potential Event of Default to:</b> Attn: Assistant General Counsel Suite 1800

***To Seller:***

<b>All Notices:</b> City of Preston 70 W Onieda Preston, ID 83263  Attn: Kelly Michelsen Telephone Number: 208-852-1817 Fax: 208-852-1820  <a href="mailto:Kellymichelsen@prestonidaho.net">Kellymichelsen@prestonidaho.net</a>	<b>And to:</b> City of Preston 70 W Onieda Preston, ID 83263  Attn: Linda Acock Telephone Number: 208-852-1817 Fax: 208-852-1820  <a href="mailto:Lindaacock@prestonidaho.net">Lindaacock@prestonidaho.net</a>
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22.2 Changes of Address. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this section.

## **SECTION 23 CONFIDENTIALITY**

23.1 Confidential Business Information. The following constitutes "Confidential Business Information," whether oral or written: (a) the Parties' proposals and negotiations concerning this Agreement, made or conducted prior to the Effective Date, (b) the actual charges billed to PacifiCorp hereunder, and (c) any information delivered by PacifiCorp to Seller prior to the Effective Date relating to the market prices of energy and methodologies for their determination or estimation. Seller and PacifiCorp each agree to hold such Confidential Business Information wholly confidential, except as otherwise expressly provided in this Agreement. "Confidential Business Information" shall not include information that (x) is in or enters the public domain through no fault of the Party receiving such information, or (y) was in the possession of a Party prior to the Effective Date, other than through delivery thereof as specified in subsections (a) and (c) above. A Party providing any Confidential Business Information under this Agreement shall clearly mark all pages of all documents and materials to be treated as Confidential Business information with the term "Confidential" on the front of each page, document or material. If the Confidential Business Information is transmitted by electronic means the title or subject line shall indicate the information is Confidential Business Information. All Confidential Business Information shall be maintained as confidential, pursuant to the terms of this Section 23, for a period of two years from the date it is received by the receiving Party unless otherwise agreed to in writing by the Parties.

23.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its Affiliates, accountants, auditors, counsel, consultants, lenders, prospective lenders, employees, officers and directors), without the prior written consent of the other Party, provided that: (a) either Party may disclose Confidential Business Information, if and to the extent such disclosure is required (i) by Requirements of Law, (ii) in order for PacifiCorp to receive regulatory recovery of expenses related to this Agreement, (iii) pursuant to an order of a court or regulatory agency, or (iv) in order to enforce this Agreement or to seek approval hereof, and (b) notwithstanding any other provision hereof, PacifiCorp may in its sole discretion disclose or otherwise use for any purpose in its sole discretion the Confidential Business Information described in Sections 23.1(b) or 23.1(c). In the event a Party is required by Requirements of Law to disclose Confidential Business Information, such Party shall to the extent possible promptly notify the other Party of the obligation to disclose such information.

23.3 PacifiCorp Regulatory Compliance. The Parties acknowledge that PacifiCorp is required by law or regulation to report certain information that is or could otherwise embody Confidential Business Information from time to time. Such reports include models, filings, reports of PacifiCorp's net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1 or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, WECC, Pacific Northwest Utility Coordinating Committee, WREGIS, or similar or successor organizations,



forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, PacifiCorp will from time to time be required to produce Confidential Business Information. PacifiCorp may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. PacifiCorp may submit Confidential Business Information in regulatory proceedings without notice to Seller.

23.4 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 23 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

23.5 News Releases and Publicity. Except as otherwise provided in Section 6.12, before either Party issues any news release or publicly distributed promotional material regarding the Facility that mentions the Facility, such Party shall first provide a copy thereof to the other Party for its review and approval. Any use of either Party's name in such news release or promotional material must adhere to such Party's publicity guidelines then in effect; any use of Berkshire Hathaway's name requires PacifiCorp's prior written consent.

## **SECTION 24 DISAGREEMENTS**

24.1 Negotiations. Prior to proceeding with litigation or other means of formal dispute resolution, the Parties must first attempt in good faith to resolve all disputes arising out of, related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above those employees who have previously been involved in the dispute must meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after the referral of the dispute to such senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate any legal remedies available to the Party. All negotiations pursuant to this clause are confidential.

24.2 Place of Contract Formation; Choice of Forum. Seller and PacifiCorp acknowledge and agree that this Agreement has been made and entered into as of the date executed by both Parties in Salt Lake City, Utah. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the United States District Court for the District of Utah in Salt Lake City, Utah, or if such court does not have jurisdiction, in the 3<sup>rd</sup> Judicial District (Salt Lake County) Court of the State of Utah. By execution and delivery hereof, each Party (a) accepts the exclusive jurisdiction of such courts and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party for the purpose of any proceeding related to this Agreement, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such courts (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum) in connection herewith, (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth herein, and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law.


24.3 Settlement Discussions. No statements of position or offers of settlement made in the course of the dispute process described in this section will be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

24.4 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN


RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, WITH ANY PROCEEDING IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date last written below.

CITY OF PRESTON

By:   
Name: MARK W. BECKSTEAD  
Title: MAYOR  
Date: 11-30-17

PACIFICORP

By:   
Name: Kyle Moore  
Title: Originator  
Date: 11-30-2017

## EXHIBIT A

### ESTIMATED MONTHLY OUTPUT

MONTH	2013 KWH	2014 KWH	2015 KWH	2016 KWH	2017 KWH	AVERAGE KWH
JANUARY	223,179	147,312	219,637	205,430	off line	198,890
FEBRUARY	177,597	107,278	198,861	165,926	off line	162,416
MARCH	206,102	123,236	241,902	209,027	200,143	196,082
APRIL	267,965	227,804	263,533	257,501	272,996	257,960
MAY	280,980	256,160	281,702	279,471	275,992	274,861
JUNE	272,576	272,363	266,248	264,379	258,478	266,809
JULY	280,225	270,274	278,563	257,764	233,692	264,104
AUGUST	278,798	279,326	276,962	280,876		223,192
SEPTEMBER	266,705	268,951	266,186	277,285		269,782
OCTOBER	276,992	279,395	227,179	268,362		262,982
NOVEMBER	234,620	258,836	261,276	268,368		255,775
DECEMBER	196,022	249,981	237,751	278,342		240,524

*The amounts shown in yellow above shall reflect the “estimated monthly Net Output” as that phrase is used in this Agreement.*

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**EXHIBIT B**  
**DESCRIPTION OF SELLER'S FACILITY**

*\*\*\*The Parties agree that Seller will supplement this exhibit after execution of the Agreement\*\*\**

Seller's Facility consists of one generator manufactured by General Electric. More specifically, each generator at the Facility is described as:

**Type (synchronous or inductive):**

**Model: 8000 5ITB821057A1**

**Number of Phases: 3**

**Rated Output (kW): 410**

**Rated Output (kVA): 480**

**Rated Voltage (line to line):**

**Rated Current (A):** Stator: \_\_\_\_\_ A; Rotor: \_\_\_\_\_ A

**Maximum kW Output:** \_\_\_\_\_ kW      **Maximum kVA Output:** \_\_\_\_\_ kVA

**Minimum kW Output:** \_\_\_\_\_ kW

**Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:**

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**Facility Capacity Rating:** \_\_\_\_\_ kW at \_\_\_\_\_

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Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:**

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**Location of the Facility:** The Facility is to be constructed in the vicinity of Glendale Road in Franklin County, Idaho. The location is more particularly described as follows:

*[Seller to provide legal description of parcel]*

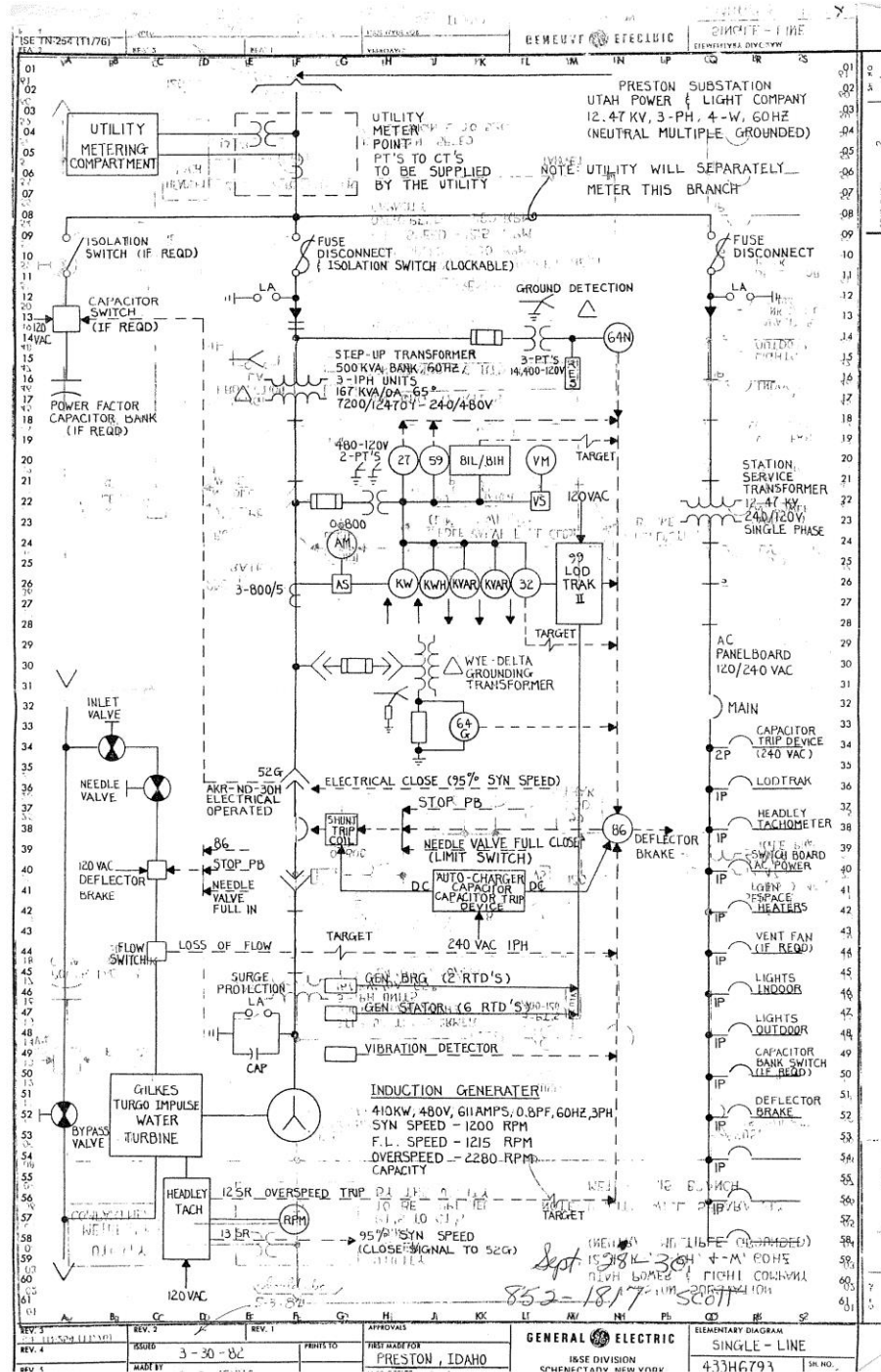
**Power factor requirements:**

Rated Power Factor (PF) or reactive load (kVAR):

# EXHIBIT C

## SELLER'S INTERCONNECTION FACILITIES

### POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES



**EXHIBIT D**  
**REQUIRED FACILITY DOCUMENTS**

**REQUIRED OF ALL FACILITIES:**

- QF Certification
- Interconnection Agreement, once obtained from PacifiCorp's transmission function
- Fuel Supply Agreement, if applicable

**REQUIRED IF SELLER ELECTS TO GRANT SENIOR LIEN:**

- Deed or Lease to Facility Premises
- Preliminary Title Report of Premises
- Proof of ownership of Facility
- Off-take sale agreements, e.g. surplus heat sale contract, if applicable

Depending upon the type of Facility and its specific characteristics, additional Required Facility Documents may be requested.

**EXHIBIT E**

**LEASES**

**N/A**



## EXHIBIT F

### CONTRACT PRICE

Contract Price shall be the applicable annual energy rate specified below multiplied by the applicable monthly weighting factor for On-Peak Hours and Off-Peak Hours.

<b>Year</b>	<b>Annual Energy Rate \$/MWh</b>
2018	59.18
2019	62.52
2020	64.46
2021	65.70
2022	65.71
2023	66.88
2024	68.98
2025	72.71
2026	75.69
2027	77.46
2028	79.10
2029	80.97
2030	82.12
2031	83.29
2032	84.87
2033	86.16
2034	87.84
2035	89.74
2036	91.67
2037	93.78

<b>Monthly Weighting Factors</b>		
<i>Month</i>	<i>On-Peak Hours</i>	<i>Off-Peak Hours</i>
January	103%	94%
February	105%	97%
March	95%	80%
April	95%	76%
May	92%	63%
June	94%	65%
July	121%	92%
August	121%	106%
September	109%	99%
October	115%	105%
November	110%	96%
December	129%	120%

**EXHIBIT G**  
**LEVELIZED SECURITY**

*[Not applicable]*

**EXHIBIT H**  
**SELLER AUTHORIZATION TO RELEASE**  
**GENERATION DATA TO PACIFICORP**

*[Interconnection Customer Letterhead]*

Transmission Services  
Attn: Director, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

**RE: \_\_\_\_\_ Interconnection Request**

Dear Sir:

\_\_\_\_\_ hereby voluntarily authorizes PacifiCorp's Transmission business unit to share \_\_\_\_\_'s generator interconnection information and generator meter data with marketing function employees of PacifiCorp, including, but not limited to those in the energy supply management group. \_\_\_\_\_ acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
**Date**

**EXHIBIT I**  
**REQUIRED INSURANCE**

1.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than “A-/VII” by the A.M. Best Company the insurance coverage specified below:

1.1.1 Workers’ Compensation. Seller shall comply with any applicable laws or statutes, state or federal jurisdiction, where Seller performs work.

1.1.2 Employers’ Liability. Seller shall maintain employers’ liability insurance with minimum limits covering bodily injury for: \$500,000 – each accident, \$500,000 by disease – each employee, and \$500,000 by disease – policy limit.

1.1.3 Commercial General Liability. Seller shall maintain insurance to include premises and operations, contractual liability, with a minimum single limit of \$1,000,000 each occurrence to protect against and from loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

1.1.4 Business Automobile Liability. Seller shall secure and continuously carry business automobile liability insurance with a minimum single limit of \$1,000,000 each accident covering bodily injury and property damage with respect to Seller’s vehicles whether owned, hired or non-owned.

1.1.5 Umbrella/excess Liability. Seller shall maintain umbrella or excess liability insurance on an occurrence and following form basis with a minimum limits as follows:

- (a) Facility Capacity Rating under 200 KW - \$1,000,000
- (b) Facility Capacity Rating at or above 200 KW - \$5,000,000

1.1.6 Property Insurance. Seller shall maintain property insurance covering equipment and structures in an amount at least equal to the full replacement value for "all risks" of physical loss or damage, including coverage for earth movement, flood, boiler and machinery, and business interruption. The policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. Property insurance will be maintained in accordance with terms available in the insurance market for similar facilities.

1.2 Additional Provisions or Endorsements:

1.2.1 Except for workers’ compensation and property insurance, the policies required herein shall include provisions or endorsements as follows:

- (a) naming PacifiCorp, parent, divisions, officers, directors and employees as additional insureds;
- (b) include provisions that such 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, and
- (c) cross liability coverage or severability of interest.

1.2.2 Unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against PacifiCorp.

1.3 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system if delivery to PacifiCorp is to be accomplished by wheeling, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) confirming Seller's compliance with the insurance requirements hereunder. Insurance certificate confirming compliance shall be provided to PacifiCorp by Seller at least annually and each time a new insurance policy is issued or becomes effective.

1.4 Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate, and Seller shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

1.5 Periodic Review. PacifiCorp may review this schedule of insurance as often as once every two (2) years. PacifiCorp may in its discretion require Seller to make reasonable changes to the policies and coverages described in this Exhibit to the extent reasonably necessary to cause such policies and coverages to conform to the insurance policies and coverages typically obtained or required for power generation facilities comparable to the Facility at the time PacifiCorp's review takes place.

**EXHIBIT J**  
**NERC EVENT TYPES**

Event Type	Description of Outages
U1	<u>Unplanned (Forced) Outage—Immediate</u> – An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2	<u>Unplanned (Forced) Outage—Delayed</u> – An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3	<u>Unplanned (Forced) Outage—Postponed</u> – An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF	<u>Startup Failure</u> – An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> – An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> – An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> – An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine replacement or inspections are typical planned outages.)
PE	<u>Planned Outage Extension</u> – An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**THREE SISTERS IRRIGATION DISTRICT WATSON MICRO HYDRO**

**[Firm Qualifying Facility (new or existing) located in non-PacifiCorp Control Area,  
interconnecting to non-PacifiCorp system, with 10,000 kW Facility Capacity Rating, or  
Less, and uninterruptible transmission to the Point of Delivery]**

**AND**

**PACIFICORP**

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EXHIBIT A:	DESCRIPTION OF SELLER'S FACILITY
EXHIBIT B:	SELLER'S INTERCONNECTION FACILITIES
EXHIBIT C:	REQUIRED FACILITY DOCUMENTS
EXHIBIT D-1:	SELLER'S MOTIVE FORCE PLAN
EXHIBIT D-2:	ENGINEER'S CERTIFICATION OF MOTIVE FORCE PLAN
EXHIBIT E:	START-UP TESTING
EXHIBIT F:	SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO PACIFICORP
EXHIBIT G:	STANDARD AVOIDED COST RATES SCHEDULE AND PRICING SUMMARY TABLE
EXHIBIT H:	GREEN TAG ATTESTATION AND BILL OF SALE
ADDENDUM W:	GENERATION SCHEDULING ADDENDUM



## POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (“**Agreement**”), entered into this 8<sup>th</sup> day of May, 2018, is between Three Sisters Irrigation District, “**Seller**,” and PacifiCorp (d/b/a Pacific Power & Light Company), an Oregon corporation acting in its regulated utility capacity, “**PacifiCorp**.” (Seller and PacifiCorp are referred to individually as a “**Party**” or collectively as the “**Parties**”).

### RECITALS

A. Seller intends to construct, own, operate and maintain a hydro facility for the generation of electric power, including interconnection facilities, located in Bend, Deschutes County, Oregon with a Facility Capacity Rating of 200-kilowatts (kW) as further described in **Exhibit A** and **Exhibit B** (“**Facility**”); and

B. Seller intends to commence delivery of Net Output under this Power Purchase Agreement, for the purpose of Start-up Testing, on September 15, 2018 (“**Scheduled Initial Delivery Date**”); and

C. Seller intends to operate the Facility as a Qualifying Facility, commencing commercial operations on October 15, 2018 (“**Scheduled Commercial Operation Date**”). The Scheduled Commercial Operation Date shall be established as no later than three years after Effective Date subject to Section 2.3; and

D. Seller estimates that the average annual Net Energy to be delivered by the Facility to PacifiCorp is 827,310 kilowatt-hours (kWh), which amount of energy PacifiCorp will include in its resource planning; and

E. Seller shall sell and PacifiCorp or another electric service provider shall purchase all Net Output from the Facility in accordance with the terms and conditions of this Agreement; and

F. This Agreement is a “New QF Contract” under the PacifiCorp Inter-Jurisdictional Cost Allocation Revised Protocol in effect on the Effective Date.

G. Seller intends to transmit Net Output to PacifiCorp via transmission facilities operated by a third party, and PacifiCorp intends to accept scheduled firm delivery of Seller’s Net Output, under the terms of this Agreement, including the Generation Scheduling Addendum attached as **Addendum W** and incorporated contemporaneously herewith.

### AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

## **SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

1.1 “**As-built Supplement**” shall be a supplement to **Exhibit A** and **Exhibit B**, provided by Seller following completion of construction of the Facility, describing the Facility as actually built.

1.2 “**Average Annual Generation**” shall have the meaning set forth in Section 4.2.

1.3 “**Billing Period**” means calendar months.

1.4 “**CAMD**” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Green Tags.

1.5 “**Commercial Operation Date**” means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which shall require, among other things, that all of the following events have occurred:

1.5.1 PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the Facility Capacity Rating of the Facility at the anticipated Commercial Operation Date; and (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

1.5.2 The Facility has completed Start-Up Testing (applies to new Facilities and new upgrades only);

1.5.3 PacifiCorp has received a certificate addressed to PacifiCorp from an attorney in good standing in the State of Oregon stating that Seller has obtained all Required Facility Documents (Facilities over 200 kW only) and, if requested by PacifiCorp, in writing, has provided copies of any or all such requested Required Facility Documents.

1.5.4 Seller has complied with the security requirements of Section 10.

1.5.5 PacifiCorp has received an executed copy of **Exhibit F** - Seller’s Authorization to Release Generation Data to PacifiCorp.

1.6 “**Commission**” means the Public Utility Commission of Oregon.

1.7 “**Contract Price**” means the applicable price for Net Output stated in Sections 5.1, 5.2, and 5.3.

1.8 “**Contract Year**” means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (“**PPT**”) on January 1 and ending on 24:00 hours PPT on December 31; *provided, however*, that the first Contract Year shall commence on the

Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the Termination Date.

1.9 **“Credit Requirements”** means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa3” or greater by Moody’s, or (2) “BBB-” or greater by S&P, or such other indicia of creditworthiness acceptable to PacifiCorp in its reasonable judgment.

1.10 **“Default Security”**, unless otherwise agreed to by the Parties in writing, means the amount of either a Letter of Credit or cash placed in an escrow account sufficient to replace twelve (12) average months of replacement power costs over the term of this Agreement, and shall be calculated by taking the average, over the term of this Agreement, of the positive difference between (a) the monthly forward power prices at Mid-Columbia (“Mid-C”) (as determined by PacifiCorp in good faith using information from a commercially reasonable independent source), multiplied by 110%, minus (b) the average of the Fixed Avoided Cost Prices specified in the Standard Avoided Cost Rates Schedule, and multiplying such difference by (c) the Minimum Annual Delivery; provided, however, the amount of Default Security shall in no event be less than the amount equal to the payments PacifiCorp would make for three (3) average months based on Seller’s average monthly volume over the term of this Agreement and utilizing the average Fixed Avoided Cost Prices specified in the Standard Avoided Cost Rates Schedule. Such amount shall be fixed at the Effective Date of this Agreement.

1.11 **“Effective Date”** shall have the meaning set forth in Section 2.1.

1.12 **“Energy Delivery Schedule”** shall have the meaning set forth in Section 4.5.

1.13 **“Environmental Attributes”** shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil, or water such as (subject to the foregoing) sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere.

1.14 **“Excess Output”** shall mean any increment of Net Output produced at a rate, on an hourly basis, exceeding the Facility Capacity Rating.

1.15 **“Facility”** shall have the meaning set forth in Recital A.

1.16 **“Facility Capacity Rating”** means the sum of the Nameplate Capacity Ratings for all generators comprising the Facility.

1.17 **“FERC”** means the Federal Energy Regulatory Commission, or its successor.

1.18 **“Generation Scheduling Addendum”** means **Addendum W**, the portion of this Agreement providing for the measurement, scheduling, and delivery of Net Output from the Facility to the Point of Delivery via a non-PacifiCorp transmission provider.

1.19 **“Green Tags”** means (1) the Environmental Attributes associated with all Net Output, together with (2) all WREGIS Certificates; and (3) the Green Tag Reporting Rights associated with such energy, Environmental Attributes and WREGIS Certificates, however commercially transferred or traded under any or other product names, such as "Renewable Energy Credits," "Green-e Certified", or otherwise. One (1) Green Tag represents the Environmental Attributes made available by the generation of one (1) MWh of energy from the Facility. Provided however, that “Green Tags” do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.20 **“Green Tag Reporting Rights”** means the exclusive right of a purchaser of Green Tags to report exclusive ownership of Green Tags in compliance with federal or state law, if applicable, and to federal or state agencies or other parties at such purchaser's discretion, and include reporting under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international, or foreign emissions trading program or renewable portfolio standard.

1.21 **“Interconnected Utility”** means Central Electric Coop, the operator of the electric utility system at the Point of Interconnection.

1.22 **“Interconnection Agreement”** means the agreement (or contemporaneous agreements) between Seller and the Interconnected Utility governing interconnection of Seller's Facility at the Point of Interconnection and associated use of the Interconnected Utility's system.

1.23 **“Letter of Credit”** means an irrevocable standby letter of credit, from an institution that has a long-term senior unsecured debt rating of “A” or greater from S&P or “A2” or greater from Moody's, in a form reasonably acceptable to PacifiCorp, naming PacifiCorp as the party entitled to demand payment and present draw requests thereunder.

1.24 **“Licensed Professional Engineer”** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

1.25 **“Material Adverse Change”** means the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's

ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement

1.26 “**Maximum Annual Delivery**” shall have the meaning set forth in Section 4.3.

1.27 “**Minimum Annual Delivery**” shall have the meaning set forth in Section 4.3.

1.28 “**Capacity Rating**” means the full-load electrical quantities assigned by the designer to a generator and its prime mover or other piece of electrical equipment, such as transformers and circuit breakers, under standardized conditions, expressed in amperes, kilovoltamperes, kilowatts, volts, or other appropriate units. Usually indicated on a nameplate attached to the individual machine or device.

1.29 “**Net Energy**” means the energy component, in kWh, of Net Output.

1.30 “**Net Output**” means all energy and capacity produced by the Facility, less station use and less transformation and transmission losses and other adjustments (e.g., Seller’s load other than station use), if any, up to and including the Point of Interconnection. For purposes of calculating payment under this Agreement, Net Output of energy shall be the amount of energy flowing through the Point of Interconnection, less any station use not provided by the Facility.

1.31 “**Net Replacement Power Costs**” shall have the meaning set forth in Section 11.4.1.

1.32 “**Off-Peak Hours**” means all hours of the week that are not On-Peak Hours.

1.33 “**On-Peak Hours**” means the hours between 6 a.m. Pacific Prevailing Time (“PPT”) and 10 p.m. PPT, Mondays through Saturdays, excluding all hours occurring on holidays as provided in the Standard Avoided Cost Rates Schedule.

1.34 “**Point of Delivery**” means the location in PacifiCorp’s system where PacifiCorp has agreed to receive Seller’s Net Energy, as specified in **Exhibit B**.

1.35 “**Point of Interconnection**” means the point of interconnection between Seller’s Facility and the Transmitting Entity’s system, if applicable, as specified in **Exhibit B**.

1.36 “**Prime Rate**” means the publicly announced prime rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, New York, selected by the Party to whom interest based on the Prime Rate is being paid.

1.37 “**Prudent Electrical Practices**” means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired

result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

1.38 “**QF**” means “**Qualifying Facility**,” as that term is defined in the FERC regulations (codified at 18 CFR Part 292) in effect on the Effective Date.

1.39 “**Renewable Resource Deficiency Period**” means the period from Scheduled Initial Delivery Date through December 31, 2027.

1.40 “**Renewable Resource Sufficiency Period**” means the period from January 1, 2028 through Termination Date.

1.41 “**Replacement Price**” means the price at which PacifiCorp, acting in a commercially reasonable manner, purchases for delivery at the Point of Delivery a replacement for any Net Output that Seller is required to deliver under this Agreement plus (i) costs reasonably incurred by PacifiCorp in purchasing such replacement Net Output, and (ii) additional transmission charges, if any, reasonably incurred by PacifiCorp in causing replacement energy to be delivered to the Point of Delivery. If PacifiCorp elects not to make such a purchase, the Replacement Price shall be the market price at the Mid-Columbia trading hub for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by PacifiCorp in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

1.42 “**Required Facility Documents**” means all licenses, permits, authorizations, and agreements, including an Interconnection Agreement and Transmission Agreement(s), necessary for construction, operation and maintenance of the Facility, and delivery of Facility output, consistent with the terms of this Agreement. The Required Facility Documents are set forth in **Exhibit C**.

1.43 “**Standard Avoided Cost Rates Schedule**” means the Commission-approved Standard Avoided Cost Rates Schedule of Pacific Power & Light Company, providing pricing options for Base Load and Wind Qualifying Facilities of 10,000 kW or less, or Fixed and Tracking Solar Qualifying Facilities of 3,000 kW or less, which is in effect on the Effective Date of this Agreement. A copy of that Standard Avoided Cost Rates Schedule is attached as **Exhibit G**.

1.44 “**Scheduled Commercial Operation Date**” shall have the meaning set forth in Recital C.

1.45 “**Scheduled Initial Delivery Date**” shall have the meaning set forth in Recital B.

1.46 “**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E** hereto.

1.47 “**Termination Date**” shall have the meaning set forth in Section 2.4.

1.48 **“Transmission Agreement”** means the agreement (or contemporaneous agreements) between Seller and the Transmitting Entity providing for Seller’s uninterrupted right to transmit Net Output to the Point of Delivery.

1.49 **“Transmitting Entity(s)”** means Bonneville Power Administration (“BPA”), the (non-PacifiCorp) operator of the transmission system at the Point of Delivery.

1.50 **“WREGIS”** means the Western Renewable Energy Generation Information System or successor organization in case WREGIS is ever replaced.

1.51 **“WREGIS Certificate”** means “Certificate” as defined by WREGIS in the WREGIS Operating Rules dated July 15, 2013.

1.52 **“WREGIS Operating Rules”** means the operating rules and requirements adopted by WREGIS, dated July 15, 2013.

## **SECTION 2: TERM; COMMERCIAL OPERATION DATE**

2.1 This Agreement shall become effective after execution by both Parties (**“Effective Date”**).

2.2 **Time is of the essence for this Agreement**, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to deliver Net Output by the Scheduled Commercial Operation Date is critically important. Therefore,

2.2.1 By May 15, 2018, Seller shall provide PacifiCorp with a copy of an executed Interconnection Agreement and an executed Transmission Agreement, which shall be consistent with all material terms and requirements of this Agreement.

2.2.2 Upon completion of construction, Seller, in accordance with Section 6.1, shall provide PacifiCorp with an As-built Supplement acceptable to PacifiCorp;

2.2.3 By the date thirty (30) days after the Effective Date, Seller shall provide Default Security required under Sections 10.1 or 10.2, as applicable.

2.3 Seller shall cause the Facility to achieve Commercial Operation on or before the Scheduled Commercial Operation Date. Seller shall have the option to propose a Scheduled Commercial Operation Date beyond three years from the Effective Date. Unless Seller and PacifiCorp agree in writing that a later Scheduled Commercial Operation Date is reasonable and necessary, the Scheduled Commercial Operation Date shall be no more than three years from the date the Effective Date. PacifiCorp will not unreasonably withhold its agreement that a Scheduled Commercial Operation Date beyond the three-year period is reasonable and necessary. If Commercial Operation occurs after the Scheduled Commercial Operation Date, Seller shall be in default, and liable for delay damages specified in Section 11.

2.4 Except as otherwise provided herein, this Agreement shall terminate on September 14, 2038 (“**Termination Date**”).

### **SECTION 3: REPRESENTATIONS AND WARRANTIES**

3.1 PacifiCorp represents, covenants, and warrants to Seller that:

- 3.1.1 PacifiCorp is duly organized and validly existing under the laws of the State of Oregon.
- 3.1.2 PacifiCorp has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.
- 3.1.3 PacifiCorp has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
- 3.1.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on PacifiCorp or any valid order of any court, or any regulatory agency or other body having authority to which PacifiCorp is subject.
- 3.1.5 This Agreement is a valid and legally binding obligation of PacifiCorp, enforceable against PacifiCorp in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors’ rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller represents, covenants, and warrants to PacifiCorp that:

- 3.2.1 Seller is an Irrigation District, duly organized and validly existing under the laws of the State of Oregon.
- 3.2.2 Seller has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility.
- 3.2.3 Seller has taken all actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.
- 3.2.4 The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other



material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

- 3.2.5 This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).
- 3.2.6 The Facility is and shall for the term of this Agreement continue to be a QF, and Seller will operate the Facility in a manner consistent with its FERC QF certification. Seller has provided to PacifiCorp the appropriate QF certification (which may include a FERC self-certification) prior to PacifiCorp's execution of this Agreement. At any time during the term of this Agreement, PacifiCorp may require Seller to provide PacifiCorp with evidence satisfactory to PacifiCorp in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements and, if PacifiCorp is not satisfied that the Facility qualifies for such status, a written legal opinion from an attorney who is (a) in good standing in the state of Oregon, and (b) who has no economic relationship, association or nexus with the Seller or the Facility, stating that the Facility is a QF and providing sufficient proof (including copies of all documents and data as PacifiCorp may request) demonstrating that Seller has maintained and will continue to maintain the Facility as a QF.
- 3.2.7 Compliance with Ownership Requirements in Commission Proceedings No. UM 1129 and UM 1610. Seller will not make any changes in its ownership, control, or management during the term of this Agreement that would cause it to not be in compliance with the definition of a Small Cogeneration Facility or Small Power Production Facility provided in PacifiCorp's Standard Avoided Cost Rates Schedule approved by the Commission at the time this Agreement is executed. Seller will provide, upon request by PacifiCorp not more frequently than every 36 months, such documentation and information as reasonably may be required to establish Seller's continued compliance with such Definition. PacifiCorp agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except PacifiCorp will provide all such confidential information the Public Utility Commission of Oregon upon the Commission's request. These ownership requirements, as well as the dispute resolution provision governing any disputes over a QF's entitlement to the standard rates and standard contract with respect to the requirements, are detailed in Standard Avoided Cost Rates Schedule.

3.2.8 Additional Seller Creditworthiness Warranties. Seller need not post security under Section 10 for PacifiCorp's benefit in the event of Seller default, provided that Seller warrants all of the following:

- (a) Neither the Seller nor any of its principal equity owners is or has within the past two (2) years been the debtor in any bankruptcy proceeding, is unable to pay its bills in the ordinary course of its business, or is the subject of any legal or regulatory action, the result of which could reasonably be expected to impair Seller's ability to own and operate the Facility in accordance with the terms of this Agreement.
- (b) Seller has not at any time defaulted in any of its payment obligations for electricity purchased from PacifiCorp.
- (c) Seller is not in default under any of its other agreements and is current on all of its financial obligations, including construction related financial obligations.
- (d) Seller owns, and will continue to own for the term of this Agreement, all right, title and interest in and to the Facility, free and clear of all liens and encumbrances other than liens and encumbrances related to third-party financing of the Facility.
- (e) **[Applicable only to Sellers with a Facility having a Facility Capacity Rating greater than 3,000 kW]** Seller meets the Credit Requirements.

Seller hereby declares (Seller initial one only):

<u>    X    </u>	Seller affirms and adopts all warranties of this Section 3.2.8, and therefore is not required to post security under Section 10; or
<u>          </u>	Seller does not affirm and adopt all warranties of this Section 3.2.8, and therefore Seller elects to post the security specified in Section 10.

3.3 Notice. If at any time during this Agreement, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

## **SECTION 4: DELIVERY OF POWER**

4.1 Commencing on the Commercial Operation Date, unless otherwise provided herein, Seller will sell and PacifiCorp will purchase (a) all Net Output from the Facility delivered to the Point of Delivery and (b) all Green Tags associated with the output or otherwise resulting from the generation of energy by the Facility (which shall come from the Facility and from no other source), for the periods during which the Green Tags are required to be transferred to PacifiCorp under the terms of Section 5.5.

4.2 Average Annual Generation. Seller estimates that the Facility will generate, on average, 827,310 kWh per Contract Year (“**Average Annual Generation**”). Seller may, upon at least six months prior written notice, modify the Average Annual Generation every other Contract Year.

4.3 Minimum and Maximum Delivery. Seller shall deliver (or cause to be delivered) from the Facility a minimum of 478,900 kWh of Net Output during each Contract Year, provided that such minimum for the first Contract Year shall be reduced *pro rata* to reflect the Commercial Operation Date, and further provided that such minimum delivered Net Output shall be reduced on a *pro rata* basis for any periods during a Contract Year that the Facility was prevented from generating or delivering electricity for reasons of Force Majeure (“**Minimum Annual Delivery**”). Seller estimates, for informational purposes, that it will deliver from the Facility a maximum of 1,239,770 kWh of Net Output during each Contract Year (“**Maximum Annual Delivery**”). Seller’s basis for determining the Minimum and Maximum Annual Delivery amounts is set forth in **Exhibit D1 and D2**.

4.4 Deliveries in Deficit of Delivery Obligation. Seller’s failure to deliver the Minimum Annual Delivery in any Contract Year (prorated if necessary) shall be a default, and Seller shall be liable for damages in accordance with Section 11.

4.5 Energy Delivery Schedule. Seller has provided a monthly schedule of Net Energy expected to be delivered by the Facility (“**Energy Delivery Schedule**”), incorporated into **Exhibit D-1**.

4.6 Transfer of Title to Green Tags. Documentation of Green Tags Transfers: Subject to the Green Tags ownership as defined in Section 5.5, title to the Green Tags shall pass from Seller to PacifiCorp immediately upon the generation of the Net Output at the Facility that gives rise to such Green Tags. The Parties shall execute all additional documents and instruments reasonably requested by PacifiCorp in order to further document the transfer of the Green Tags to PacifiCorp or its designees. Without limiting the generality of the foregoing, Seller shall, on or before the 10th day of each month, deliver to PacifiCorp a Green Tags Attestation and Bill of Sale in the form attached as **Exhibit H** for all Green Tags delivered to PacifiCorp hereunder in the preceding month, along with any attestation that is then-current with the Center for Resource Solution's Green-e program or successor organization in case the Center for Resource Solutions is replaced by another party over the life of the contract. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Facility or Green Tags, except that when Seller is required to transfer Green Tags to PacifiCorp under Section 5.5, PacifiCorp

will pay all fees required by WREGIS relating to the Green Tags. Seller shall ensure that the Facility will participate in and comply with, during the Term, all aspects of WREGIS. Seller will use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of WREGIS Certificates to PacifiCorp, and transfer such WREGIS Certificates to PacifiCorp, in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller may either elect to enter into a Qualified Reporting Entity Services Agreement with PacifiCorp in a form approved by PacifiCorp, enter into a Qualified Reporting Entity Services Agreement with a third-party authorized to act as a Qualified Reporting Entity, or elect to act as its own WREGIS-defined Qualified Reporting Entity. Seller shall promptly give PacifiCorp copies of all documentation it submits to WREGIS. Further, in the event of the promulgation of a scheme involving Green Tags administered by CAMD, upon notification by CAMD that any transfer contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Tags purchased by PacifiCorp hereunder belong to any person other than PacifiCorp. Without limiting the generality of PacifiCorp's ownership of the Green Tag Reporting Rights, PacifiCorp may report under such program that such Green Tags purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfer. Seller shall reasonably cooperate in any registration by PacifiCorp of the Facility in the renewable portfolio standard or equivalent program in all such further states and programs in which PacifiCorp may wish to register or maintain registration of the Facility by providing copies of all such information as PacifiCorp reasonably required for such registration.

## **SECTION 5: PURCHASE PRICES**

5.1 Seller shall have the option to select one of three pricing options: Standard Fixed Avoided Cost Prices ("Fixed Price Standard"), Renewable Fixed Avoided Cost Prices ("Fixed Price Renewable"), or Firm Market Indexed Avoided Cost Prices ("Firm Electric Market"), as published in the Standard Avoided Cost Rates Schedule. Once an option is selected the option will remain in effect for the duration of the Facility's contract. Seller has selected the following (Seller to initial one):

_____	Fixed Price Standard
<u>  X  </u>	Fixed Price Renewable
_____	Firm Electric Market

A copy of the Standard Avoided Cost Rates Schedule, and a table summarizing the purchase prices under the pricing option selected by Seller, is attached as **Exhibit G**.

5.2 (Fixed Price Standard Seller Only). In the event Seller elects the Fixed Price Standard pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in the **Standard Avoided Cost Rates Schedule** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.3 (Fixed Price Renewable Seller Only). In the event Seller elects the Fixed Price Renewable pricing method, PacifiCorp shall pay Seller the applicable On-Peak and Off-Peak rates specified in the **Standard Avoided Cost Rates Schedule** during the first fifteen (15) years after the Scheduled Initial Delivery Date. Thereafter, PacifiCorp shall pay Seller Firm Electric Market.

5.4 For all Excess Output and for all Net Output delivered prior to the Commercial Operation Date, PacifiCorp shall pay Seller 93 percent of a blended market index price for day-ahead firm energy at Mid-Columbia, California Oregon Border (COB), Four Corners and Palo Verde market indices as reported by the Intercontinental Exchange (ICE), for the On-Peak and Off-Peak periods. PacifiCorp shall document its calculation of the blended rate, upon request, to Seller. Such payment will be accomplished by adjustments pursuant to Section 9.2.

5.5 Environmental Attributes.

5.5.1 (Fixed Price Standard Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes under this Agreement throughout the Term.

5.5.2 (Fixed Price Renewable Seller Only): PacifiCorp waives any claim to Seller's ownership of Environmental Attributes during the Renewable Resource Sufficiency Period. Seller shall transfer the Green Tags to PacifiCorp in accordance with Section 4.6 during the Renewable Resource Deficiency Period.

## **SECTION 6: OPERATION AND CONTROL**

6.1 As-Built Supplement. Upon completion of initial (and any subsequent) construction affecting the Facility, Seller shall provide PacifiCorp an As-built Supplement to specify the actual Facility as built. The As-built Supplement must be reviewed and approved by PacifiCorp, which approval shall not unreasonably be withheld, conditioned or delayed.

6.2 Incremental Utility Upgrades. At start-up (and at any other time upon at least six months' prior written notice), Seller may increase Net Output, if such increase is due to normal variances in estimated versus actual performance, changed Facility operations, or improvements in Facility efficiency. Seller may not increase Net Output under this Agreement by installing additional generating units. In the case of substantial upgrades, PacifiCorp may require Seller to comply with Section 3.2.8(e) (in the event that the Facility upgrade causes the Facility Capacity Rating to exceed 3,000 kW) and increase its Minimum Annual Delivery obligation in Section 4.3 (if appropriate). PacifiCorp may also update Seller's security obligation (if applicable). So long as the Facility Capacity Rating after the upgrade is 3,000 kW or less for solar or 10,000 kW or less for all other resource types, Seller will continue to receive the Contract Price for the Net Output, as set forth in Sections 5.1, 5.2, and 5.3 of this Agreement. If Seller increases the Facility Capacity Rating above 3,000 kW for solar or 10,000 kW for all other resource types, then (on a going forward basis) PacifiCorp shall pay Seller the Contract Price for the fraction of total Net Output equal to 10,000 kW divided by the Facility

Capacity Rating of the upgraded Facility. For the remaining fraction of Net Output, PacifiCorp and Seller shall agree to a new negotiated rate. Seller shall be responsible for ensuring that any planned increase in the Facility Capacity Rating or the maximum instantaneous capacity of the Facility complies with Seller's Interconnection Agreement, Transmission Agreement and any other relevant agreements.

6.3 Seller shall operate and maintain the Facility in a safe manner in accordance with this Agreement, the Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp shall have no obligation to purchase Net Output from the Facility to the extent the interconnection between the Facility and the Point of Delivery is disconnected, suspended or interrupted, in whole or in part, pursuant to the Interconnection Agreement or Transmission Agreement(s), or to the extent generation curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement or Transmission Agreement(s). PacifiCorp shall have the right to inspect the Facility to confirm that Seller is operating the Facility in accordance with the provisions of this Section 6.3 upon reasonable notice to Seller. Seller is solely responsible for the operation and maintenance of the Facility. PacifiCorp shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

6.4 Scheduled Outages. Seller may cease operation of the entire Facility or individual units, if applicable, for maintenance or other purposes. Seller shall exercise its best efforts to notify PacifiCorp of planned outages at least ninety (90) days prior, and shall reasonably accommodate PacifiCorp's request, if any, to reschedule such planned outage in order to accommodate PacifiCorp's need for Facility operation.

6.5 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the Facility Capacity Rating (other than curtailments due to lack of motive force), Seller immediately shall notify PacifiCorp of the necessity of such unscheduled outage or curtailment, the time when such has occurred or will occur and the anticipated duration. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outage or curtailment, to limit the duration of such, and to perform unscheduled maintenance during Off-Peak hours.

## **SECTION 7: FUEL/MOTIVE FORCE**

Prior to the Effective Date of this Agreement, Seller provided to PacifiCorp a fuel or motive force plan acceptable to PacifiCorp in its reasonable discretion and attached hereto as **Exhibit D-1**, together with a certification from a Licensed Professional Engineer to PacifiCorp attached hereto as **Exhibit D-2**, certifying that the implementation of the fuel or motive force plan can reasonably be expected to provide fuel or motive force to the Facility for the duration of this Agreement adequate to generate power and energy in quantities necessary to deliver the Minimum Annual Delivery set forth by Seller in Section 4.

## **SECTION 8: METERING AT THE POINT OF INTERCONNECTION**

8.1 Metering shall be performed at the location and in a manner consistent with this Agreement, as specified in **Exhibit B**. Seller shall provide to PacifiCorp metered Facility Net Output in hourly increments, and any other energy measurements required to administer this Agreement. If the Transmitting Entity requires Seller to telemeter data, PacifiCorp shall be entitled to receive the same data Seller provides to the Transmitting Entity, if such data is useful to PacifiCorp's administration of this Agreement. All quantities of energy purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Interconnection. The loss adjustment shall be 0% of the kWh energy production recorded on the Facility output meter.

8.2 Seller shall pay for the installation, testing, and maintenance of any metering required by Section 8.1, and shall provide reasonable access to such meters. PacifiCorp shall have reasonable access to inspection, testing, repair and replacement of the metering equipment. If any of the inspections or tests discloses a measurement error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) Billing Periods, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered following the repair of the meter.

## **SECTION 9: BILLINGS, COMPUTATIONS, AND PAYMENTS**

9.1 On or before the thirtieth (30th) day following the end of each Billing Period, PacifiCorp shall send to Seller payment for Seller's deliveries of Net Output to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Seller to PacifiCorp pursuant to this Agreement or any other agreement between the Parties.

9.2 Corrections. PacifiCorp shall have up to eighteen months to adjust any payment made pursuant to Section 9.1. In the event PacifiCorp determines it has overpaid Seller (for Excess Output or otherwise), PacifiCorp may adjust Seller's future payment accordingly in order to recapture any overpayment in a reasonable time.

9.3 Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; *provided, however*, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

## **SECTION 10: SECURITY**

Unless Seller has adopted the creditworthiness warranties contained in Section 3.2.8, Seller must provide security (if requested by PacifiCorp) in the form of a cash escrow, letter of credit, senior lien, or step-in rights. Seller hereby elects to provide, in accordance with the applicable terms of this Section 10, the following security (Seller to initial one selection only):

- ☐ Cash Escrow
- ☐ Letter of Credit
- ☐ Senior Lien
- ☐ Step-in Rights
- ☒ Seller has adopted the Creditworthiness Warranties of Section 3.2.8.

In the event Seller's obligation to post default security (under Section 10 or Section 11.1.4) arises solely from Seller's delinquent performance of construction-related financial obligations, upon Seller's request, PacifiCorp will excuse Seller from such obligation in the event Seller has negotiated financial arrangements with its construction lenders that mitigate Seller's financial risks to PacifiCorp's reasonable satisfaction.

### **[SKIP THIS SECTION 10.1 UNLESS SELLER SELECTED CASH ESCROW ALTERNATIVE]**

**10.1 Cash Escrow Security.** Seller shall deposit in an escrow account established by PacifiCorp in a banking institution acceptable to both Parties, the Default Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institution from time to time. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

### **[SKIP THIS SECTION 10.2 UNLESS SELLER SELECTED LETTER OF CREDIT ALTERNATIVE]**

**10.2 Letter of Credit Security.** Seller shall post and maintain in an amount equal to the Default Security: (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to PacifiCorp in its discretion, or (b) a Letter of Credit in favor of PacifiCorp. To the extent PacifiCorp receives payment from the Default Security, Seller shall, within fifteen (15) days, restore the Default Security as if no such deduction had occurred.

### **[SKIP THIS SECTION 10.3 UNLESS SELLER SELECTED SENIOR LIEN ALTERNATIVE]**

**10.3 Senior Lien.** Before the Scheduled Commercial Operation Date, Seller shall grant PacifiCorp a senior, unsubordinated lien on the Facility and its assets as security for performance of this Agreement by executing, acknowledging and delivering a security agreement and a deed of trust or a mortgage, in a recordable form (each in a form satisfactory to PacifiCorp in the reasonable exercise of its discretion). Pending delivery of the senior lien



to PacifiCorp, Seller shall not cause or permit the Facility or its assets to be burdened by liens or other encumbrances that would be superior to PacifiCorp's, other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

**[SKIP THIS SECTION 10.4 UNLESS SELLER SELECTED STEP-IN RIGHTS  
ALTERNATIVE]**

**10.4 Step-in Rights (Operation by PacifiCorp Following Event of Default of Seller).**

- 10.4.1 Prior to any termination of this Agreement due to an Event of Default of Seller, as identified in Section 11, PacifiCorp shall have the right, but not the obligation, to possess, assume control of, and operate the Facility as agent for Seller (in accordance with Seller's rights, obligations, and interest under this Agreement) during the period provided for herein. Seller shall not grant any person, other than the lending institution providing financing to the Seller for construction of the Facility ("Facility Lender"), a right to possess, assume control of, and operate the Facility that is equal to or superior to PacifiCorp's right under this Section 10.4.
- 10.4.2 PacifiCorp shall give Seller ten (10) calendar days notice in advance of the contemplated exercise of PacifiCorp's rights under this Section 10.4. Upon such notice, Seller shall collect and have available at a convenient, central location at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Prudent Electrical Practices. Upon such notice, PacifiCorp, its employees, contractors, or designated third parties shall have the unrestricted right to enter the Facility for the purpose of constructing and/or operating the Facility. Seller hereby irrevocably appoints PacifiCorp as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as PacifiCorp may reasonably deem necessary or appropriate to exercise PacifiCorp's step-in rights under this Section 10.4.
- 10.4.3 During any period that PacifiCorp is in possession of and constructing and/or operating the Facility, no proceeds or other monies attributed to operation of the Facility shall be remitted to or otherwise provided to the account of Seller until all Events of Default of Seller have been cured.
- 10.4.4 During any period that PacifiCorp is in possession of and operating the Facility, Seller shall retain legal title to and ownership of the Facility and PacifiCorp shall assume possession, operation, and control solely as agent for Seller.
  - (a) In the event PacifiCorp is in possession and control of the Facility for an interim period, Seller shall resume operation and PacifiCorp shall

relinquish its right to operate when Seller demonstrates to PacifiCorp's reasonable satisfaction that it will remove those grounds that originally gave rise to PacifiCorp's right to operate the Facility, as provided above, in that Seller (i) will resume operation of the Facility in accordance with the provisions of this Agreement, and (ii) has cured any Events of Default of Seller which allowed PacifiCorp to exercise its rights under this Section 10.4.

- (b) In the event that PacifiCorp is in possession and control of the Facility for an interim period, the Facility Lender, or any nominee or transferee thereof, may foreclose and take possession of and operate the Facility and PacifiCorp shall relinquish its right to operate when the Facility Lender or any nominee or transferee thereof, requests such relinquishment.

10.4.5 PacifiCorp's exercise of its rights hereunder to possess and operate the Facility shall not be deemed an assumption by PacifiCorp of any liability attributable to Seller. If at any time after exercising its rights to take possession of and operate the Facility PacifiCorp elects to return such possession and operation to Seller, PacifiCorp shall provide Seller with at least fifteen (15) calendar days advance notice of the date PacifiCorp intends to return such possession and operation, and upon receipt of such notice Seller shall take all measures necessary to resume possession and operation of the Facility on such date.

## **SECTION 11: DEFAULTS AND REMEDIES**

11.1 Events of Default. The following events shall constitute defaults under this Agreement:

- 11.1.1 Breach of Material Term. Failure of a Party to perform any material obligation imposed upon that Party by this Agreement (including but not limited to failure by Seller to meet any deadline set forth in Section 2) or breach by a Party of a representation or warranty set forth in this Agreement.
- 11.1.2 Default on Other Agreements. Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Interconnection Agreement and any Transmission Agreement) within the time allowed for a cure under such agreement or instrument.
- 11.1.3 Insolvency. A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days

after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

- 11.1.4 Material Adverse Change. A Material Adverse Change has occurred with respect to Seller and Seller fails to provide such performance assurances as are reasonably requested by PacifiCorp, including without limitation the posting of additional Default Security, within thirty (30) days from the date of such request;
- 11.1.5 Failure to Meet Scheduled Commercial Operation Date. Seller's failure to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.
- 11.1.6 Underdelivery. If Seller's Facility has a Facility Capacity Rating of 100 kW or less, Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for two (2) consecutive years; else Seller's failure to satisfy the minimum delivery obligation of Section 4.3 for one year.

## 11.2 Notice; Opportunity to Cure.

- 11.2.1 Notice. In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default.
- 11.2.2 Opportunity to Cure. A Party defaulting under Section 11.1.1 or 11.1.5 shall have thirty (30) days to cure after receipt of proper notice from the non-defaulting Party. This thirty (30) day period shall be extended by an additional ninety (90) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional ninety (90) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure. If Seller defaults under Section 11.1.5, Seller shall have one (1) year in which to cure the default during which time Seller shall pay PacifiCorp damages as provided for in Section 11.4.
- 11.2.3 Seller Default Under Other Agreements. Seller shall cause any notices of default under any of its commercial or financing agreements or instruments to be sent by the other party to such agreements or instruments, or immediately forwarded, to PacifiCorp as a notice in accordance with Section 23.
- 11.2.4 Seller Delinquent on Construction-related Financial Obligations. Seller promptly shall notify PacifiCorp (or cause PacifiCorp to be notified) anytime it becomes delinquent under any construction related financing

agreement or instrument related to the Facility. Such delinquency may constitute a Material Adverse Change, subject to Section 11.1.4.

### 11.3 Termination.

- 11.3.1 Notice of Termination. If a default described herein has not been cured within the prescribed time, above, the non-defaulting Party may terminate this Agreement at its sole discretion by delivering written notice to the other Party and may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement Subject to the one (1) year cure period in Section 11.2.2, PacifiCorp may terminate the Agreement for a default under Section 11.1.5 regardless of PacifiCorp's resource sufficiency/deficiency position. PacifiCorp may not terminate for a default under Section 11.1.6 unless such default is material. The rights provided in Section 10 and this Section 11 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. Further, the Parties may by mutual written agreement amend this Agreement in lieu of a Party's exercise of its right to terminate.
- 11.3.2 In the event this Agreement is terminated because of Seller's default and Seller wishes to again sell Net Output to PacifiCorp following such termination, PacifiCorp in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price, until the Termination Date (as set forth in Section 2.4). At such time Seller and PacifiCorp agree to execute a written document ratifying the terms of this Agreement.
- 11.3.3 Damages. If this Agreement is terminated as a result of Seller's default, Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from the sum of the Replacement Price for the Minimum Annual Delivery that Seller was otherwise obligated to provide for a period of twenty-four (24) months from the date of termination plus any cost incurred for transmission purchased to deliver the replacement power to the Point of Delivery, and the estimated administrative cost to the utility to acquire replacement power. Amounts owed by Seller pursuant to this paragraph shall be due within five (5) business days after any invoice from PacifiCorp for the same.
- 11.3.4 If this Agreement is terminated because of Seller's default, PacifiCorp may foreclose upon any security provided pursuant to Section 10 to satisfy any amounts that Seller owes PacifiCorp arising from such default.

### 11.4 Damages.

- 11.4.1 Failure to Deliver Net Output. In the event of Seller default under Subsection 11.1.5 or Subsection 11.1.6, then Seller shall pay PacifiCorp the positive difference, if any, obtained by subtracting the Contract Price from

the Replacement Price for any energy and capacity that Seller was otherwise obligated (under Section 4.3) to provide during the period of default (“**Net Replacement Power Costs**”); *provided, however*, that the positive difference obtained by subtracting the Contract Price from the Replacement Price shall not exceed the Contract Price, and the period of default under this Section 11.4.1 shall not exceed one (1) year.

#### 11.4.2 Recoupment of Damages.

- (a) Default Security Available. If Seller has posted Default Security, PacifiCorp may draw upon that security to satisfy any damages, above.
- (b) Default Security Unavailable. If Seller has not posted Default Security, or if PacifiCorp has exhausted the Default Security, PacifiCorp may collect any remaining amount owing by partially withholding future payments to Seller over a reasonable period of time, which period shall not be less than the period over which the default occurred. PacifiCorp and Seller shall work together in good faith to establish the period, and monthly amounts, of such withholding so as to avoid Seller’s default on its commercial or financing agreements necessary for its continued operation of the Facility.

### **SECTION 12: INDEMNIFICATION AND LIABILITY**

#### 12.1 Indemnities.

- 12.1.1 Indemnity by Seller. Seller shall release, indemnify and hold harmless PacifiCorp, its directors, officers, agents, and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney’s fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Point of Delivery, (b) any facilities on Seller’s side of the Point of Delivery, (c) Seller’s operation and/or maintenance of the Facility, or (d) arising from this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PacifiCorp, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of PacifiCorp, its directors, officers, employees, agents or representatives.
- 12.1.2 Indemnity by PacifiCorp. PacifiCorp shall release, indemnify and hold harmless Seller, its directors, officers, agents, Lenders and representatives against and from any and all loss, fines, penalties, claims, actions or suits, including costs and attorney’s fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Point of Delivery, including

without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents, Lenders or representatives.

12.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Seller as an independent individual or entity.

12.3 No Consequential Damages. EXCEPT TO THE EXTENT SUCH DAMAGES ARE INCLUDED IN THE LIQUIDATED DAMAGES, DELAY DAMAGES, COST TO COVER DAMAGES OR OTHER SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.

### **SECTION 13: INSURANCE (FACILITIES OVER 200KW ONLY)**

13.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, or another utility's electric system, Seller shall secure and continuously carry insurance in compliance with the requirements of this Section. Seller shall provide PacifiCorp insurance certificate(s) (of "ACORD Form" or the equivalent) certifying Seller's compliance with the insurance requirements hereunder. Commercial General Liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

13.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "B+" by the A.M. Best Company the insurance coverage specified below:

13.2.1 Commercial General Liability insurance, to include contractual liability, with a minimum single limit of \$1,000,000 to protect against and from all loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

13.2.2 All Risk Property insurance providing coverage in an amount at least equal to the full replacement value of the Facility against "all risks" of physical loss or damage, including coverage for earth movement, flood, and boiler

and machinery. The Risk policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The Risk Policy will be maintained in accordance with terms available in the insurance market for similar facilities.

13.3 The Commercial General Liability policy required herein shall include i) provisions or endorsements naming PacifiCorp, its Board of Directors, Officers and employees as additional insureds, and ii) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured.

13.4 All liability policies required by this Agreement shall include provisions that such 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, and provisions that such policies shall not be canceled or their limits of liability reduced without 1) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or 2) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

13.5 Insurance coverage provided on a "claims-made" basis shall be maintained by Seller for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

#### **SECTION 14: FORCE MAJEURE**

14.1 As used in this Agreement, “**Force Majeure**” or “**an event of Force Majeure**” means any cause beyond the reasonable control of the Seller or of PacifiCorp which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of fuel or motive force resources to operate the Facility or changes in market conditions that affect the price of energy or transmission. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the event of Force Majeure, after which such Party shall re-commence performance of such obligation, provided that:

14.1.1 the non-performing Party, shall, within two (2) weeks after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

14.1.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the event of Force Majeure; and

14.1.3 the non-performing Party uses its best efforts to remedy its inability to perform.

14.2 No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the event of Force Majeure.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

14.4 PacifiCorp may terminate the Agreement if Seller fails to remedy Seller's inability to perform, due to an event of Force Majeure, within six months after the occurrence of the event.

#### **SECTION 15: SEVERAL OBLIGATIONS**

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

#### **SECTION 16: CHOICE OF LAW**

This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

#### **SECTION 17: PARTIAL INVALIDITY**

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

#### **SECTION 18: WAIVER**

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing,



and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

#### **SECTION 19: GOVERNMENTAL JURISDICTIONS AND AUTHORIZATIONS**

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to PacifiCorp.

#### **SECTION 20: REPEAL OF PURPA**

This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.

#### **SECTION 21: SUCCESSORS AND ASSIGNS**

This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent to a lender as part of a financing transaction or as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

#### **SECTION 22: ENTIRE AGREEMENT**

22.1 This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

22.2 By executing this Agreement, Seller releases PacifiCorp from any claims, known or unknown, that may have arisen prior to the Effective Date.

#### **SECTION 23: NOTICES**

23.1 All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested.

<b>Notices</b>	<b>PacifiCorp</b>	<b>Seller</b>
<b>All Notices</b>	PacifiCorp 825 NE Multnomah Street Portland, OR 97232 Attn: Contract Administration, Suite 600 Facsimile: (503) 813 – 6291 Email: cntadmin@PacifiCorp.com  Duns: 00-790-9013 Federal Tax ID Number: 93-0246090	Three Sisters Irrigation District PO Box 2230 Sisters, OR 97759 Attn: Marc Thalacker Phone: (541) 549-8815 Facsimile: (541) 549-8070 Duns: 180462921 Federal Tax ID Number: 93-6002504
<b>All Invoices:</b>	Attn: Back Office, Suite 700  Facsimile: (503) 813 – 5580 Email: powerinvoices@pacificorp.com	(Same as above)
<b>Scheduling:</b>	Attn: Pre-Scheduling, Suite 600 Phone: (503) 813 – 6090 Email: ctpreschd@pacificorp.com	(Same as above)
<b>Payments:</b>	Attn: Central Cashiers Office, Suite 550 Phone: (503) 813 - 6826	(Same as above)
<b>Wire Transfer:</b>	Bank One N.A. To be provided in separate letter from PacifiCorp to Seller	First Interstate Bank ABA: 092901683 ACCT: Confidential Information, will be sent via separate letter.
<b>Credit and Collections:</b>	Attn: Credit Manager, Suite 700 Phone: (503) 813 - 7280 Facsimile: (503) 813-5609	(Same as above)
<b>With Additional Notices of an Event of Default or Potential Event of Default to:</b>	Attn: Assistant General Counsel 825 NE Multnomah Street, Suite 1800 Portland, OR 97232  Phone: (503) 813-5356	(Same as above)

23.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 23.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the date first above written.

PacifiCorp

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

Name: Bruce Griswold

Title: Director, Short-term Origination

5/8/2018

Seller

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

Name: Marc Thalacker

Title: District Manager

5/8/2018

**EXHIBIT A**  
**DESCRIPTION OF SELLER'S FACILITY**

[Seller to Complete]

Seller's Facility consists of four generators manufactured by Canyon, Cornell, HydroTek, and SOAR Technologies. More specifically, each generator at the Facility is described as:

**Manufacturer's Nameplate Data: Canyon Hydro**

**Type (synchronous or inductive):** Inductive

**Model:** US Motors

**Number of Phases:** Three Phase

**Rated Output (kW):** 11.19 kW

**Rated Output (kVA):** 13.37 kVA

**Rated Voltage (line to line):** 480

**Rated Current (A):** Stator: 17.5 A; Rotor: Not Applicable, induction generator

**Power factor requirements:** Rated Power Factor (PF) or reactive load (kVAR): PF 83.7

**Manufacturer's Nameplate Data: Cornell**

**Type (synchronous or inductive):** Inductive

**Model:** Marathon

**Number of Phases:** Three Phase

**Rated Output (kW):** 17.0 kW

**Rated Output (kVA):** 22.7 kVA

**Rated Voltage (line to line):** 480

**Rated Current (A):** Stator: 27.3 A; Rotor: Not Applicable, induction generator

**Power factor requirements:** Rated Power Factor (PF) or reactive load (kVAR): PF 75.0

**Manufacturer's Nameplate Data: HydroTek**

**Type (synchronous or inductive):** Inductive

**Model:** Marathon

**Number of Phases:** Three Phase

**Rated Output (kW):** 150 kW

**Rated Output (kVA):** 190.4 kVA

**Rated Voltage (line to line):** 480

**Rated Current (A):** Stator: 229 A; Rotor: Not Applicable, induction generator

**Power factor requirements:** Rated Power Factor (PF) or reactive load (kVAR): PF 80.5

**Manufacturer's Nameplate Data: SOAR Technologies**

**Type (synchronous or inductive):** Inductive

**Model:** NIDEC

**Number of Phases:** Three Phase

**Rated Output (kW):** 22.38 kW

**Rated Output (kVA):** 26.42 kVA

**Rated Voltage (line to line):** 480

**Rated Current (A):** Stator: 34 A; Rotor: Not Applicable, induction generator

**Power factor requirements:** Rated Power Factor (PF) or reactive load (kVAR): PF 84.7

**B. Seller's Estimate of Facility Output Under Ideal (Maximum) or Worst (Minimum) Conditions**

**Maximum kW Output:** \_200 kW **Maximum kVA Output:** \_252.89 kVA

**Minimum kW Output:** \_ 50 kW

**Manufacturer's Guaranteed Cut-in Wind Speed [if applicable]:** NA

---

**Facility Capacity Rating:** \_200 kW at design flow and design head\_\_\_\_\_

---

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capacity Rating:

**Station service requirements, and other loads served by the Facility, if any, are described as follows:** Station service loads consist of wicket gate positioner, lights, and cooling which is estimated to be approximately 1 kW.

---

**C: Location of the Facility:** The Facility is to be constructed in the vicinity of Bend in Deschutes County, Oregon. The location is more particularly described as follows:

68000 Hwy 20, Bend, OR 97703

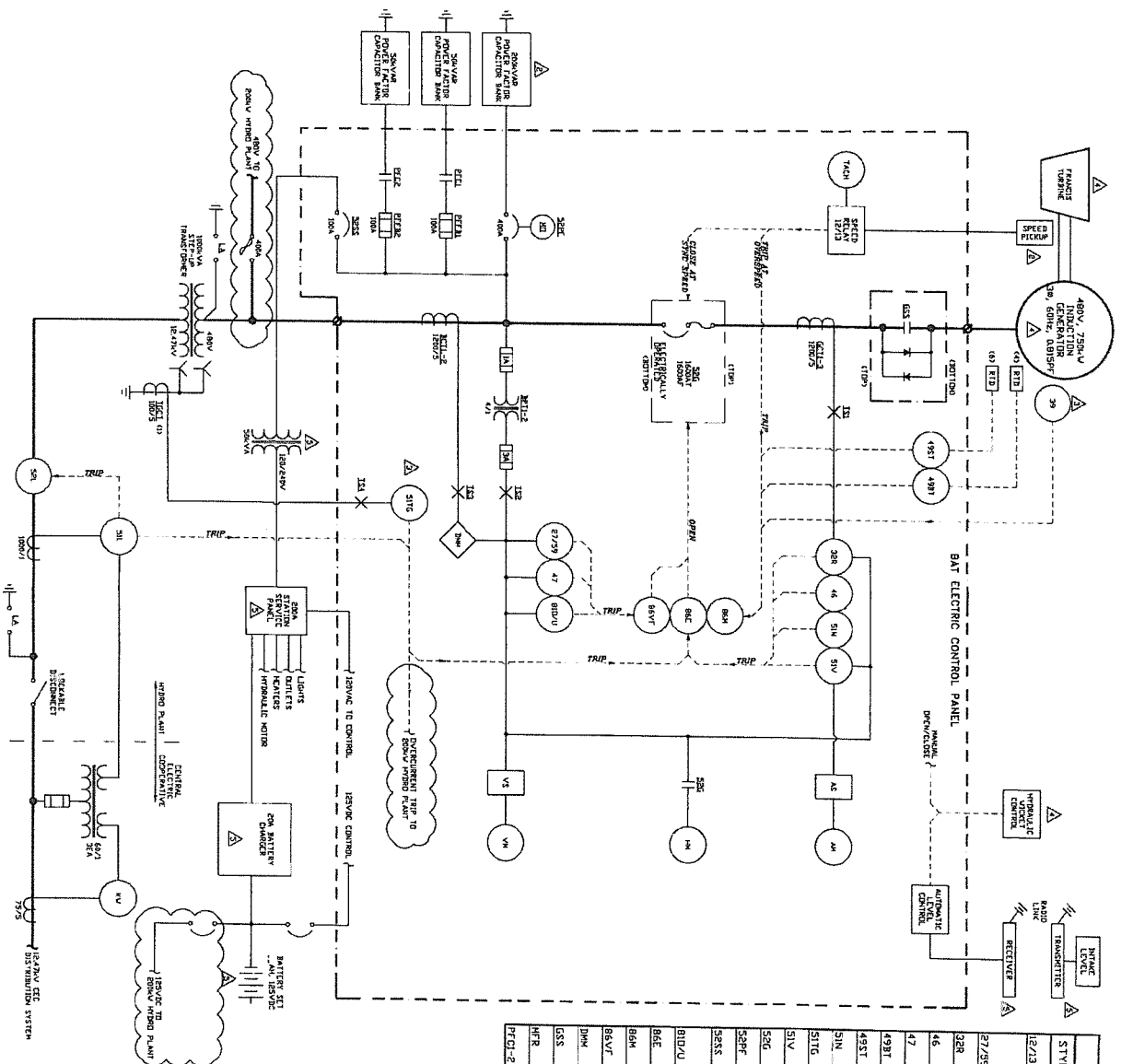
15S 10E W.M., Section 13 Tax Lot 600

**EXHIBIT B**  
**SELLER'S INTERCONNECTION FACILITIES**

**POINT OF DELIVERY / SELLER'S INTERCONNECTION FACILITIES**

1. Point of metering is at Central Electric Cooperative meter connected to the high side of CEC transformer located at the site. Type of meter: CEC – Elster A3RA, 13 terminal, form 9s, CL20.
2. One-line diagrams of the Facility, metering, and Point of Interconnection are attached.
3. Central Electric Cooperative will deliver the generation to Bonneville Power Administration at CEC's Sisters 115 kV Substation. BPA will deliver the generation to PacifiCorp's Redmond terminal, Bay 14 of the BPA Redmond 115 KV Substation.

**EXHIBIT B**

[illegible]

\*\*\* SETTING TO BE DETERMINED

SYMBOLS _____	
▲	SUPPLIED BY BAI ELECTRIC
▲	INSTALLED BY OTHERS
▲	BAI ELECTRIC OPTIONAL SUPPLY
▲	SUPPLIED BY HYDROTECH
▲	SUPPLIED BY OTHERS


  

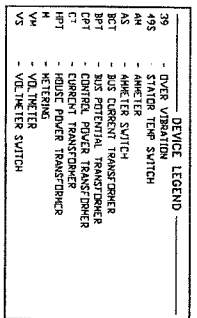
DEVICE LEGEND _____	
39	VIBRATION RELAY
51L	HIGH SIDE OVERCURRENT RELAY
52L	REL/DSE
AM	AMMETER
AS	AMMETER SWITCH
BE1	BUS CURRENT TRANSFORMER
BE2	BUS CURRENT TRANSFORMER
GET	GENERATOR CURRENT TRANSFORMER
HM	HOUR METER
KV	KETERING
LA	LIGHTNING ARRESTOR
MO	MOTOR OPERATOR
PTFB	POWER FACTOR FUSE BLOCK
TA	TEMPERATURE
TACH	TACHOMETER
TDC1	TRANSFORMER GROUND CURRENT TRANSFORMER
TDC2	TRANSFORMER GROUND CURRENT TRANSFORMER
VM	VOLTMETER
VS	VOLTMETER SWITCH

HYDROTECH  
WATSON HYDRO P  
ONE LINE DIAGRAM


PROJECT

REV	BY	DATE
A	PT	4-6-13
B	PT	10-11-1

	HYDROTECH HYDRO PROJECT WATSON LINE DIAGRAM	
	DWG No.: 12P0579-01 DATE: 1/1/71	DATE: 5-1-73
SAT ELECTRIC, INC. 2500 MARKET LANE FARMINGTON, CT 06030 TEL. (203) 221-1335 FAX (203) 221-5445	A	

[illegible]



[REV] TEL (520) 221-1346 FAX (520) 221-1346	BOLD ELECTRONIC, INC. 3040 WASHINGTON, LANE SUITE 100 ALBUQUERQUE, NM 87105			THREE SISTERS IRRIGATION DISTRICT 1000 N. 1ST AVENUE (CORN #2-4) SMALL HYDRO PROJECT ONE LINE DIAGRAM	
	DWG No. 1.600367-02 DATE: JANUARY 2001			[REV] [BY] DATE 1 28 6-28-01	
[SCALE: 3/16"=1'-0"]			DATE: 6-29-16		

**EXHIBIT C**  
**REQUIRED FACILITY DOCUMENTS**

- 1) QF Certification: QF17-1088-000 Docket Number CD16-13-000-Oregon
- 2) Interconnection Agreement: Provided August 19, 2013
- 3) Transmission Service Agreement: BPA Use of Facilities Agreement: Contract No. 13TX-15854, Dated April 2, 2013
- 4) FERC Conduit Exemption: Project No. 14364-000
- 5) Water Rights: Oregon Water Resources PC 897

# EXHIBIT C-6

## DEED

DESCHUTES COUNTY OFFICIAL RECORDS  
NANCY BLANKENSHIP, COUNTY CLERK

2013-07667



\$58.00

00078887201300076670030030

02/21/2013 03:46:45 PM

D-D Cnt=1 Stn=2 TH

\$15.00 \$11.00 \$18.00 \$10.00 \$6.00

After Recording return to:  
Three Sisters Irrigation District  
PO Box 2230  
Sisters, OR 97759  
Attn: Marc Thalacker

Until a change is requested,  
send tax statements to:  
Three Sisters Irrigation District  
PO Box 2230  
Sisters, OR 97759  
Attn: Marc Thalacker

### QUITCLAIM DEED

#### (Property Line Adjustment Consolidating Lots)

The true consideration for this transfer is no dollars but other good and valuable consideration.

Three Sisters Irrigation District, an Oregon quasi-municipal corporation, and formerly known as Squaw Creek Irrigation District, Grantor, releases and quitclaims to Three Sisters Irrigation District, an Oregon quasi-municipal corporation, and formerly known as Squaw Creek Irrigation District, Grantee, all right title and interest in and to the following described real property:

See Exhibit A, attached hereto and incorporated by this reference.

This deed consolidates two adjoining parcels owned by Three Sisters Irrigation District, formerly known as Squaw Creek Irrigation District, both Oregon quasi-municipal corporations, pursuant to Deschutes County Property Line Adjustment Approval LL-12-32 granted on October 16, 2012, making them one legal lot of record. Three Sisters Irrigation District retains all right, title and interest in and to the real property described in Exhibit A as consolidated.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE

ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

DATED this 8<sup>th</sup> day of February, 2013.

Three Sisters Irrigation District,  
An Oregon quasi-municipal corporation

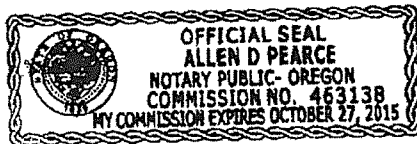
By: Marc Thalacker  
Marc Thalacker, Manager

With authority of the Board of Directors by resolution passed on 2/5/2013.

STATE OF OREGON,  
COUNTY OF DESCHUTES ) ss.

The foregoing instrument was acknowledged before me this 8 day of February, 2013 by Marc Thalacker, as Manager of Three Sisters Irrigation District.

Allen D. Pearce  
Notary Public for Oregon



## Exhibit A

All that portion of a certain tract of land described in Book 137, Page 325, recorded November 29, 1963, Deschutes County Deed Records, described as follows:

The Southeast Quarter (SE1/4) Section Fourteen (14), Township Fifteen (15) South, Range Ten (10) E. W.M., and the East 30 rods or 495 feet of the Southwest Quarter (SW1/4) of said Section 14, Township 15 South, Range 10 EWM, with an appurtenant water right for the SE1/4, Section 14, of 25 acres, date of priority 1889, through the Squaw Creek Irrigation District system, and 55 acres, date of priority 1895, through Squaw Creek Irrigation District system, or a total water right of 80 acres, all in Deschutes County, Oregon.

Together with the following:

All that portion of a certain tract of land described in Book 152, Page 446, recorded in March 23, 1967, Deschutes County Deed Records, described as follows:

A tract of land in the West Half of the Southwest Quarter of Section 13, Township 15 South, Range 10 E.W.M., described as follows:

Beginning at the corner of Sections 13, 14, 23 and 24 of Township 15 South, Range 10 East of the Willamette Meridian and running thence North  $0^{\circ}56'36''$  East 1737.34 feet along the section line between Sections 13 and 14; thence North  $89^{\circ}10'20''$  East 98.0 feet; thence South  $76^{\circ}01'10''$  East 175.0 ft.; thence South  $71^{\circ}43'40''$  East 169.0 ft.; thence South  $65^{\circ}51'$  East 175.0 ft.; thence South  $51^{\circ}34'20''$  East 425.0 feet; thence South  $39^{\circ}36'20''$  East 470.0 feet to a large juniper tree on the North right of way line of the Squaw Creek Canal; thence along the North right of way line of the Squaw Creek Canal North  $71^{\circ}51'$  West 278.0 feet; thence North  $63^{\circ}30'$  West 380.0 feet; thence North  $81^{\circ}00'$  West 125.0 feet; thence South  $56^{\circ}55'$  West 212.0 feet; thence leaving the canal right of way line and running thence South  $8^{\circ}50'$  West 1122.0 feet to the South line of Section 13; thence North  $88^{\circ}54'$  West 171.6 feet along the South line of Section 13 to the point of beginning, and EXCEPTING therefrom the right of way of the present Squaw Creek Canal as now located over and across said land, and containing 16.2 acres.

**FEDERAL ENERGY REGULATORY COMMISSION**  
**Washington, D.C. 20426**

OFFICE OF ENERGY PROJECTS

Docket No. CD16-13-000 – Oregon  
Watson Net Meter/Micro Hydroelectric  
Demonstration Facility  
Three Sisters Irrigation District

August 4, 2016

Mr. Marc Thalacker, Manager  
Three Sisters Irrigation District  
PO Box 2230  
Sisters, OR 97759

Subject: Determination that the Watson Net Meter/Micro Hydroelectric  
Demonstration Facility Meets the Qualifying Conduit Hydropower Facility  
Criteria

Dear Mr. Thalacker:

On June 2, 2016, as supplemented on June 13, 2016, you filed a notice of intent pursuant to section 30(a) of the Federal Power Act (FPA), as amended by Section 4 of the Hydropower Regulatory Efficiency Act of 2013 (2013 Act),<sup>1</sup> to construct a qualifying conduit hydropower facility, the Watson Net Meter/Micro Hydroelectric Demonstration Facility, to be located in Deschutes County, Oregon.

On June 16, 2016, Commission staff issued a public notice that preliminarily determined that the project met the statutory criteria for a qualifying conduit hydropower facility, and thus was not required to be licensed under Part I of the FPA. The notice established a 45-day period for entities to contest whether the project met the criteria. No comments or interventions were filed in response to the notice. Accordingly, this letter constitutes a written determination that the Watson Net Meter/Micro Hydroelectric Demonstration Facility meets the qualifying criteria under FPA section 30(a), and is not required to be licensed under Part I of the FPA. Qualifying conduit hydropower facilities remain subject to other applicable federal, state, and local laws and regulations.

---

<sup>1</sup> 16 U.S.C. § 823(a) (2012), amended by the 2013 Act, Pub L. 113-23, § 4a, 127 Stat. 498 (2013).

If you have any questions, please contact Mr. Christopher Chaney at (202) 502-6778 or [Christopher.Chaney@ferc.gov](mailto:Christopher.Chaney@ferc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly Houff". The signature is written in a cursive, flowing style with a large initial "K" and a long, sweeping underline.

Kelly Houff  
Chief, Engineering Resources Branch  
Division of Hydropower Administration  
and Compliance

## **PROJECT DESCRIPTION**

Water will be diverted from the Whychus Creek through an existing fish screen, then into the Three Sisters Irrigation District's Main Canal Pipeline. The powerhouse will be located at the discharge point to Watson Reservoir approximately 3 miles from the diversion. The powerhouse will contain up to four small turbines and generator units with a combined installed capacity of 199 kilowatts (kW). The turbines will use up to 20 cubic feet per second (cfs) of water for hydroelectric generation with an operating head of 194 feet. This provides approximately 441 theoretical horsepower (thp) of capacity. After the water flows through the turbine it will discharge to Watson Reservoir for later delivery to the districts laterals and water users.

## **WATER RIGHT CONDITIONS**

Upon review of the application, Oregon Water Resources Department (OWRD) finds that the Watson Net Meter/Micro Hydroelectric Demonstration Facility (Project), with the conditions set forth below is consistent with the public interest. The Project is well adapted to the development and utilization of the water power involved.


1. The water right holder shall comply with all statutes and rules applicable to the Project.
2. The water right holder shall construct and build the Project according to the maps, plans and specifications filed with the application within five years of issuance of this water right certificate. ORS 543.765(13).
3. The water right holder shall construct, operate and maintain all fish screens, by-pass devices and fish passages as required by the Oregon Department of Fish and Wildlife. ORS 543.765(5)(a).
4. The water right holder shall allow the OWRD Director and authorized agents and employees of the Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife (ODFW), and OWRD free and unrestricted access in, through, and across the Project in the performance of their official duties, and shall allow free access to all reports, accounts, records, and other data relating to said Project.
5. The restrictions established in ORS 543.660 shall apply as conditions of use.
6. This certificate shall be invalidated upon a change in the point of diversion authorized for the existing right under Certificate 74135. ORS 543.765(5)(g).
7. The Water Resources Department shall conduct a review of this certificate upon approval of any changes or adjustments made to the water user's existing water right to determine if a revised certificate should be issued. ORS 543.765(6).
8. The right to use water under this certificate is invalidated if the Federal Energy



Regulatory Commission exemption related to this certificate is canceled or invalidated.  
ORS 543.765(5)(h).

9. This certificate does not have its own priority date. The Department shall not regulate for or against this certificate. This certificate does not grant a right to divert water for hydroelectric purposes other than in conjunction with the water right as used under Certificate 74135. ORS 543.765(9) and (10).
10. This certificate is subject to review by the Department 50 years after the date of issuance pursuant to ORS 543.765. ORS 543.765(12).
11. The water right holder shall pay, upon receiving an invoice from OWRD, an annual fee to OWRD under ORS 543.078. This amount shall be due by the date specified on the invoice. Failure to pay the required fee will invalidate this certificate.  
ORS 543.765(16) and (17).
12. If at any time, unanticipated circumstances or emergency situations arise in which fish or wildlife are being killed, harmed or endangered by any of the project facilities including the fish passage and screening facilities, the District shall immediately take appropriate action to prevent further loss. The District shall notify the nearest ODFW office within 24 hours and shall comply with measures required by ODFW to prevent additional injury or mortality.
13. Failure to comply with any of the provisions of this water right may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the water right.

Issued October 25, 2016

  
Dwight W. French, Administrator  
Water Rights Services Division  
Oregon Water Resources Department, for

Thomas M. Byler, Director  
Oregon Water Resources Department

Recorded in State Record of Water Right Certificates numbered 92035 .

STATE OF OREGON  
COUNTY OF DESCHUTES  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO:

THREE SISTERS IRRIGATION DISTRICT  
P.O. Box 2230  
SISTERS, OR 97759

confirms the right to use up to 20 CUBIC FEET PER SECOND (cfs) of the waters of WHYCHUS CREEK, tributary to the DESCHUTES RIVER, for HYDROELECTRIC PRODUCTION of 441 THEORETICAL HORSEPOWER (THP).

The use of water for hydroelectric purposes shall be in conjunction with water used under the right of Three Sisters Irrigation District for purposes, as evidenced by Certificate 74135 and as delivered through the Watson McKenzie Main Canal. Use of water shall be limited to periods when the water right holder's water right under Certificate 74135 is put to beneficial use without waste. The amount of water used shall not be greater than the quantity of water diverted to satisfy the authorized specific use under Certificate 74135. The use of water shall be limited by rate, duty, season and any other limitations of Certificate 74135. ORS 543.765(5)(c) and (d).

The water user shall measure and report the quantity of water diverted. ORS 543.765(5)(e).

This right was filed under application PC 903.


The point of diversion is located: 998 FEET NORTH AND 1211 FEET EAST FROM SW CORNER OF SECTION 21, being within the SW¼ SW¼, SECTION 21, TOWNSHIP 15 SOUTH, RANGE 10 EAST, W.M.

The authorized place of use is located: Tax Lot 600, SW¼ SW¼, SECTION 13, TOWNSHIP 15 SOUTH, RANGE 10 EAST, W.M.

**Appeal Rights**

**This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.**

**This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law.**

	CENTRAL ELECTRIC	Interconnection Agreement For Generation Systems/Wheeling
---	------------------	--

**Interconnection of Distributed  
Generation Systems in Parallel  
With  
Central Electric Cooperative, Inc.**

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This Generating System Interconnection/Wheeling Agreement is entered into by and between Central Electric Cooperative, Inc. ("CEC") and Three Sisters Irrigation District (the "Interconnection Member"). The Interconnection Member and CEC may also be referred to in this Agreement jointly as "Parties" or individually as "Party". In consideration of the mutual promises and obligations stated in this Agreement and its attachments, the Parties agree as follows:

**ADDENDUM TO EXHIBIT A**  
**Generation System Description and Single Line Diagram**

The generation system will be located at 68000 Hwy 20 West, Bend, OR 97701 on Township 15S Range 10E Section 13 Tax Lot 700. The facility will contain five turbine generators with the following nameplate ratings:

U.S. Motors    746 kW  
Marathon       150 kW  
U.S. Motors    22.38 kW  
Marathon       14 kW  
U.S. Motors    11.19 kW

The facility will operate from March 1 through Nov 15.

A summation of these generators is approximately 943.57 kW to be trued up when the generators are installed and will reflect applicable CEC wheeling rates. Specification sheets are attached.

See attached one-line diagram, project plot plan and site map.

CENTRAL ELECTRIC COOPERATIVE, INC.

By: Brad Wilson

Name: Brad Wilson

Title: Director of Engineering and Operations

Date: May 4, 2018

THREE SISTERS IRRIGATION DISTRICT

By: Marc Thalacker

Name: Marc Thalacker

Title: Manager

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

**AMENDMENT**  
**executed by the**  
**UNITED STATES OF AMERICA**  
**DEPARTMENT OF ENERGY**  
**acting by and through the**  
**BONNEVILLE POWER ADMINISTRATION**  
**and**  
**THREE SISTERS IRRIGATION DISTRICT**

This AMENDMENT to Balancing Authority Area Services Agreement No. 13TX-15850, (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA) and THREE SISTERS IRRIGATION DISTRICT (Customer). BPA and Customer are sometimes referred to individually as "Party" and collectively as "Parties."

This Amendment to the Agreement reflects an increase of 200 kW (from 700 kW to 900 kW) to the nameplate capacity of the Three Sisters Hydro Generation Project.

The Parties agree to the following:

**1. EFFECTIVE DATE**

This Amendment shall take effect on October 1, 2018 (Effective Date).

**2. AMENDMENT OF AGREEMENT**

The Agreement is amended as follows:

- (a) Delete the first paragraph of RECITALS and replace it with the following:

"The Customer desires to operate its Three Sisters Hydroelectric Generation Project (Project) in BPA's Balancing Authority Area, and such Project interconnects directly with Central Electric Cooperative, Inc.'s (CEC) system, which interconnects with BPA's Redmond Substation."

- (b) Exhibit A, is replaced by Exhibit A, Revision No. 2, which is incorporated herein by reference.
- (c) Exhibit C, is replaced by Exhibit C, Revision No. 2, which is incorporated herein by reference.

(d) Exhibit G is replaced by Exhibit G, Revision No. 1, which is incorporated herein by reference.

3. The Parties agree that all other terms and conditions of the Agreement remain the same.

4. **SIGNATURES**

This Amendment may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The parties have executed this Amendment as of the last date indicated below.

THREE SISTERS IRRIGATION DISTRICT

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

By: 

By:  Digitally signed by ERIC TAYLOR  
Date: 2018.05.04 15:40:05 -07'00'

Title: Manager

Title: Transmission Account Executive

If opting out of the electronic signature:

By: 

Name: Marc Thalacker  
(Print/Type)

Title: Manager

Date: 5/4/2018

## **EXHIBIT A PROJECT DETAILS**

### **IDENTIFICATION OF THE PROJECT**

The Project consists of a single induction 700 kW nameplate Hydro-Tech irrigation drop structure generator located at the Project in Deschutes County, Oregon. The Project interconnects the Customer's hydro generation facility to CEC's 12.5 kV distribution line approximately 2 miles from CEC's Sister's Substation where transformation to 115 kV occurs. Then via approximately 15.2 miles CEC's 115 kV line to BPA's Redmond substation. The point of interconnection of CEC's 115 kV transmission line to the FCRTS is at BPA's Redmond Substation.

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**EXHIBIT A, REVISION NO. 2  
PROJECT DETAILS**

*This Exhibit A, Revision No. 2 (Revision) replaces the original Exhibit A, in its entirety and provides for an incremental increase of 200 kW (from 700 kW to 900 kW) for the Three Sisters Irrigation District Hydro Generation Project in Bonneville Power Administration's (BPA) Balancing Authority Area.*

**1. IDENTIFICATION OF THE PROJECT**

The Project consists of a single induction 700 kW nameplate Hydro-Tech irrigation drop structure and a single induction 200kW Micro Hydro located at the Project in Deschutes County, Oregon. The Project interconnects to Central Electric Cooperative's (CEC) system via CEC's 12.5 kV distribution line approximately 2 miles from CEC's Sister's Substation (where transformation to 115 kV occurs). CEC's system connects to the Federal Columbia River Transmission System (FCRTS) via CEC's approximately 15.2 mile 115 kV line between CEC's Sisters Substation and BPA's Redmond Substation. The point of interconnection of CEC's 115 kV transmission line to the FCRTS is at BPA's Redmond Substation.

**2. CONSTRUCTION AGREEMENT**

Not applicable.

**3. PROJECT CAPACITY**

Nameplate: 900 kW.

Maximum studied amount: 900 kW.

Maximum operating limit under this Agreement: 900 kW.

**4. SOURCE OF STATION SERVICE WHEN PROJECT IS OFF-LINE**

CEC 12.5kV local distribution served from CEC Sister's Substation.

**5. INTENDED USE OF PROJECT OUTPUT**

Behind the meter serving Host Utility load.



6. **SIGNATURES**

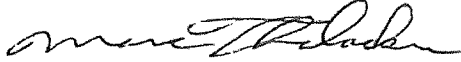
This Revision may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The parties have executed this Revision as of the last date indicated below.

THREE SISTERS IRRIGATION DISTRICT

UNITED STATES OF AMERICA

Department of Energy

Bonneville Power Administration


By: 

By:  Digitally signed by ERIC TAYLOR  
Date: 2018.05.04 15:41:41 -07'00'

Title: Manager

Title: Transmission Account Executive

If opting out of the electronic signature:

By: 

Name: Marc Thalacker  
(Print/Type)

Title: Manager

Date: 5/4/2018

**EXHIBIT B**  
**BALANCING AUTHORITY AREA SERVICES**

**1. REQUIRED BALANCING AUTHORITY AREA SERVICES**

The Ancillary and Control Area Services (ACS) Rate Schedule, or its successor, in effect at the time of service shall apply to the services provided under this Agreement.

As of the Effective Date of this Agreement, the Customer shall purchase the following services from BPA:

	<b>Provided By</b>	<b>Contract No.</b>
<b>Generation Imbalance Service</b>	BPA	13TX-15850
<b>Operating Reserves – Spinning Reserve</b>	BPA	13TX-15850
<b>Operating Reserves – Supplemental Reserve</b>	BPA	13TX-15850

**2. REVISION OF THIS EXHIBIT**

BPA may unilaterally revise this Exhibit upon BPA's determination that such revision is necessary to conform to BPA's approved Transmission, Ancillary and Control Area Service Rate Schedules and General Rate Schedule Provisions. BPA shall provide the Customer with as much notice as reasonably possible of its intent to revise such rates and revise this Exhibit.

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**EXHIBIT C**  
**BALANCING AUTHORITY AREA REQUIREMENTS**  
**AND OPERATING REQUIREMENTS**

1. The amount of electricity delivered from the Project into BPA's Balancing Authority Area shall not exceed 700 kW, except upon agreement by BPA and the Customer recorded in a written revision to this Agreement. If the amount of electricity delivered from the Project into BPA's Balancing Authority Area exceeds the amount stated in this paragraph at any time during the term of this Agreement, the Customer shall be responsible for all associated costs and damages, including, but not limited to, all costs of reprogramming the BPA owned generation meter and rescaling the Supervisory Control and Data Acquisition (SCADA) MW value.
2. The Customer shall comply with the BPA requirements contained in: (1) BPA Technical Requirements, (2) BPA's scheduling procedures as posted on BPA's Open Access Same Time Information System (OASIS), and (3) BPA's business practices. BPA may unilaterally amend its Technical Requirements, scheduling procedures, and business practices. The BPA Technical Requirements are incorporated herein by reference.
3. The Customer shall operate the Project as directed by BPA and comply with all BPA Orders including, but not limited to, orders to reduce generation in accordance with the Oversupply Management Protocol in BPA's Open Access Transmission Tariff, and other Dispatcher Standing Orders or operational procedures and their successors.
4. The Customer shall provide BPA with as built technical data for the Project and shall provide BPA updated data in the event of any changes. BPA may request technical data regarding the Project from the Customer. The Customer shall provide the data in accordance with BPA's request.
5. BPA may unilaterally revise this Exhibit upon BPA's determination that such revision is necessary to conform to BPA's Balancing Authority Area requirements or operating requirements, or to include new Balancing Authority Area requirements or operating requirements. BPA shall provide the Customer with as much notice as reasonably possible of its intent to revise this Exhibit.

(W:\CT\Three Sisters Irrigation District\Contracts (Final)\15850\_BAASA.doc)

**EXHIBIT D  
VOLTAGE SCHEDULES**

**1. NOT APPLICABLE AT THIS TIME**

Exhibit D, Voltage Schedules is not applicable at this time.

**2. REVISION OF THIS EXHIBIT**

BPA may unilaterally revise this Exhibit upon BPA's determination that such revision is necessary to preserve transmission system safety and reliability. BPA shall provide the Customer with as much notice as reasonably possible of its intent to revise this Exhibit.

(W:\CT\Three Sisters Irrigation District\Contracts (Final)\15850\_BAASA.doc)

**EXHIBIT E**  
**VOLTAGE RIDE-THROUGH AND REACTIVE POWER**

**1. NOT APPLICABLE AT THIS TIME**

Exhibit E, Voltage Ride-Through and Reactive Power is not applicable at this time.

**2. REVISION OF THIS EXHIBIT**

BPA may unilaterally revise this Exhibit upon BPA's determination that such revision is necessary to preserve transmission system safety and reliability. BPA shall provide the Customer with as much notice as reasonably possible of its intent to revise this Exhibit.

(W:\CT\Three Sisters Irrigation District\Contracts (Final)\15850\_BAASA.doc)

**EXHIBIT F**  
**REMEDIAL ACTION SCHEME**

**1. REMEDIAL ACTION SCHEME**

Exhibit F, Remedial Action Scheme is not applicable at this time.

**2. REVISION OF THIS EXHIBIT**

BPA may unilaterally revise this Exhibit upon BPA's determination that such revision is necessary to preserve transmission system safety and reliability. BPA shall provide the Parties with as much notice as reasonably possible of its intent to revise this Exhibit.

(W:\CT\Three Sisters Irrigation District\Contracts (Final)\15850\_BAASA.doc)

## **EXHIBIT G NOTICES**

### **1. ADMINISTRATIVE CONTACTS**

Any notice or other communication related to this Agreement, other than notices of an operating nature (section 2 below), shall be in writing and shall be deemed to have been received if delivered in person, by First Class mail, by facsimile or sent by overnight delivery service.

Administrative contacts under this Agreement are as follows:

**If to Customer:**

Three Sisters Irrigation District  
68000 Highway 20 West  
Bend, OR 97701  
Attention: Marc Thalacker  
Title: Manager  
Phone: (541) 549-8815  
Fax: (541) 549-8070  
E-mail: [manager@tsidweb.org](mailto:manager@tsidweb.org)

**If to BPA:**

Attention: Transmission Account  
Executive for Three Sisters Irrigation  
District – TSE/TPP-2  
Phone: (360) 619-6016  
Fax: (360) 619-6940

**If by First Class Mail:**

Bonneville Power Administration  
P.O. Box 61409  
Vancouver, WA 98666-1409

**If by Overnight Delivery Service:**

Bonneville Power Administration –  
TSE/TPP-2  
7500 NE 41<sup>st</sup> Street, Suite 130  
Vancouver, WA 98662

### **2. NOTICES OF AN OPERATING NATURE**

The Customer shall provide BPA with the name (or title), address, voice phone number and Fax number for routine operational activities associated with the interconnection and operation of the Project with the Federal Columbia River Transmission System (FCRTS). Such operational activities shall include, but are not limited to outage coordination, generation dispatch and system dispatch. Any notice, request or demand of an operating nature between BPA and the Project Operator shall be made orally, via electronic communication, or in writing, by facsimile, by First Class mail or overnight delivery service. For planned outages, the Transmission Operator Provider Outage Request form may be requested via [bpaoutage@bpa.gov](mailto:bpaoutage@bpa.gov) email.

<u>Party</u>	<u>Outage Coordination</u>	<u>Operational Contact Generation Dispatcher</u>
<b>BPA</b>	<b>Planned Outages:</b> Munro CC Phone: (509) 466-2409 Fax: (509) 466-2444 E-mail: bpaoutage@bpa.gov	<b>Primary:</b> Munro Dispatch Phone: (509) 465-1820 or (888) 835-9590 Fax: (509) 466-2444  <b>Alternate:</b> Dittmer Dispatch Phone: (360) 418-2281 or (360) 418-2280 or (503) 283-8501 Fax: (360) 418-2938
<b>The Customer</b>	<b>Primary:</b> Plant Operator (24 hour) Phone: (541) 548-2144 Fax: (541) 923-3549	

### 3. **CHANGES IN NOTICES**

If either Party changes its contact(s), that Party shall notify the other Party by voice phone, facsimile transmission, or other means immediately. The Party making the change shall send written notice of the change to the other Party within 3 business days. BPA shall revise this Exhibit upon such notice.

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## Department of Energy

Bonneville Power Administration  
P.O. Box 61409  
Vancouver, WA 98666-1409

TRANSMISSION SERVICES

April 24, 2013

In reply refer to: TSE/TPP-2

Mr. Marc Thalacker, Manager  
Three Sisters Irrigation District  
68000 Highway 20 West  
Bend, OR 97701

Dear Mr. Thalacker:

Enclosed for your records is one fully executed original of the Balancing Authority Area Services Agreement Contract No. 13TX-15850, between Three Sisters Irrigation District and the Bonneville Power Administration.

If you have any questions please call me at, (360) 619-6014.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric K. Taylor", is written over a horizontal line.

Eric K. Taylor  
Transmission Account Executive  
Transmission Sales

Enclosure

Contract No. 13TX-15854

**USE-OF-FACILITIES AGREEMENT**  
 executed by the  
**UNITED STATES OF AMERICA**  
**DEPARTMENT OF ENERGY**  
 acting by and through the  
**BONNEVILLE POWER ADMINISTRATION**  
 and  
**THREE SISTERS IRRIGATION DISTRICT**

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This USE-OF-FACILITIES AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA), and THREE SISTERS IRRIGATION DISTRICT (Customer). BPA and Customer are sometimes referred to individually as "Party" and collectively as "Parties".

**RECITALS**

The Customer owns the 700 kW Three Sisters Irrigation District Hydro Generation Project (Project) located in Deschutes County, Oregon.

The Customer has requested the use of facilities described in Section 1(c) in order to integrate the Project into BPA's Balancing Authority Area via Central Electric

Cooperative's (CEC) Sisters 115 kV Substation. The Project output is to be transferred from CEC's transmission system to PacifiCorp's transmission system via 115 kV facilities at BPA's Redmond Substation.

Therefore, the Parties agree as follows:

**1. SCOPE OF AGREEMENT**

**(a) Terms and Conditions**

BPA agrees to provide and Customer agrees to take and pay for Use-of-Facilities services in accordance with the provisions of this Agreement.

**(b) Transmission Rate Schedules**

BPA Transmission and Ancillary Service Rate Schedules and General Rate Schedule Provisions (Rate Schedules), as they may be revised from time-to-time, are hereby incorporated by this reference.

**(c) Description of BPA Owned Facilities**

(1) Type: Substation line terminals

(2) Name: Redmond 115 kV

(3) Additional Description of facilities and equipment:

B-2034 – 115 kV C.E.C. Sisters terminal, Bay 8

B-1555 – 115 kV PacifiCorp Redmond terminal, Bay 14

B-1557 – 115 kV main bus sectionalizing, Bay 12

B-1558 – 115 kV bus tie

**2. TERM OF SERVICE AGREEMENT**

(a) Service under this Agreement shall commence on the Commercial Operation Date of this Project, but no later than 24 months after 0000 hours on March 1, 2014.

(b) Service under this Agreement shall terminate on the earlier of 0000 hours on March 1, 2044; or one year following written notification by either Party of its desire to terminate this Agreement.

All liabilities and obligations incurred under this Agreement shall be preserved until satisfied.

**3. REVISION OF EXHIBITS**

BPA shall have the unilateral right to update Exhibit A, not more than once a year, upon 90 days written notice. A revised Exhibit A incorporating such revised charges shall be prepared by BPA and made part of this Agreement effective as of the date specified in such notice.

**4. CHARGES FOR USE-OF-FACILITIES**

Customer shall pay BPA the applicable charge, specified in Exhibit A, for services provided pursuant to BPA's applicable Rate Schedule(s). Charges are calculated pursuant to the current UFT Rate Schedule or its successors.

**5. AMENDMENT**

Except where this Agreement explicitly allows one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision to this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

**6. ASSIGNMENT**

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld.

**7. BILLING AND PAYMENT**

**(a) Billing**

BPA shall bill Customer monthly for all products and services provided during the preceding month(s). BPA may send Customer an estimated bill followed by a final bill. The Issue Date is the date BPA electronically sends the bill to Customer. If electronic transmittal of the entire bill is not practical, BPA shall transmit a summary electronically, and send the entire bill by United States mail.

**(b) Payment**

Customer shall pay all bills electronically in accordance with instructions on the bill. Payment of all bills must be received by the 20<sup>th</sup> day after the Issue Date of the bill (Due Date). If the 20<sup>th</sup> day is a Saturday, Sunday, or federal holiday, then the Due Date is the next Business Day.

**8. ENTIRE AGREEMENT**

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

**9. FREEDOM OF INFORMATION ACT**

BPA may release information provided by Customer to comply with FOIA or if required by any other federal law or court order. For information that Customer designates in writing as proprietary, BPA will limit the use and dissemination of that information within BPA to employees who need the information for purposes of this Agreement.

**10. NO THIRD PARTY BENEFICIARIES**

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

**11. UNCONTROLLABLE FORCES**

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party's reasonable care, diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (a) strikes or work stoppage;
- (b) floods, earthquakes, or other natural disasters; terrorist acts; and
- (c) final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with Exhibit B.

701

**12. WAIVERS**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

**13. NOTICES**

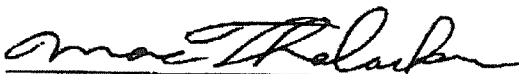

Any notice shall be provided pursuant to Exhibit B.

**14. SIGNATURES**

The Parties have executed this Agreement as of the last date indicated below.

**THREE SISTERS IRRIGATION  
DISTRICT**

**UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration**

By	<u></u>	By:	<u></u>
Name:	<u>Marc Thalacker</u> (Print/Type)	Name	<u>Eric K. Taylor</u> (Print/Type)
Title	<u>Manager</u>	Title	<u>Transmission Account Executive</u>
Date	<u>3/28/2013</u>	Date	<u>4/2/13</u>

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**EXHIBIT A  
USE-OF-FACILITIES CHARGES**

**Calculation of Charges Pursuant to the UFT-12 Rate Schedule<sup>1</sup>**

<u>Facility</u>	<u>Invest- ment</u>	<u>I&amp;A Annual Cost Ratio<sup>2</sup></u>	<u>I&amp;A Annual Cost<sup>3</sup></u>	<u>O&amp;M Annual Cost<sup>4</sup></u>	<u>Total Annual &amp; Allocated Cost<sup>5</sup></u>	<u>Sum of Non-Coincidental Demands kW<sup>6</sup> TSID<sup>7</sup> BPA TOTAL</u>			<u>\$/kW/yr<sup>8</sup></u>
PACW Redmond Terminal (B1555) CEC Sisters Terminal (B2034) <sup>9</sup>	\$874,355	10.23%	\$89,446	\$6,379	\$139,776	700	45000	45700	\$3.06
	\$1,226,498	10.23%	\$125,471	\$6,379	\$175,800	700	53000	53700	\$3.27

**Total Annual UFT Charge**

(700 kW X \$ 3.06) = \$ 2142  
 (700 kW X \$ 3.27) = \$ 2289  
 Total = \$ 4431

Total Monthly UFT Charge<sup>10</sup> = \$ 4431 / 12  
 = \$ 369

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<sup>1</sup> UFT-12 Rate Schedule or successor rate schedules.

<sup>2</sup> From ACR memo June 29 2007, ACR for H5 type substation, excluding O&M.

<sup>3</sup> I&A Annual Costs = (Investment x I&A Annual Cost Ratio)

<sup>4</sup> From ACR memo June 29 2007, O&M for 115 kV terminal w/ gas breaker. Includes Station General and Administration.

<sup>5</sup> Total Annual & Allocated Annual Cost = (I&A Annual Cost + O&M Cost + Allocated Annual Cost)  
 Allocated Annual Cost is \$21,975 + \$21,975 = \$43,950, which is the portion of the cost of the 115 kV bus tie (B1558) and bus sectionalizing (B1557) allocated to each line terminal. These breakers support 6 terminals, so 1/6 of the cost of each is assigned to each of the six terminals. The allocated cost is determined as:  
 \$21,975 = \$1,226,498\*10.23% (Annual I&A) plus \$6,379 (Annual O&M) times 1/6th.

<sup>6</sup> Approximate peak flow from SCADA, ignoring outliers.

<sup>7</sup> Three Sisters Irrigation District

<sup>8</sup> \$/kW/yr = (Total Annual & Allocated Annual Cost) / Total Non-Coincidental Demands kW

<sup>9</sup> The CEC Sisters terminal, as well as the 115 kV bus tie (B1558) and 115 kV bus sectionalizing (B1557) are all new, and investment data is not yet available. Investment is based on typical estimate number ST-7893-5 adjusted for 2012 overheads of 23%

<sup>10</sup> This charge has been adjusted for 12 equal whole dollar monthly payments.

**EXHIBIT A, REVISION NO. 1  
USE-OF-FACILITIES CHARGES**

**Calculation of Charges Pursuant to the UFT-18 Rate Schedule<sup>1</sup>  
Effective October 1, 2018**

<u>Facility</u>	<u>Invest- ment</u>	<u>I&amp;A Annual Cost Ratio<sup>2</sup></u>	<u>I&amp;A Annual Cost<sup>3</sup></u>	<u>O&amp;M Annual Cost<sup>4</sup></u>	<u>Total Annual &amp; Allocated Cost<sup>5</sup></u>	<u>Sum of Non-Coincidental Demands kW<sup>6</sup> TSID<sup>7</sup> BPA TOTAL</u>			<u>\$/kW/yr.<sup>8</sup></u>
PACW Redmond Terminal (B1555) CEC Sisters Terminal (B2034) <sup>9</sup>	\$874,355	10.23%	\$89,446	\$6,379	\$139,776	900	45000	45700	\$3.06
	\$1,226,498	10.23%	\$125,471	\$6,379	\$175,800	900	53000	53700	\$3.27

**Total Annual UFT Charge**

(900 kW X \$ 3.06) = \$ 2754  
 (900 kW X \$ 3.27) = \$ 2943  
 Total = \$ 5697

Total Monthly UFT Charge<sup>10</sup> = \$ 5697 / 12  
 = \$ 475

<sup>1</sup> UFT-18 Rate Schedule or successor rate schedules.

<sup>2</sup> From ACR memo June 29 2007, ACR for H5 type substation, excluding O&M.

<sup>3</sup> I&A Annual Costs = (Investment x I&A Annual Cost Ratio).

<sup>4</sup> From ACR memo June 29 2007, O&M for 115 kV terminal w/ gas breaker. Includes Station General and Administration.

<sup>5</sup> Total Annual & Allocated Annual Cost = (I&A Annual Cost + O&M Cost + Allocated Annual Cost)  
 Allocated Annual Cost is \$21,975 + \$21,975 = \$43,950, which is the portion of the cost of the 115 kV bus tie (B1558) and bus sectionalizing (B1557) allocated to each line terminal. These breakers support 6 terminals, so 1/6 of the cost of each is assigned to each of the six terminals. The allocated cost is determined as:  
 \$21,975 = \$1,226,498\*10.23% (Annual I&A) plus \$6,379 (Annual O&M) times 1/6th.

<sup>6</sup> Approximate peak flow from SCADA, ignoring outliers.

<sup>7</sup> Three Sisters Irrigation District.

<sup>8</sup> \$/kW/yr. = (Total Annual & Allocated Annual Cost) / Total Non-Coincidental Demands kW.

<sup>9</sup> The CEC Sisters terminal, as well as the 115 kV bus tie (B1558) and 115 kV bus sectionalizing (B1557) are all new, and investment data is not yet available. Investment is based on typical estimate number ST-7893-5 adjusted for 2012 overheads of 23%.

<sup>10</sup> This charge has been adjusted for 12 equal whole dollar monthly payments.

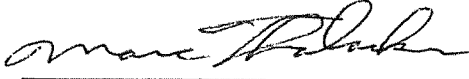


## SIGNATURES

This Revision may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The Parties have executed this Agreement as of the last date indicated below.

THREE SISTERS IRRIGATION DISTRICT

UNITED STATES OF AMERICA  
Department of Energy  
Bonneville Power Administration

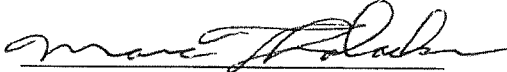
By: 

By:  Digitally signed by ERIC TAYLOR  
Date: 2018.05.04 15:57:32 -07'00'

Title: Manager

Title: Transmission Account Executive

If opting out of the electronic signature:

By: 

Name: Marc Thalacker  
(Print/Type)

Title: Manager

Date: 5/4/2018

**EXHIBIT B  
NOTICES**

Any notice required under this Agreement shall be in writing and shall be delivered in person; or with proof of receipt by a nationally recognized delivery service or by United States Certified Mail. Notices are effective when received. Either Party may change the name or address for receipt of notice by providing notice of such change. The Parties shall deliver notices to the following person and address:

**If to Customer:**

Three Sisters Irrigation District  
68000 Hwy 20 West  
Bend, OR 97701  
Attention: Marc Thalacker  
Title: Manager  
Phone: (541) 549-8815  
Fax: (541) 549-8070  
Email: [manager@tsionline.org](mailto:manager@tsionline.org)

**If to BPA:**

Attention: Transmission Account Executive  
for Three Sisters Irrigation  
District – TSE/TPP-2  
Phone: (360) 619-6016  
Fax: (360) 619-6940

**If by First Class Mail:**

Bonneville Power Administration  
P.O. Box 61409  
Vancouver, WA 98666-1409

**If by Overnight Delivery Service:**

Bonneville Power Administration – TSE/TPP-2  
7500 NE 41<sup>st</sup> Street, Suite 130  
Vancouver, WA 98662

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**EXHIBIT D-1**  
**SELLER'S MOTIVE FORCE PLAN**

**A. MONTHLY DELIVERY SCHEDULES AND SCHEDULED MAINTENANCE**

<b>Month</b>	<b>Average Energy (kWh)</b>	<b>Scheduled Maintenance</b>
January		Annual
February		Preventative
March	36,000	
April	108,000	
May	147,760	
June	142,990	
July	147,760	
August	74,400	
September	72,000	
October	74,400	
November	36,000	
December		Winter Shut-Down

The flow measurements from Oregon Water Resource Gage number 14075000, 1950 to 2012, were used to calculate the amount of water available for diversion between March 1 and November 31 for each year. Water diverted to the 54" HDPE Pipe will have a flow rate of 10-80 cfs. 20 cfs maximum going through the 200 kW facility. Using these variables, a spreadsheet was created based on the average flow years out of the last 62 years. The average annual generation is 839,311 kWh. (See attached spreadsheets)

**B. MINIMUM ANNUAL DELIVERY CALCULATION**

The flow measurements from Oregon Water Resource Gage number 14075000, 1950 to 2012, were used to calculate the amount of water available for diversion between March 1 and November 31 for each year. Water diverted to the 54" HDPE Pipe will have a flow rate of 10-80 cfs. 20 cfs maximum going through the 200 kW facility. Using these variables, a spreadsheet was created based on the worst flow years out of the last 62 years. The minimum annual generation is 478,930 kWh. (See attached spreadsheets)

**C. MAXIMUM ANNUAL DELIVERY CALCULATION**

The flow measurements from Oregon Water Resource Gage number 14075000, 1950 to 2012, were used to calculate the amount of water available for diversion between March 1 and November 31 for each year. Water diverted to the 54" HDPE Pipe will have a flow rate of 10-80 cfs. 20 cfs maximum going through the 200 kW facility. Using these variables, a spreadsheet was

created based on the best flow years out of the last 62 years. The maximum annual generation is 1,239,773 kWh. (See attached spreadsheets)

**EXHIBIT D-2**  
**ENGINEER'S CERTIFICATION OF**  
**MOTIVE FORCE PLAN**

February 28, 2018

I, David Lucke, certify that the Three Sisters Irrigation District Watson Net Meter/Micro Hydro Demonstration Project Hydroelectric Facility is likely capable under average conditions foreseeable during the term of this Agreement of meeting the Seller's estimated average, maximum, and minimum Net Output as documented in the attached calculations and narrative.



***Prepared for:***  
Three Sisters Irrigation District  
PO Box 2230  
Sisters, OR 97759

***Certified by:***  
  
David Lucke  
BSC Group, Inc.  
6711 No Winston Dr.  
Spokane, WA 99208

**THREE SISTERS IRRIGATION DISTRICT  
MOTIVE FORCE CALCULATION NARRATIVE  
FOR THE**

**WATSON NET METER/MICRO HYDROELECTRIC DEMONSTRATION PROJECT**

**BASE CALCULATION**

We took the flow measurements from the Oregon Water Resources Gage number 14075000 (just above our diversion) from March 1 through Nov 31 from 1950 through 2012 and calculated the amount of water available for diversion for that period for each year. We eliminated any flow above 140 cfs and calculated the number of acre feet that came past the diversion for each year. From those calculations we were able to determine which years had the least, most and average availability of water.

**AVERAGE FLOW CALCULATION**

When we averaged the number of acre feet available for all 62 years we got 42,647 acre feet. In March and November we are running stock water and filling storage. Currently TSID on average is delivering 20,000 acre feet on farm and diverting 30,000-32,000 acre feet. Our on farm deliveries have increased on average 4,000 acre feet per year due to piping. The majority of Storage & Stock water is delivered through both North turbine & South pressurized pipes. Currently the water from the South pipe is just being dumped to atmosphere into the reservoir. For March through November we assume that we will be delivering irrigation, stock & storage water through the South pipe. We then take the daily flow expected through the South turbine pipe and apply the appropriate head and efficiency to that flow to determine the amount of electricity that would have been generated for each day. We then applied the appropriate head and efficiency for those averages to approximate the amount of electricity that would be generated in an average year and came up with 839,311 kWh (shown on the "Avg" worksheet in the Motive Force Calculation workbook).

**MAXIMUM FLOW CALCULATION**

To calculate the best flow we chose the 5 best flow years out of the last 62 and applied the same flow management daily calculations that we have described above to determine the amount of electricity that would have been generated for each of those years. In the best years we were able to generate every day of the irrigation season, so we took the best flow from each month and applied the appropriate head and efficiency to approximate the amount of electricity that might be generated in the most advantageous conditions and came up with 1,239,773 kWh (shown on the "Maximum" worksheet in the Motive Force Calculation worksheet).

**LOW FLOW CALCULATION**

2015 is by far the worst flow on record, with 23,463 available acre feet. The next worst year is 1977 with 26,586 available acre feet. We saw no reason to evaluate what would happen in any other year. So the worst worksheet is the daily calculations on the 2015 daily flows. Because in such a low flow situation we would only be delivering 1895, percentage, and senior water, and we would be using supplemental wells to shore up deliveries, we changed the daily calculation for the turbine to leave 7 cfs flowing through the turbine all the way down to a 40 cfs diversion. Even with that modification we were only able to generate 478,930 kWh from that flow.

TSID Watson Micro Hydro Net Meter Demonstration 200 kW Average Case

Average Scenario	Hours	Flow CFS	Head	Potential	Generation Needed	Actual
Mar	360	10	163	42234	117	42234
Apr	720	10.9	163	91681	127	91681
May	744	20	163	174566	235	140988
Jun	720	20	163	168935	235	136440
Jul	720	15	163	126701	176	126701
Aug	744	10	163	87283	117	87283
Sep	720	10	163	84467	117	84467
Oct	744	10	163	87283	117	87283
Nov	360	10	163	42234	117	42234
Total				905384		839311
Nameplate	189.5					

TSID Net Meter/Micro Hydro Demonstration 200 kW Best Case

	Hours	Flow	Head	Potential	Generation Needed	Actual
Mar	744	16	163	140124	188	140124
Apr	720	20	163	168935	235	136440
May	744	20	163	174566	235	140988
Jun	720	20	163	168935	235	136440
Jul	720	20	163	168935	235	136440
Aug	744	20	163	174566	235	140988
Sep	720	20	163	168935	235	136440
Oct	744	20	163	174566	235	140988
Nov	744	15	163	130924	176	130924
				1470486		1239773
Nameplate	189.5					

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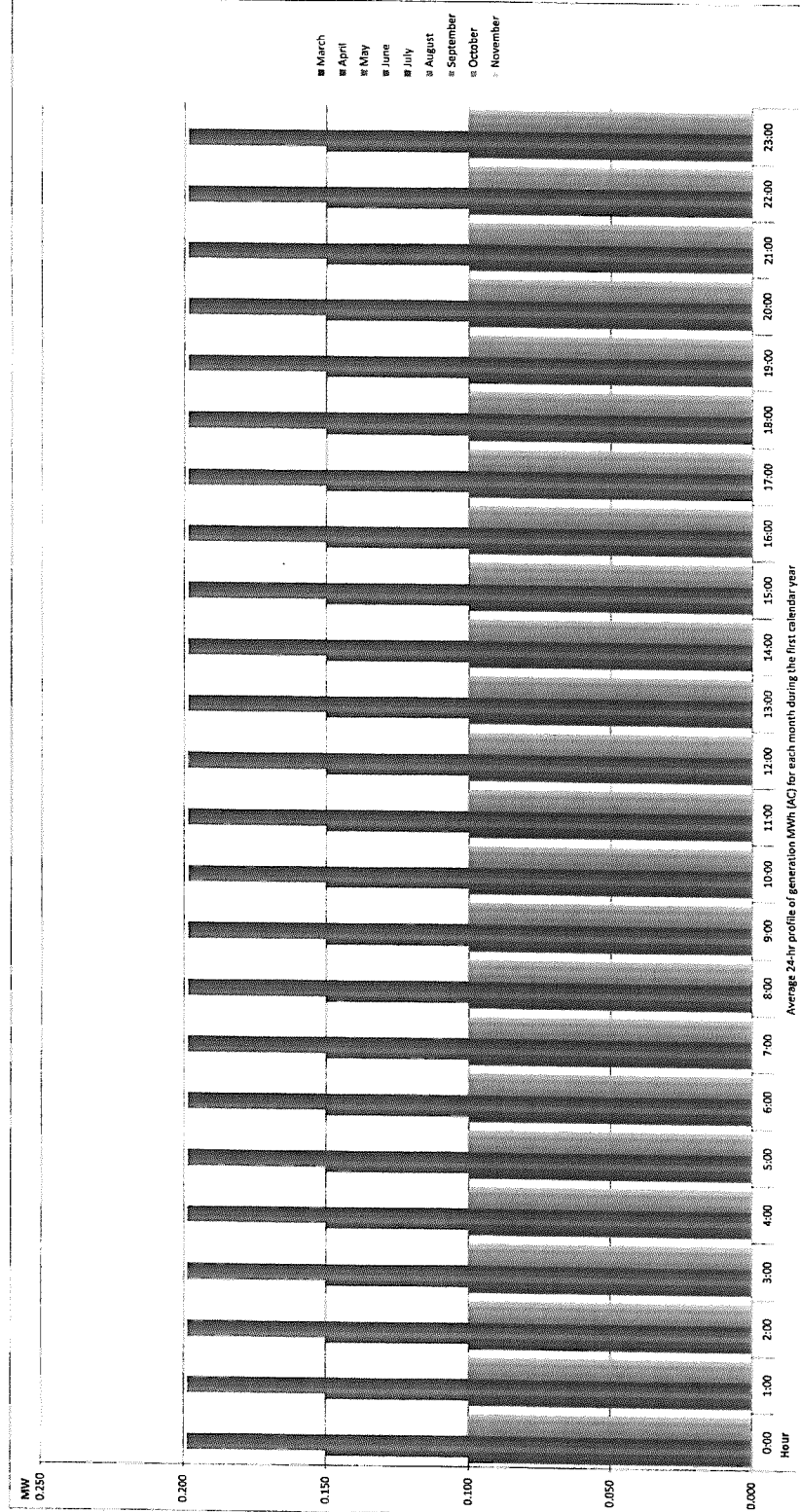


TSID McKenzie 200 kW Worst Case (Drought)

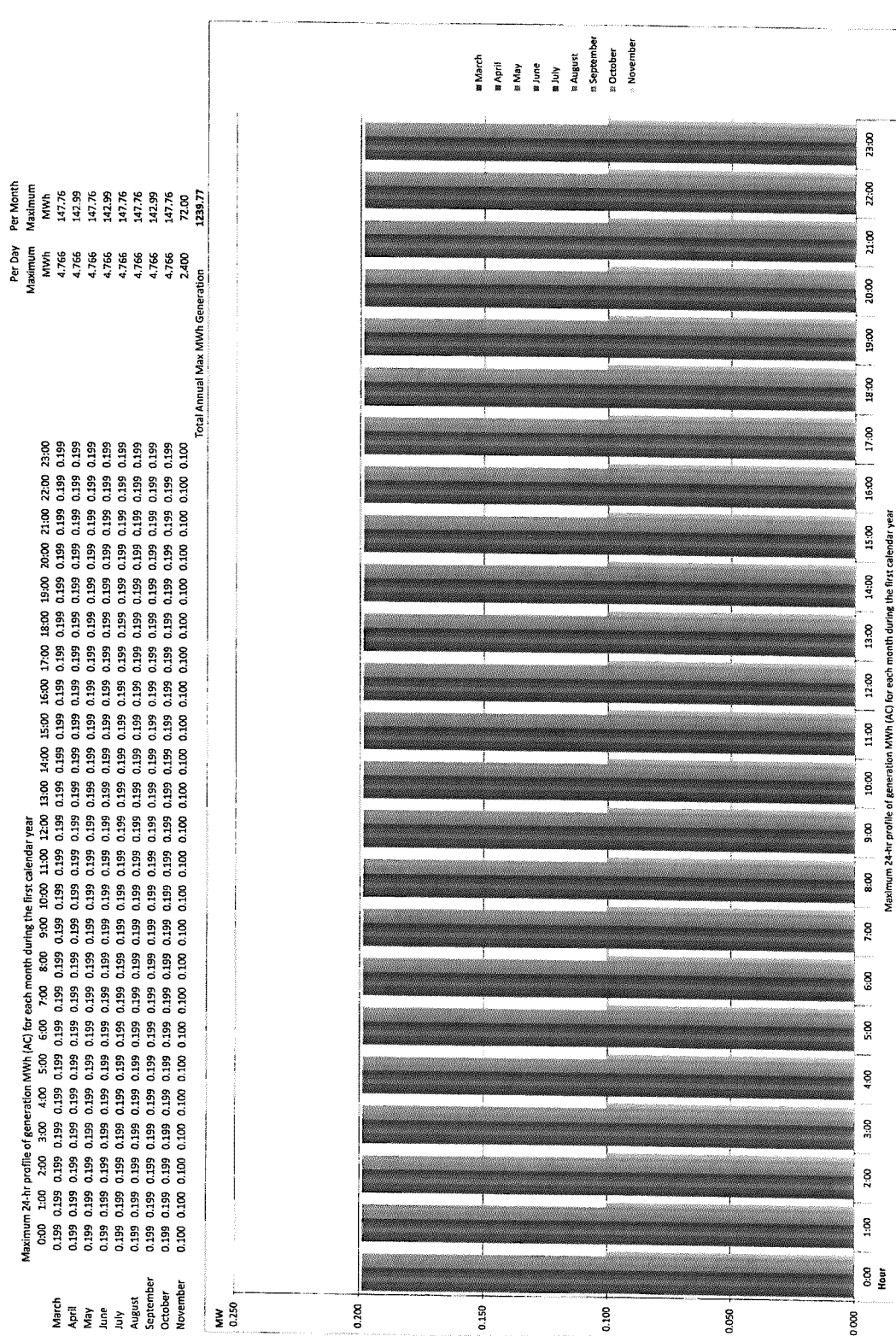
	Hours	Flow (CFS)	Head	Potential	Generation Needed	Actual
Mar	360	7	163	29564	82	29564
Apr	720	7	163	59127	82	59127
May	744	7	163	61098	82	61098
Jun	720	7	163	59127	82	59127
Jul	720	7	163	59127	82	59127
Aug	744	7	163	61098	82	61098
Sep	720	7	163	59127	82	59127
Oct	744	7	163	61098	82	61098
Nov	360	7	163	29564	82	29564
				478930		478930
Nameplate	189.5					

Three Sisters Irrigation District  
Watson Net Meter/Micro Hydro Demonstration Facility  
Average 24-hr Megawatt Generation Model

Average 24-hr profile of generation MWh (AC) for each month during the first calendar year																								
	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00
March	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100
April	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150	0.150
May	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199
June	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199
July	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199	0.199
August	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100
September	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100
October	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100
November	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100	0.100
Total Annual Avg MWh Generation																								
	Per Day											Per Month												
	Average											Average											MWh	
	2.400											2.400											36.00	
	3.600											3.600											108.00	
	4.766											4.766											147.76	
	4.766											4.766											147.76	
	2.400											2.400											74.40	
	2.400											2.400											74.40	
	2.400											2.400											36.00	
																							839.31	

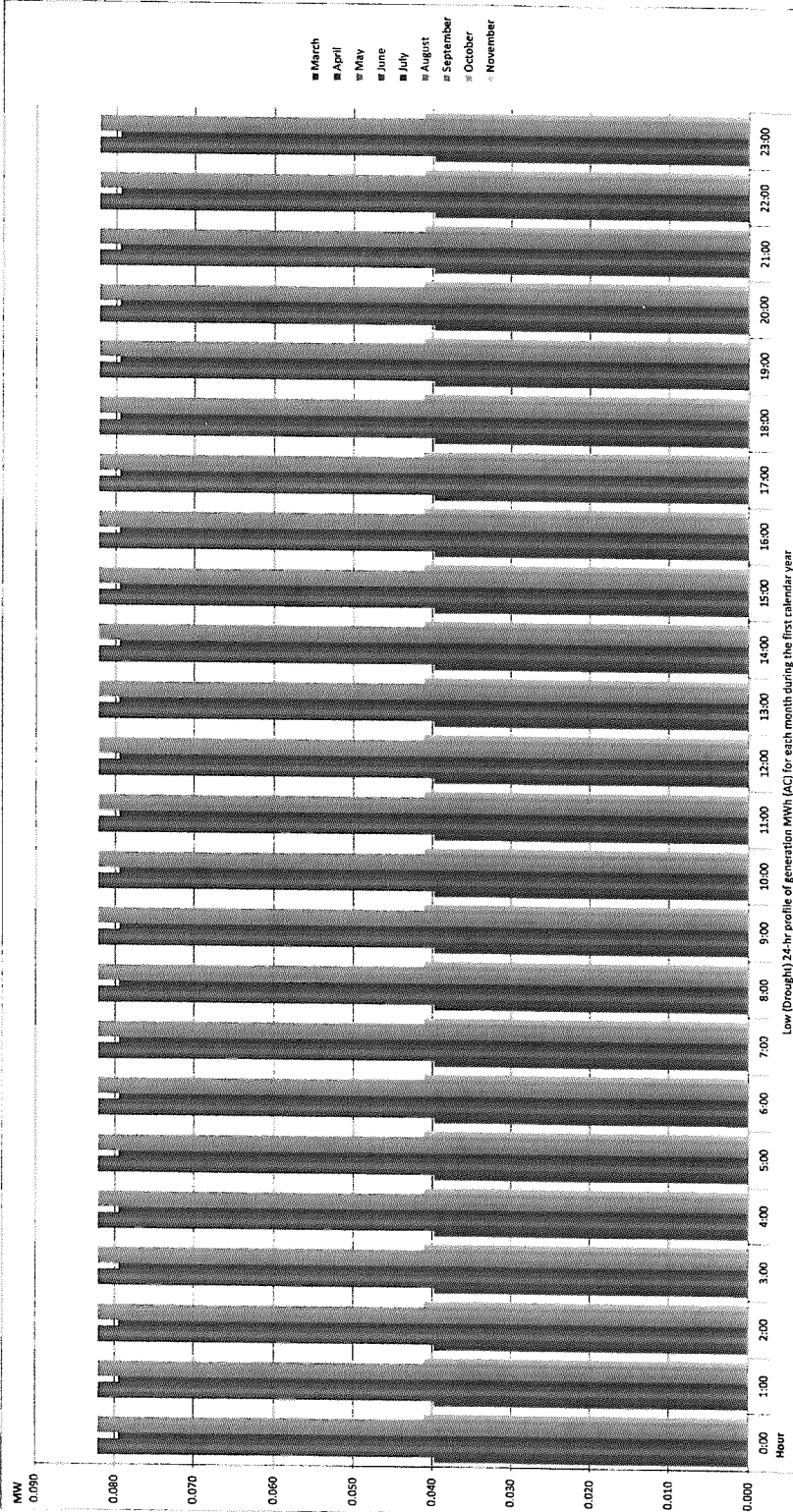


Three Sisters Irrigation District  
Watson Net Meter/Micro Hydro Demonstration Facility  
Maximum 24-hr Megawatt Generation Model



Three Sisters Irrigation District  
Watson Net Meter/Micro Hydro Demonstration Facility  
Low (Drought) 24-hr Megawatt Generation Model

Low (Drought) 24-hr profile of generation MWh (AC) for each month during the first calendar year																								Per Day Maximum	Per Month Maximum		
	0:00	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	MWh	MWh	
March	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.040	0.954	985.4667
April	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.954	985.4667	
May	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	1.971	99.13	41.06111
June	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	1.971	99.13	41.06111
July	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	0.079	1.907	95.13	41.06111
August	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	1.971	95.13	41.06111
September	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	1.971	95.13	41.06111
October	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	0.082	1.971	95.13	41.06111
November	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.041	0.985	29.56	478.93
Total Annual Max MWh Generation																								0.985	478.93		



## **EXHIBIT E**

### **START-UP TESTING**

Required factory testing includes such checks and tests necessary to determine that the equipment systems and subsystems have been properly manufactured and installed, function properly, and are in a condition to permit safe and efficient start-up of the Facility, which may include but are not limited to (as applicable):

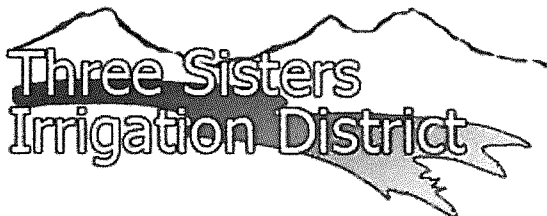
1. Pressure tests of all steam system equipment;
2. Calibration of all pressure, level, flow, temperature and monitoring instruments;
3. Operating tests of all valves, operators, motor starters and motor;
4. Alarms, signals, and fail-safe or system shutdown control tests;
5. Insulation resistance and point-to-point continuity tests;
6. Bench tests of all protective devices;
7. Tests required by manufacturer of equipment; and
8. Complete pre-parallel checks with PacifiCorp.

Required start-up tests are those checks and tests necessary to determine that all features and equipment, systems, and subsystems have been properly designed, manufactured, installed and adjusted, function properly, and are capable of operating simultaneously in such condition that the Facility is capable of continuous delivery into PacifiCorp's electrical system, which may include but are not limited to (as applicable):

1. Turbine/generator mechanical runs including shaft, vibration, and bearing temperature measurements;
2. Running tests to establish tolerances and inspections for final adjustment of bearings, shaft run-outs;
3. Brake tests;
4. Energization of transformers;
5. Synchronizing tests (manual and auto);
6. Stator windings dielectric test;
7. Armature and field windings resistance tests;
8. Load rejection tests in incremental stages from 5, 25, 50, 75 and 100 percent load;
9. Heat runs;
10. Tests required by manufacturer of equipment;
11. Excitation and voltage regulation operation tests;
12. Open circuit and short circuit; saturation tests;
13. Governor system steady state stability test;
14. Phase angle and magnitude of all PT and CT secondary voltages and currents to protective relays, indicating instruments and metering;
15. Auto stop/start sequence;
16. Level control system tests; and
17. Completion of all state and federal environmental testing requirements.

**EXHIBIT F**

**SELLER AUTHORIZATION TO RELEASE GENERATION DATA TO PACIFICORP**



PO Box 2230, Sisters, OR 97759  
Phone 541-549-8815 Fax 541-549-8070  
[www.tsidweb.org](http://www.tsidweb.org) [office@tsidweb.org](mailto:office@tsidweb.org)

March 1, 2018

Transmission Services  
Attn: Director, Transmission Services  
825 NE Multnomah, Suite 1600  
Portland, OR 97232

**RE: Three Sisters Irrigation District Interconnection Request**

Dear Sir:

Three Sisters Irrigation District hereby voluntarily authorizes PacifiCorp's Transmission business unit to share the Watson Micro Hydroelectric Facility's generator interconnection information and generator meter data with Marketing Affiliate employees of PacifiCorp Energy, including, but not limited to those in the Commercial and Trading group. Three Sisters Irrigation District acknowledges that PacifiCorp did not provide it any preferences, either operational or rate-related, in exchange for this voluntary consent.

A handwritten signature in cursive script, appearing to read "Marc Thalacker".

Marc Thalacker  
District Manager

**EXHIBIT G**  
**OREGON STANDARD AVOIDED COST RATES SCHEDULE**  
**AND**  
**PRICING SUMMARY TABLE**

MET  
5/8/2018

Year	Oregon Renewable Baseload Avoided Cost Prices <sup>1</sup> (\$/MWh)	
	On-Peak	Off-Peak
2018	\$24.69	\$19.18
2019	\$25.27	\$19.67
2020	\$27.28	\$21.10
2021	\$28.83	\$20.81
2022	\$30.82	\$24.41
2023	\$33.60	\$27.48
2024	\$37.09	\$25.38
2025	\$39.55	\$33.35
2026	\$39.95	\$33.95
2027	\$41.01	\$35.23
2028	\$101.36	\$67.58
2029	\$103.54	\$69.45
2030	\$105.62	\$71.55
2031	\$108.05	\$73.36
2032	\$110.56	\$75.32
2033	\$112.91	\$77.54
2034	Firm Market Index	Firm Market Index
2035	Firm Market Index	Firm Market Index
2036	Firm Market Index	Firm Market Index
2037	Firm Market Index	Firm Market Index
2038	Firm Market Index	Firm Market Index

<sup>1</sup> Based on Oregon standard avoided cost schedule effective June 1, 2017.

**AVOIDED COST PURCHASES FROM  
ELIGIBLE QUALIFYING FACILITIES**

Page 1

**Available**

To owners of Qualifying Facilities making sales of electricity to the Company in the State of Oregon.

**Applicable**

- For power purchased from Base Load and Wind Qualifying Facilities with a nameplate capacity of 10,000 kW or less or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 10,000 kW or less.
- For power purchased Fixed and Tracking Solar Qualifying Facilities with a nameplate capacity of 3,000 kW or less or that, together with any other electric generating facility using the same motive force, owned or controlled by the same person(s) or affiliated person(s), and located at the same site, has a nameplate capacity of 3,000 kW or less.

Owners of these Qualifying Facilities will be required to enter into a written power sales contract with the Company.

**Definitions****Cogeneration Facility**

A facility which produces electric energy together with steam or other form of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes through the sequential use of energy.

**Qualifying Facilities**

Qualifying cogeneration facilities or qualifying small power production facilities within the meaning of section 201 and 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796 and 824a-3.

**Qualifying Electricity**

Electricity that meets the requirements of "qualifying electricity" set forth in the Oregon Renewable Portfolio Standards: ORS 469A.010, 469A.020, and 469A.025.

**Renewable Qualifying Facility**

A Qualifying Facility that generates Qualifying Electricity.

**Wind Qualifying Facility**

A Renewable Qualifying Facility that generates Qualifying Electricity using wind as its motive force.

**Baseload Renewable Qualifying Facility**

A Renewable Qualifying Facility that generates Qualifying Electricity using any qualifying resource other than wind or solar.

**Small Power Production Facility**

A facility which produces electric energy using as a primary energy source biomass, waste, renewable resources or any combination thereof and has a power production capacity which, together with other facilities located at the same site, is not greater than 80 megawatts.

(continued)



**Definitions (continued)****On-Peak Hours or Peak Hours**

On-Peak hours are defined as 6:00 a.m. to 10:00 p.m. Pacific Prevailing Time Monday through Saturday, excluding NERC holidays.

Due to the expansions of Daylight Saving Time (DST) as adopted under Section 110 of the U.S. Energy Policy Act of 2005, the time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April and for the period between the last Sunday in October and the first Sunday in November.

**Off-Peak Hours**

All hours other than On-Peak.

**Excess Output**

Excess Output shall mean any increment of Net Output delivered at a rate, on an hourly basis, exceeding the Facility Nameplate Capacity. PacifiCorp shall pay Seller the Off-Peak Price as described and calculated under pricing option 4 (Non-Firm Market Index Avoided Cost Price) for all Excess Output.

**Same Site**

Generating facilities are considered to be located at the same site as the QF for which qualification for the standard rates and standard contract is sought if they are located within a five-mile radius of any generating facilities or equipment providing fuel or motive force associated with the QF for which qualification for the standard rates and standard contract is sought.

**Person(s) or Affiliated Person(s)**

A natural person or persons or any legal entity or entities sharing common ownership, management or acting jointly or in concert with or exercising influence over the policies or actions of another person or entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) solely because they are developed by a single entity. Two facilities will not be held to be owned or controlled by the same person(s) or affiliated person(s) if such common person or persons is a "passive investor" whose ownership interest in the QF is primarily related to utilizing production tax credits, green tag values and MACRS depreciation as the primary ownership benefit and the facilities at issue are independent family-owned or community-based projects. A unit of Oregon local government may also be a "passive investor" in a community-based project if the local governmental unit demonstrates that it will not have an equity ownership interest in or exercise any control over the management of the QF and that its only interest is a share of the cash flow from the QF, which share will not exceed 20%. The 20% cash flow share limit may only be exceeded for good cause shown and only with the prior approval of the Commission.

**Shared Interconnection and Infrastructure**

QFs otherwise meeting the separate ownership test and thereby qualified for entitlement to the standard rates and standard contract will not be disqualified by utilizing an interconnection or other infrastructure not providing motive force or fuel that is shared with other QFs qualifying for the standard rates and standard contract so long as the use of the shared interconnection complies with the interconnecting utility's safety and reliability standards, interconnection contract requirements and Prudent Electrical Practices as that term is defined in the interconnecting utility's approved standard contract.

(continued)

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**Definitions (continued)****Family Owned**

After excluding the ownership interest of the passive investor whose ownership interests are primarily related to green tag values and tax benefits as the primary ownership benefit, five or fewer individuals own 50 percent or more of the equity of the project entity, or fifteen or fewer individuals own 90 percent or more of the project entity. A "look through" rule applies to closely held entities that hold the project entity, so that equity held by LLCs, trusts, estates, corporations, partnerships or other similar entities is considered held by the equity owners of the look through entity. An individual is a natural person. In counting to five or fifteen, spouses or children of an equity owner of the project owner who also have an equity interest are aggregated and counted as a single individual.

**Community-Based**

A community project (or a community sponsored project) must have a recognized and established organization located within the county of the project or within 50 miles of the project that has a genuine role in helping the project be developed and must have a significant continuing role with or interest in the project after it is completed and placed in service. Many varied and different organizations may qualify under this exception. For example, the community organization could be a church, a school, a water district, an agricultural cooperative, a unit of local government, & local utility, a homeowners' association, a charity, a civic organization, and etc.

After excluding the passive investor whose ownership interests are primarily related to green tag values and tax benefits as the primary ownership benefit, the equity (ownership) interests in a community sponsored project must be owned in substantial percentage (80 percent or more) by the following persons (individuals and entities): (i) the sponsoring organization, or its controlled affiliates; (ii) members of the sponsoring organization (if it is a membership organization) or owners of the sponsorship organization (if it is privately owned); (iii) persons who live in the county in which the project is located or who live a county adjoining the county in which the project is located; or (iv) units of local government, charities, or (v) other established nonprofit organizations active either in the county in which the project is located or active in a county adjoining the county in which the project is located.

**Dispute Resolution**

Upon request, the QF will provide the purchasing utility with documentation verifying the ownership, management and financial structure of the QF in reasonably sufficient detail to allow the utility to make an initial determination of whether or not the QF meets the above-described criteria for entitlement to the standard rates and standard contract.

Any dispute concerning a QF's entitlement to the standard rates and standard contract shall be presented to the Commission for resolution. The QF may file a complaint asking the Commission to adjudicate disputes regarding the formation of the standard contract. The QF may not file such a complaint during any 15-day period in which the utility has the obligation to respond, but must wait until the 15-day period has passed. The utility may respond to the complaint within ten days of service. The Commission will limit its review to the issues identified in the complaint and response, and utilize a process similar to the arbitration process adopted to facilitate the execution of interconnection agreements among telecommunications carriers. See OAR 860, Division 016. The Administrative Law Judge will act as an administrative law judge, not as an arbitrator.

(continued)

**Self Supply Option**

Owner shall elect to sell all Net Output to PacifiCorp and purchase its full electric requirements from PacifiCorp or sell Net Output surplus to its needs at the Facility site to PacifiCorp and purchase partial electric requirements service from PacifiCorp, in accordance with the terms and conditions of the power purchase agreement and the appropriate retail service.

**Pricing Options****1. Standard Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Qualifying Facility and the Company and will not change during the term of the contract. Standard Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price.

The Standard Fixed Avoided Cost pricing option is available to all Qualifying Facilities. The Standard Fixed Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs as set forth on page 5.

**2. Renewable Fixed Avoided Cost Prices**

Prices are fixed at the time that the contract is signed by both the Renewable Qualifying Facility and the Company and will not change during the term of the contract. Renewable Fixed Avoided Cost Prices are available for a contract term of up to 15 years and prices under a longer term contract (up to 20 years) will thereafter be under the Firm Market Indexed Avoided Cost Price. The Renewable Fixed Avoided Cost pricing option is available only to Renewable Qualifying Facilities. A Renewable Qualifying Facility choosing the Renewable Fixed Avoided Cost pricing option: (a) must cede all Green Tags generated by the facility, as defined in the standard contract, to the Company during the Renewable Resource Deficiency Period identified on page 8 including during any period after the first 15 years of a longer term contract (up to 20 years); and (b) will retain ownership of all Environmental Attributes generated by the facility, as defined in the standard contract, during the Renewable Resource Sufficiency Period identified on page 8.

**3. Firm Market Indexed Avoided Cost Prices**

Firm Market Index Avoided Cost Prices are available to Qualifying Facilities that contract to deliver firm power. Monthly On-Peak / Off-Peak prices paid are a blending of Intercontinental Exchange (ICE) Day Ahead Power Price Report at market hubs for On-Peak and Off-Peak prices. The monthly blending matrix is available upon request.

**4. Non-Firm Market Index Avoided Cost Prices**

Non-Firm Market Index Avoided Cost Prices are available to Qualifying Facilities that do not elect to provide firm power. Qualifying Facilities taking this option will have contracts that do not include minimum delivery requirements, default damages for construction delay or, for under delivery or early termination, or default security for these purposes. Monthly On-Peak / Off-Peak prices paid are 93 percent of a blending of ICE Day Ahead Power Price Report at market hubs for on-peak and off-peak firm index prices. The monthly blending matrix is available upon request. The Non-Firm Market Index Avoided Cost pricing option is available to all Qualifying Facilities. The Non-Firm Market Index Avoided Cost Price for Wind Qualifying Facilities will reflect integration costs.

(continued)

**AVOIDED COST PURCHASES FROM  
ELIGIBLE QUALIFYING FACILITIES**

Page 5

**Monthly Payments**

A Qualifying Facility shall select the option of payment at the time of signing the contract under one of the Pricing Options specified above. Once an option is selected the option will remain in effect for the duration of the Facility's contract.

**Renewable or Standard Fixed Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the renewable or standard fixed prices as provided in this schedule. On-Peak and Off-Peak are defined in the definitions section of this schedule.

**Firm Market Indexed and Non-Firm Market Index Avoided Cost Prices**

In accordance with the terms of a contract with a Qualifying Facility, the Company shall pay for all separately metered kilowatt-hours of On-Peak and Off-Peak generation at the market prices calculated at the time of delivery. On-Peak and Off-Peak are defined in the definitions section of this schedule.

**Avoided Cost Prices**
**Standard Fixed Avoided Cost Prices for Base Load and Wind QF (\$/kWh)**

Deliveries During Calendar Year	Base Load QF (1,3)		Wind QF (2,3)	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)	(c)	(d)
2017	2.66	2.00	2.34	1.68
2018	2.47	1.92	2.14	1.59
2019	2.53	1.97	2.19	1.63
2020	2.73	2.11	2.39	1.77
2021	2.88	2.08	2.53	1.73
2022	3.08	2.44	2.73	2.08
2023	3.36	2.75	3.00	2.38
2024	3.71	2.54	3.34	2.17
2025	3.96	3.34	3.57	2.95
2026	4.00	3.40	3.60	3.00
2027	4.10	3.52	3.70	3.12
2028	5.81	2.78	4.71	2.37
2029	6.12	3.01	4.99	2.59
2030	6.44	3.26	5.28	2.83
2031	6.67	3.41	5.48	2.97
2032	6.93	3.59	5.71	3.14
2033	7.26	3.85	6.02	3.39
2034	7.51	4.01	6.24	3.54
2035	7.78	4.20	6.48	3.72
2036	8.21	4.54	6.87	4.04

(continued)

**Effective for service on and after July 16, 2017**

**AVOIDED COST PURCHASES FROM  
ELIGIBLE QUALIFYING FACILITIES**

Page 6

**Avoided Cost Prices (Continued)**
**Standard Fixed Avoided Cost Prices for Fixed and Tracking Solar QF (¢/kWh)**

Deliveries During Calendar Year	Fixed Solar QF (3)		Tracking Solar QF (3)	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price
	(e)	(f)	(g)	(h)
2017	2.66	2.00	2.66	2.00
2018	2.47	1.92	2.47	1.92
2019	2.53	1.97	2.53	1.97
2020	2.73	2.11	2.73	2.11
2021	2.88	2.08	2.88	2.08
2022	3.08	2.44	3.08	2.44
2023	3.36	2.75	3.36	2.75
2024	3.71	2.54	3.71	2.54
2025	3.96	3.34	3.96	3.34
2026	4.00	3.40	4.00	3.40
2027	4.10	3.52	4.10	3.52
2028	5.37	2.78	5.32	2.78
2029	5.66	3.01	5.62	3.01
2030	5.97	3.26	5.93	3.26
2031	6.19	3.41	6.14	3.41
2032	6.44	3.59	6.39	3.59
2033	6.76	3.85	6.71	3.85
2034	7.00	4.01	6.94	4.01
2035	7.26	4.20	7.20	4.20
2036	7.67	4.54	7.62	4.54

- (1) Capacity Contribution to Peak for Avoided Proxy Resource and Base Load Qualifying Facility resource are assumed 100%.
- (2) The standard avoided cost price for wind is reduced by an integration charge of \$3.06/MWh (\$2014). If Wind Qualifying Facility is not in PacifiCorp's balancing authority area, then no reduction is required.
- (3) Standard Resource Sufficiency Period ends December 31, 2027 and Standard Resource Deficiency Period begins January 1, 2028.

(continued)

**Effective for service on and after July 16, 2017**

**AVOIDED COST PURCHASES FROM  
 ELIGIBLE QUALIFYING FACILITIES**

Page 7

**Avoided Cost Prices (Continued)**
**Renewable Fixed Avoided Cost Prices for Base Load and Wind QF (¢/kWh)**

Deliveries During Calendar Year	Renewable Base Load QF (1,4)		Wind QF (1,2,3)	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price
	(a)	(b)	(c)	(d)
2017	2.66	2.00	2.34	1.68
2018	2.47	1.92	2.14	1.59
2019	2.53	1.97	2.19	1.63
2020	2.73	2.11	2.39	1.77
2021	2.88	2.08	2.53	1.73
2022	3.08	2.44	2.73	2.08
2023	3.36	2.75	3.00	2.38
2024	3.71	2.54	3.34	2.17
2025	3.96	3.34	3.57	2.95
2026	4.00	3.40	3.60	3.00
2027	4.10	3.52	3.70	3.12
2028	10.14	6.76	7.46	6.35
2029	10.35	6.95	7.62	6.53
2030	10.56	7.16	7.76	6.73
2031	10.81	7.34	7.94	6.90
2032	11.06	7.53	8.12	7.08
2033	11.29	7.75	8.28	7.29
2034	11.55	7.96	8.47	7.49
2035	11.85	8.13	8.69	7.65
2036	12.10	8.37	8.87	7.87

(continued)

**Effective for service on and after July 16, 2017**

**AVOIDED COST PURCHASES FROM  
ELIGIBLE QUALIFYING FACILITIES**

Page 8

**Avoided Cost Prices (continued)**
**Renewable Fixed Avoided Cost Prices for Fixed and Tracking Solar QF (¢/kWh)**

Deliveries During Calendar Year	Fixed Solar QF (1,4)		Tracking Solar QF (1,4)	
	On-Peak Energy Price	Off-Peak Energy Price	On-Peak Energy Price	Off-Peak Energy Price
	(e)	(f)	(g)	(h)
2017	2.66	2.00	2.66	2.00
2018	2.47	1.92	2.47	1.92
2019	2.53	1.97	2.53	1.97
2020	2.73	2.11	2.73	2.11
2021	2.88	2.08	2.88	2.08
2022	3.08	2.44	3.08	2.44
2023	3.36	2.75	3.36	2.75
2024	3.71	2.54	3.71	2.54
2025	3.96	3.34	3.96	3.34
2026	4.00	3.40	4.00	3.40
2027	4.10	3.52	4.10	3.52
2028	8.42	6.76	8.65	6.76
2029	8.59	6.95	8.84	6.95
2030	8.76	7.16	9.01	7.16
2031	8.96	7.34	9.22	7.34
2032	9.17	7.53	9.43	7.53
2033	9.36	7.75	9.62	7.75
2034	9.57	7.96	9.84	7.96
2035	9.82	8.13	10.10	8.13
2036	10.02	8.37	10.31	8.37

- (1) For the purpose of determining: (i) when the Renewable Qualifying Facility is entitled to renewable avoided cost prices; and (ii) the ownership of Environmental Attributes and the transfer of Green Tags to PacifiCorp, the Renewable Resource Sufficiency Period ends December 31, 2027, and the Renewable Resource Deficiency Period begins January 1, 2028.
- (2) During the Renewable Resource Deficiency Period, the renewable avoided cost price for a Wind Qualifying Facility will be adjusted by adding the difference between the avoided integration costs and the Qualifying Facility's integration costs. If the Wind Qualifying Facility is in PacifiCorp's Balancing Authority Area (BAA), the adjustment is zero (integration costs cancel each other out). If the Wind Qualifying Facility is not in PacifiCorp's BAA, the renewable avoided cost price will be increased by avoided integration charge of \$3.06/MWh (\$2014).
- (3) During Renewable Resource Sufficiency Period, the renewable avoided cost price for a Wind Qualifying Facility is reduced by an integration charge of \$3.06/MWh (\$2014) for Wind Qualifying Facilities located in PacifiCorp's BAA (in-system). If a Wind Qualifying Facility is not in PacifiCorp's BAA, the renewable avoided cost price will be increased by avoided integration charge of \$3.06/MWh (\$2014).
- (4) During the Renewable Resource Deficiency Period, the renewable avoided cost price for Base Load, Fixed Solar and Tracking Solar is increased by an integration charge of \$3.06/MWh (\$2014).

(continued)

**Effective for service on and after July 16, 2017**

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**Qualifying Facilities Contracting Procedure**

Interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (PacifiCorp Commercial and Trading).

It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to allow time for studies, negotiation of agreements, engineering, procurement, and construction of the required interconnection facilities. Early application for interconnection will help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

**1. Eligible Qualifying Facilities**

**APPLICATION:** To owners of eligible existing or proposed QFs with a design capacity less than or equal to 10,000 kW for Base Load and Wind QF resources and less than or equal to 3,000 kW for Solar QF resources who desire to make sales to the Company in the state of Oregon. Such owners will be required to enter into a written power purchase agreement with the Company pursuant to the procedures set forth below.

**I. Process for Completing a Power Purchase Agreement****A. Communications**

Unless otherwise directed by the Company, all communications to the Company regarding QF power purchase agreements should be directed in writing as follows:

PacifiCorp  
Manager-QF Contracts  
825 NE Multnomah St, Suite 600  
Portland, Oregon 97232

The Company will respond to all such communications in a timely manner. If the Company is unable to respond on the basis of incomplete or missing information from the QF owner, the Company shall indicate what additional information is required. Thereafter, the Company will respond in a timely manner following receipt of all required information.

(continued)



**B. Procedures**

1. The Company's approved generic or standard form power purchase agreements may be obtained from the Company's website at [www.pacificorp.com](http://www.pacificorp.com), or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request.
2. In order to obtain a project specific draft power purchase agreement the owner must provide in writing to the Company, general project information required for the completion of a power purchase agreement, including, but not limited to:
  - (a) demonstration of ability to obtain QF status;
  - (b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system;
  - (c) generation technology and other related technology applicable to the site;
  - (d) proposed site location;
  - (e) schedule of monthly power deliveries;
  - (f) calculation or determination of minimum and maximum annual deliveries;
  - (g) motive force or fuel plan;
  - (h) proposed on-line date and other significant dates required to complete the milestones;
  - (i) proposed contract term and pricing provisions as defined in this Schedule (i.e., standard fixed price, renewable fixed price);
  - (j) status of interconnection or transmission arrangements;
  - (k) point of delivery or interconnection;
3. The Company shall provide a draft power purchase agreement when all information described in Paragraph 2 above has been received in writing from the QF owner. Within 15 business days following receipt of all information required in Paragraph 2, the Company will provide the owner with a draft power purchase agreement including current standard avoided cost prices and/or other optional pricing mechanisms as approved by the Public Utility Commission of Oregon in this Standard Avoided Cost Rate Schedule.
4. If the owner desires to proceed with the power purchase agreement after reviewing the Company's draft power purchase agreement, it may request in writing that the Company prepare a final draft power purchase agreement. In connection with such request, the owner must provide the Company with any additional or clarified project information that the Company reasonably determines to be necessary for the preparation of a final draft power purchase agreement. Within 15 business days following receipt of all information requested by the Company in this paragraph 4, the Company will provide the owner with a final draft power purchase agreement.

(continued)

**B. Procedures (continued)**

5. After reviewing the final draft power purchase agreement, the owner may either prepare another set of written comments and proposals or approve the final draft power purchase agreement. If the owner prepares written comments and proposals the Company will respond in 15 business days to those comments and proposals.
6. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner within 15 business days, a final executable version of the agreement. Following the Company's execution a completely executed copy will be returned to the owner. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties.

**II. Process for Negotiating Interconnection Agreements**

[NOTE: Section II applies only to QFs connecting directly to PacifiCorp's electrical system. An off-system QF should contact its local utility or transmission provider to determine the interconnection requirements and wheeling arrangement necessary to move the power to PacifiCorp's system.]

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon the QF completing all necessary interconnection arrangements. It is recommended that the owner initiate its request for interconnection 18 months ahead of the anticipated in-service date to help ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's transmission function (including but not limited to PacifiCorp Transmission Services) while power purchase agreements are handled by the Company's merchant function (including but not limited to PacifiCorp's Commercial and Trading Group).

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**II. Process for Negotiating Interconnection Agreements (continued)****A. Communications**

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

PacifiCorp  
Director – Transmission Services  
825 NE Multnomah St, Suite 1600  
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's transmission function who will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

**B. Procedures**

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) undertaking studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, and (3) executing an interconnection agreement to address facility construction, testing, acceptance, ownership, operation and maintenance issues. Consistent with PURPA and Oregon Public Utility Commission regulations, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis. For interconnections impacting the Company's Transmission and Distribution System, the Company will process the interconnection application through PacifiCorp Transmission Services.

**EXHIBIT H**  
**GREEN TAG ATTESTATION AND BILL OF SALE**

Subject to Green Tags ownership as defined in Section 5.5, from the period commencing on October 15, 2018 and ending on \_\_\_\_\_, Three Sisters Irrigation District ("Seller") hereby sells, transfers and delivers to PacifiCorp the Green Tags (including all Green Tag Reporting Rights) associated with the generation of Net Output under the Power Purchase Agreement (Renewable Energy) between Seller and PacifiCorp dated [\_\_\_\_\_] (the "PPA"), as described below, in the amount of one Green Tag for each megawatt hour generated. Defined terms used in this Green Tag Attestation and Bill of Sale (as indicated by initial capitalization) shall have the meaning set forth in the PPA.

Facility name and location: Watson Net Meter/Micro Hydroelectric Facility, 68000 Hwy 20, Bend, Oregon Fuel Type: Water

Capacity (MW): .2 MW

Operational Date: 10/15/2018

Energy Admin. ID no.: \_\_\_\_\_

Dates

MWh generated

\_\_\_\_\_

\_\_\_\_\_

Seller further attests, warrants and represents, under penalty of perjury, as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) its sale to PacifiCorp is its one and only sale of the Green Tags referenced herein;
- iii) the Facility generated Output in the amount indicated above; and
- iv) to the best of Seller's knowledge, each of the Green Tags associated with the generation Output have been generated and sold by the Facility.

This Green Tag Attestation and Bill of Sale confirms, in accordance with the PPA, the transfer from Seller to PacifiCorp all of Seller's right, title and interest in and to the Green Tags (including Green Tag Reporting Rights), as set forth above.

Seller's Contact Person: [\_\_\_\_\_]

WITNESS MY HAND,

\_\_\_\_\_

a \_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

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

This Attestation may be disclosed by Seller and PacifiCorp to others, including the Center for Resource Solutions and the public utility commissions having jurisdiction over PacifiCorp, to substantiate and verify the accuracy of PacifiCorp's advertising and public communication claims, as well as in PacifiCorp's advertising and other public communications.

**ADDENDUM W**

**ADDENDUM W**

**GENERATION SCHEDULING ADDENDUM**

WHEREAS, Seller and PacifiCorp are parties to that certain power purchase agreement, dated February 18, 2014, whereby Seller sells and PacifiCorp purchases the net output of an approximately 700 kilowatt (kW) hydroelectric facility (the "Facility") located in Deschutes County, Oregon (the "2014 PPA");

WHEREAS, the 2014 PPA included a "Generation Scheduling Addendum" included in the 2014 PPA as Addendum W;

WHEREAS, Seller has expanded its Facility to increase the capacity by approximately 200 kW (the "Capacity Expansion");

WHEREAS, Seller has entered into this Agreement with PacifiCorp whereby Seller sells and PacifiCorp purchases the net output of the Facility that is attributable to the Capacity Expansion;

WHEREAS, consistent with the amendment to the 2014 PPA, dated May 8<sup>th</sup>, 2018, this Addendum W is intended to replace the original Addendum W that was included in the 2014 PPA and will address generation scheduling under the 2014 PPA and this Agreement;

WHEREAS, Seller's Facility, including the Capacity Expansion, is not located within the balancing authority area of PacifiCorp;

WHEREAS, Seller's Facility, including the Capacity Expansion, does not interconnect directly to PacifiCorp's transmission system;

WHEREAS, Seller and PacifiCorp have not executed a Generation Interconnection Agreement in conjunction with the 2014 PPA and will not execute a Generation Interconnection Agreement in conjunction with this Agreement;

WHEREAS, Seller has elected to exercise its right under the federal Public Utility Regulatory Policies Act to deliver Net Output from its QF Facility, including the Capacity Expansion, to PacifiCorp via one (or more) Transmitting Entities;

WHEREAS, PacifiCorp desires that Seller schedule delivery of Net Output on a firm, hourly basis; and

WHEREAS, PacifiCorp does not intend to buy, and Seller does not intend to deliver, more or less than the Net Output from the Facility, including the Capacity Expansion, except as expressly provided below.

NOW, THEREFORE, Seller and PacifiCorp do hereby agree to the following, which shall become part of the Agreement as well as the 2014 PPA:

## ADDENDUM W-ctd.

### DEFINITIONS

The meaning of the terms defined in the Agreement and this **Addendum W** shall apply to this Generation Scheduling Addendum:

**“Aggregate Net Output”** means the aggregate of the “Net Output” as defined in the 2014 PPA and the “Net Output” as defined in this Agreement.

**“Day”** means midnight to midnight, prevailing local time at the Point of Delivery, or any other mutually agreeable 24-hour period.

**“Energy Imbalance Accumulation,”** or **“EIA,”** means the accumulated difference between Seller’s Aggregate Net Output and the energy scheduled and delivered at the Point of Delivery. A positive accumulated difference indicates Seller’s net delivery of Supplemented Output to PacifiCorp. A negative accumulated difference indicates Seller’s scheduled and delivered at the Point of Delivery is less than Seller’s Aggregate Net Output.

**“Firm Delivery”** means uninterruptible transmission service that is reserved and/or scheduled between the Point of Interconnection and the Point of Delivery pursuant to Seller’s Transmission Agreement.

**“Settlement Period”** means one month.

**“Supplemented Output”** means any increment of scheduled hourly energy or capacity delivered to the Point of Delivery in excess of the Aggregate Net Output during that same hour.

**“Surplus Delivery”** means any energy delivered in excess of hourly Aggregate Net Output that is not offset by the delivery of energy in deficit of hourly Aggregate Net Output during the Settlement Period. PacifiCorp shall accept Surplus Delivery, but shall not pay for it.

### **SELLER’S OBLIGATIONS IN LIEU OF THOSE CONTAINED IN A GENERATION INTERCONNECTION AGREEMENT.**

1. **Seller’s Responsibility to Arrange for Delivery of Net Output to Point of Delivery.** Seller shall arrange for the Firm Delivery of Aggregate Net Output to the Point of Delivery. Seller shall comply with the terms and conditions of the Transmission Agreement(s) between the Seller and the Transmitting Entity(s). Whenever Seller fails to provide for Firm Delivery of Aggregate Net Output, all Net Output (under either this Agreement or the 2014 PPA) delivered via non-firm transmission rights shall be deemed Excess Output, and therefore subject to the payment provision in Section 5.4.

2. **Seller’s Responsibility to Schedule Delivery.** Seller shall coordinate with the Transmitting Entity(s) to provide PacifiCorp with a schedule of the next Day’s hourly scheduled Aggregate Net Output deliveries at least 24 (twenty-four) hours prior to the beginning of the day being scheduled, and otherwise in accordance with the WECC Prescheduling Calendar (which is updated annually and may be downloaded at: <http://www.wecc.biz/>).

## ADDENDUM W-ctd.

3. **Seller's Responsibility to Maintain Interconnection Facilities.** PacifiCorp shall have no obligation to install or maintain any interconnection facilities on Seller's side of the Point of Interconnection. PacifiCorp shall not pay any costs arising from Seller interconnecting its Facility with the Transmitting Entity(s).

4. **Seller's Responsibility to Pay Transmission Costs.** Seller shall make all arrangements for, and pay all costs associated with, transmitting Aggregate Net Output to PacifiCorp, scheduling energy into the PacifiCorp system and any other costs associated with delivering the Seller's Aggregate Net Output to the Point of Delivery.

5. **Energy Reserve Requirements.** The Transmitting Entity shall provide all generation reserves as required by the WECC and/or as required by any other governing agency or industry standard to deliver the Net Energy (under this Agreement and the 2014 PPA) to the Point of Delivery, at no cost to PacifiCorp.

6. **Seller's Responsibility to Report Net Output.** On or before the tenth (10<sup>th</sup>) day following the end of each Billing Period, Seller shall send a report documenting hourly station service, Excess Output, Net Output under the 2014 PPA, and Net Output under this Agreement from the Facility during the previous Billing Period, in columnar format substantially similar to the attached **Example 1**. If requested, Seller shall provide an electronic copy of the data used to calculate Net Output, in a standard format specified by PacifiCorp. For each day Seller is late delivering the certified report, PacifiCorp shall be entitled to postpone its payment deadline under the 2014 PPA and this Agreement by one day. Seller hereby grants PacifiCorp the right to audit its certified reports of hourly Net Output. In the event of discovery of a billing error resulting in underpayment or overpayment, the Parties agree to limit recovery to a period of three years from the date of discovery.

7. **Seller's Supplemental Representations and Warranties.** In addition to the Seller's representations and warranties contained in the 2014 PPA and this Agreement, Seller warrants that:

- (a) Seller's Supplemented Output, if any, results from Seller's purchase of some form of energy imbalance ancillary service;
- (b) The Transmitting Entity(s) requires Seller to procure the service, above, as a condition of providing transmission service;
- (c) The Transmitting Entity requires Seller to schedule deliveries of Net Output in increments of no less than one (1) megawatt;
- (d) Seller is not attempting to sell PacifiCorp energy or capacity in excess of its Aggregate Net Output; and
- (e) The energy imbalance service, above, is designed to correct a mismatch between energy scheduled by the QF and the actual real-time production by the QF.

8. **Seller's Right to Deliver Supplemented Output.** In reliance upon Seller's warranties in Section 7, above, PacifiCorp agrees to accept and pay for Supplemented Output;



## ADDENDUM W-ctd.

*provided, however, that* Seller agrees to achieve an EIA of zero (0) kilowatt-hours during On-Peak Hours and zero (0) kilowatt-hours during Off-Peak Hours at the end of each Settlement Period.

(a) **Remedy for Seller's Failure to Achieve zero EIA.** In the event Seller does not achieve zero EIA at the end of each Settlement Period, PacifiCorp will declare any positive balance to be Surplus Delivery, and Seller's EIA will be reset to zero. PacifiCorp will include an accounting of Surplus Delivery in each monthly statement provided to Seller pursuant to Section 9.1 of the 2014 PPA and this Agreement.

(b) **Negative Energy Imbalance Accumulations.** Any negative EIA (indicating that the Transmitting Entity has delivered less than Seller's Aggregate Net Output to the Point of Delivery), will be reset to zero at the end of each Settlement Period. Seller's Net Output attributed to the 2014 PPA and this Agreement shall be reduced by the negative EIA based on the ratio of the Net Output for each agreement to the Aggregate Net Output times the negative EIA for billing purposes.

(c) **PacifiCorp's Option to Change EIA Settlement Period.** In the event PacifiCorp reasonably determines that doing so likely will have a *de minimis* net effect upon the cost of Seller's Aggregate Net Output to PacifiCorp, it may elect to enlarge the Settlement Period, up to a maximum of one Contract Year. Conversely, if PacifiCorp reasonably determines, based on the QF's performance during the current year, that reducing the Settlement Period likely will significantly lower the net cost of Seller's Aggregate Net Output to PacifiCorp, it shall have the right to shorten Seller's EIA settlement period beginning the first day of the following Contract Year. However, in no case shall the Settlement Period be less than one month.

## ADDENDUM W—Example 1

### Example of Seller's Output Reporting Requirement with Multiple Generators

Day	Hour ending (HE)	A1	B1	C1		A2	B2	C2		CT		DT	E =Max (0, CT-DT)
				(=A1-B1)				=A2-B2		=C1+C2			
		Meter Reading <sup>1</sup> at Point of Interconnection (MWh)	Meter reading at Station Power Meter <sup>2</sup> (MWh)	Net Output (MWh)	Meter Reading <sup>1</sup> at Point of Interconnection (MWh)	Meter reading at Station Power Meter <sup>2</sup> (MWh)	Net Output (MWh)	Net Output (MWh)	Net Output (MWh)			Combine d Facility Capacity Rating (MW)	Excess Output (MWh)
1	7:00	0.20	0.01	0.19	0.65	0.01	0.64	0.83	0.90				
1	8:00	0.15	0.02	0.13		0.02	{0.02}	0.11	0.90				
1	9:00	0.12	0.01	0.11	0.50	0.01	0.49	0.60	0.90				
1	10:00	0.21	0.01	0.20	0.50	0.01	0.72	0.92	0.90				0.02
1	11:00	0.18	0.01	0.17	0.50	0.01	0.72	0.89	0.90				
1	12:00	0.17	0.01	0.16	0.40	0.01	0.39	0.55	0.90				
1	13:00	0.19	0.01	0.18	0.30	0.01	0.29	0.47	0.90				
1	14:00	0.14	0.01	0.13	0.45	0.01	0.44	0.57	0.90				
1	15:00	0.10	0.01	0.09	0.50	0.01	0.49	0.58	0.90				
1	16:00	0.05	0.01	0.04	0.60	0.01	0.59	0.63	0.90				
1	17:00	0.08		0.08	0.65		0.65	0.73	0.90				
1	18:00	0.09	0.01	0.08	0.65	0.01	0.64	0.72	0.90				
1	19:00	0.14	0.02	0.12	0.71	0.02	0.72	0.84	0.90				
1	20:00	0.16	0.01	0.15	0.50	0.01	0.49	0.64	0.90				

<sup>1</sup> Seller shall show adjustment of Meter Reading for losses, if any, between point of metering and the Point of Interconnection, in accordance with Section 8.1 of the 2014 PPA and this Agreement.

<sup>2</sup> Does not apply if Station Service is provided from the gross output of the Facility.